



Pacific Judicial
Integrity Program

Advanced Managing and Reporting on Fraud and Corruption Cases Online Course

Via Zoom – 1, 8, 15 & 22 August 2024



**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence



Advanced Managing and Reporting on Fraud and Corruption Cases Online Course

Via Zoom – 1, 8, 15 & 22 August 2024

Session 02 – (PNG) FCOT Update & Fraud identity and Evidentiary Case Example



Introduction

Criminal Code Act 1974:

“It sets out the various offences and penalties that apply to criminal conduct and defines the fundamental principles of criminal liability.”

Criminal Practice Rules 2022:

“These Rules are intended to promote the fair, just, and speedy disposition of all criminal cases in the National Court so as to maintain the Rules of Law and to ensure that the rights of all accused persons under s 37(3) of the Constitution to be afforded a fair hearing, within a reasonable time by an independent and specifies procedures in criminal proceedings.”



Definitions

Fraud and Corruptions cases – General R

- Definitions

In this Order, unless the contrary intention appears:

“FC” means Fraud and Corruption related cases;

“Judge Administrator (FC) means the Judge appointed by the Chief Justice to manage the Criminal (FC) track.

“Listing process” means the process set out in in the Rules and in particular mentions, direction hearing, status conferences and trials.

Judge Administrator (FC)’s Responsibilities

FC cases that are commenced in the registry shall be managed by the Judge Administrator and shall be dealt with in accordance with the practice and procedure of the Court prescribed by these Rules.

PNG Fraud & Corruption Track



In Papua New Guinea National Court Criminal Registry has two tracks, the Fraud & Corruption and the General Crimes track.

The Fraud and Corruption Track is a special track that manages the fraud and corruption cases. Previously the Crimes Registry Officers were guided by the Criminal Practice Rules 1987 in their work in registering and managing of all criminal matters. Later the need to create a separate track for the Fraud & Corruption cases arose so the Judges through their Rules Committee formulated the Criminal Practice (Fraud & Corruption Related Offences) Rules on the 04 of November 2013.

The purpose of the creation of the Fraud & Corruption Track:

- to facilitate a quick, fair and efficient disposition of Fraud and Corruption cases under a special track.
- to distinguish Fraud Offences as opposed to other Criminal offences and can be dealt with separately
- This court track deals with high and sensitive cases and, since the establishment, all FCOT cases are being managed through the Fraud & Corruption Track.



FCOT Court Track Management

- Judge Administrator- Oversee and Manage FCOT cases
- Registrar's Responsibilities - The Registrar shall assign clerks to maintain the FC List in FCOT and perform duties as directed by the Judge Administrator.

FC case files in FCOT shall be managed by a clerk appointed by the Registrar, following instructions from the Assistant Registrar and the Judge Administrator responsible for FCOT

Team Composition

- Team Leader
- Counter and Court Room Officer
- Electronic filing Officer



Types of FCOT Cases

- Offences under the Code or under any other law involving theft, fraud, dishonesty or misappropriation of property, including fraud and corruption; and
- Offences listed in Schedule 2; and
- Certain applications under the Proceeds of Crime Act 2005 or the Mutual Assistance in Criminal Matters Act 2005

Commencement of FCOT Related Cases



Fraud and Corruption cases into the National Court commenced through:

- **Committal from the Committal/District Courts**
- **Proceedings under section 526 of the Criminal Code Act 1974**

“ This happens in cases in which a District Court has refused to commit a person for trial of an indictable offence and the Public Prosecutor decides to prosecute under s 526 of the Code, the Public Prosecutor shall file a Notice of Intention to Prosecute pursuant to s 526 of the Criminal Code, in Form 8, and serve the notice on the accused, which shall give the accused at least seven days' notice of the date and place of the first mention of the proceedings before a Judge”.

- Certain applications under the Proceeds of Crime Act 2005 or the Mutual Assistance in Criminal Matters Act 2005

FCOT Case Initiation at The National Court



Case initiations at the National Court

- The Committal Courts after finding enough evidence to commit an accused person to stand trial at the National Court commits the person to the National Court
- The clerk of the Committal Court forwards the Notice of Committal with the file to the Fraud and Corruption Court Track
- The file is received, registered online, case reference is automatically generated by the system with the special case code and assigned to the Track Judge.



FCOT Team Roles & Responsibilities

- Numbering of the Committal Court Depositions
 - Listings is created, manually and online listings. Case listings is management through out the life span of the matter until its completed. This means both physical and online file must be updated by capturing all court events that is taking place in the life of a particular file.
- Manage filing and tracking of documents, sealing of documents filed on existing file in FCOT
- Sequential numbering of new documents filed, scanning, vetting, upload online filing, ensuring all filings are properly documented and stored.
- Manage Case Listings throughout the life span of a case file, both physical and online filing, documents, file endorsements, court events must correspond.



FCOT Team Roles & Responsibilities – cont

- Daily online listings are updated immediately to reflect court events/sittings
- Manage correspondence and document amongst parties
- Case is listed before judge for mention, direction and other listings until the matter goes for trial and the Court makes a decision on the verdict and later sentence if the person is found guilty or acquitted.
- Maintain closed case list for the year, documenting all concluded cases.
- The registry/FCOT must capture all written decisions, orders, documentary evidence, numbered exhibits, placing them on the file for records and ensuring readiness for the event of an appeal.
- Online file is also updated documents stored for reference, easy retrieval for future use.



Pre-Trial Procedures

- **First Mention at Regular Callover**

Case is first mentioned at a regular Callover sessions, where upcoming cases are scheduled and managed.

- **Directions Hearing**

At the direction hearing, the judge addresses key pre-trial matters such as the availability of depositions and witnesses, protection of testimony, early indications of plea and charges, trial preparation and logistics, and scheduling the trial date.

- **Preliminary Hearing**

Preliminary hearings involve the accused and prosecuting counsel. Prosecuting counsel and defense counsel fulfill their obligations, and any further applications are made, concluding the pre-trial review.

Weekly FCOT Case List Submission & Exhibit Finalization



- FCOT updated list is passed to the Judge Administrator every Thursday.
- At the end of the trial and before submissions on verdict the list must be finalized, and all exhibits placed on court file in order and then scanned into the system in order. Place submissions on court file, followed by written verdict and orders in the event Acquittal or Conviction.
- Perform quality checks to ensure that electronic copies are clear and of high quality.
- These steps are part of our practice in managing our court exhibits in FCOT to avoid potential evidentiary issues.



Exhibits Management

- Trial judge and associate manage exhibits tendered during trial, preparing a list of exhibits and numbering them for reference (Numbered by Judge – ie: P1, P2 etc. for prosecution exhibits, D1, D2 for defence). Ensure all exhibits are properly documented and preserved for evidentiary purposes.
- Ensure all exhibits are properly documented and preserved for evidentiary purposes.
- The purposes of numbering exhibits is to avoid evidentiary issues and maintain case integrity.
- Associates prepare the list of exhibits.
- At the end of the trial and before submissions on verdict, the list must be finalized and all exhibits placed on court file in order and then scanned into the system.



Summary of Criminal Practice Rules

- Current Practice Rules were edited and adopted in 2022. All FCOT cases adhere to this Practice Rules.
- The results of these changes has been tested and realized because the current Judge Administrator contribution to these new Practice Directions
- These new changes has enhanced the efficiency in the management of the Fraud and Corruption related cases.

Examples of Improvements

- Efficient case listings management
- Efficient management of court exhibits in compliance to the Evidsence Act and the Practice Rules
- Successful case disposals rate



Case Example

Document and Identify Fraud Evidently Issues

Definition-:

Document fraud refers to the illegal act of forging, altering, or misusing official documents for personal gain or to deceive others. It encompasses a broad range of activities, including counterfeiting, identity theft, rental application fraud, and the creation of false records or credentials.

In PNG's perspective, it is specifically the use of false documents or falsification of documents with intention to defraud. Forgery and uttering are defined offences in the Criminal Code Act 1974.

Case – State vs James Fix

James Fix went into business with his elder brother Peter in 1976. They incorporated a company business known as Fixt Propriety Limited and had equal shares. Peter decided to change ownership of shareholding in 2015, from 1 share each to 100 shares where 40% shares of the offender was removed from him and distributed to other family members hence leaving James with 10% shares.



Case – State vs James Fix Continued

Having to be upset of this change, Peter went to court and changed the ownership back to 50% as held previously by forging James signature on a purported meeting minutes that agreed to change share ownership and a notice of change of shareholder (share transfer) form (i.e. form 13 of the Company Act 1997) and uttered notice of change of shareholder form when he lodged it to IPA (Investment Promotion Authority).

James was charged with 2 counts of Forgery and 1 count of uttering. During trial, the complainant – Peter and another witness are overseas and could not attend court due to covid restrictions. State made an application pursuant to ss 5 and 12 of the Mutual Assistance in Criminal Matters Act 2005 and s 185 fo the PNG Constitution to lead evidence via video link. State had 11 documentary exhibits and the defence had 3 exhibits. The court granted the application and Peter gave evidence from overseas.



Case – State vs James Fix Continued

The order directed the associate and FCOT- Crimes Registry to facilitate the video link facilities as well as the State to communicate with the colleague prosecution office overseas. Paramount attention was given to the quality of documentary exhibits that were to be shown of quality or clarity of exhibits can become an issue when not properly given attention. In this case the evidence on display was of good quality and readable.

Furthermore, to avoid technical issues during the trial via video link, an IT officer was made to sit with the associate to effectively attend to any unforeseen issues that may come by so that unnecessary interruptions are avoided.

The Mutual Assistance in Criminal Matters Act 2005 has provided the avenue especially for the Prosecution in such circumstances when witnesses are required to give evidence. The court in this matter as part of it's ruling in emphasized that the state witnesses were willing to give evidence. It does not limit the court's power to compel witnesses to give evidence within the operation of the Act (i.e. Mutual Assistance in Criminal Matters Act 2005).

FCOT Facilitates Court's Request



Ensure all court documents, documentary evidence, and exhibits are properly numbered, scanned, and captured in the physical file and online file(database) for easy retrieval and use.

Exhibit

Store physical exhibits in a designated, secure area (storeroom) accessible only to authorized personnel via digitized access with special pin numbers.

Number each exhibits clearly and accurately

Create a court files index to list all exhibits

Scan and store documentary evidence in the database, ensuring that there are no errors in wording or spelling.



Conclusion

The Papua New Guinea (PNG) Fraud and Corruption Track (FCOT) within the National Court is a pivotal system for managing fraud and corruption cases with efficiency and integrity. Established to address these high-stakes cases distinctly from other criminal offenses, the FCOT ensures rapid and just case handling through a specialized framework.

Under the guidance of the Criminal Practice Rules 2022 and the Criminal Code Act 1974, the FCOT is overseen by a Judge Administrator who ensures that all fraud and corruption cases are handled efficiently from the initial filing to the final verdict. This involves managing court schedules, pre-trial processes, and trial proceedings to ensure swift justice.



Conclusion Cont.

The FCOT's commitment to maintaining document integrity and managing exhibits effectively was evident in the "State vs. James Fix" case. The facilitation of video link testimony and the meticulous handling of documentary evidence highlighted the track's adaptability and precision.

Overall, the FCOT's adherence to the Criminal Practice Rules 2022 and the Criminal Code Act 1974, under the oversight of the Judge Administrator, ensures that fraud and corruption cases are managed with the highest standards of efficiency and fairness, reinforcing the judiciary's role in upholding justice in Papua New Guinea.

End of Presentation



PNG - Tok Pisin (Pidgin) Tenku Tru Lo Harim!

Pijin (Solomon Islands) - Tanggio tumas fo yor wakaabout!

Fijian (Fiji) - Vinaka vakalevu

Samoan (Samoa) - Fa'afetai mo lou fesoasoani!

Tongan (Tonga) - Malo 'aupito mo e tautefito!