

Judicial Officers' Fraud and Corruption Workshop

Kiribati

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Chapter 1: Similarities and differences of provisions across all jurisdictions

This chapter outlines the similarities and differences between fraud and corruption offences across PJIP partner court jurisdictions. The two most prevalent fraud and corruption offence categories defined by the region¹ are: fraud and bribery.

Fraud

In most jurisdictions, the Fraud regime is complex and there is significant overlap with various other provisions. The provisions annexed below are those with which a public officer could be charged, who embezzled public funds. Six jurisdictions (Fiji, Kiribati, Nauru, Republic of Marshall Islands, Solomon Islands, and Tonga) have provisions that specifically target fraud or embezzlement by public servants. In the other six jurisdictions, recourse must be had to general provisions (present in all jurisdictions) dealing with fraudulent misappropriation of property. These offences may be variously referred to as “theft”, “cheating”, “obtaining by false pretences”, “obtaining by deception”, or “fraudulent conversion”. Palau is the only jurisdiction to have a specific offence of theft of government property that can be committed by a private individual.

Kiribati and Solomon Islands have identical provisions dealing with the following:

- Frauds and breaches of trust by persons employed in the public service²
- Theft, including taking by trickery or despite knowledge of a mistake on the part of the person defrauded
- Larceny and embezzlement by public servants
- Obtaining by false pretences

Vanuatu has provisions dealing with theft and obtaining by false pretences which are substantially similar to those in the three aforementioned jurisdictions. However, it lacks any provisions dealing specifically with frauds by public servants. The other eight jurisdictions have substantially different regimes.

¹ As outlined in the PJIP Judicial Officer Needs Assessment Survey Report, June 2022

² Fiji has a similarly worded provision



There is a degree of practical commonality among the fraudulent misappropriation or theft offences in all jurisdictions. There are three main elements of which most jurisdictions include at least two. These are that the taking of a thing is done:

- Dishonestly, or by fraud or deceit;
- Without a good faith claim of right (some jurisdictions (Federated States of Micronesia, Fiji, and Nauru) merely include the weaker proposition that the property belongs to another); and
- With intent to permanently deprive the owner of the thing.

Kiribati, Nauru, Solomon Islands, Tonga and Vanuatu include all three elements; Palau, Republic of Marshall Islands, Samoa and Tokelau include the first and third; and Papua New Guinea and Federated States of Micronesia include the second and third.

Bribery

All jurisdictions except Nauru focus on bribery in official and political matters, with relevant bribery being bribery of public officials to act in a certain way in the course of their official duties. Nauru, by contrast, focuses on the dishonest provision/receipt of a bribe with the intention of gaining/providing a favour. All jurisdictions address both directions of bribery, that is, provision and receipt. Papua New Guinea and Fiji both have provisions that address bribery of judicial officials. The most detailed provision is that in the Marshall Islands. Fiji also has specific bribery legislation.³

Offence provision/s by jurisdictions

Unless otherwise specified, all references to statutory provisions are to the following Crimes Acts:

- **Federated States of Micronesia:** [Code of the Federated States of Micronesia](#) ;
- **Fiji:** [CRIMES ACT 2009 - Laws of Fiji](#); [Prevention of Bribery Act 2007](#) (For offences committed prior to 1/2/2010 see [Laws of Fiji Chapter 17 \(Penal Code\)](#));
- **Kiribati:** [Penal Code 1977](#);
- **Nauru:** [Crimes Act 2016](#);
- **Palau:** [Penal Code of the Republic of Palau](#);
- **Papua New Guinea:** [Criminal Code Act 1974](#);
- **Republic of Marshall Islands:** [Marshall Islands Revised Code 2014 Title 31 Chapter 1](#);
- **Samoa:** [Crimes Act 2013](#);
- **Solomon Islands:** [Penal Code 1963](#);
- **Tokelau:** [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:** [Laws of Tonga Chapter 18 \(Criminal Offences\)](#)
- **Vanuatu:** [Penal Code 1977](#)

	Fraud	Bribery
Federated States of Micronesia	s 601(9) s 602	s 516

³ Prevention of Bribery Act 2007



Fiji	ss 4, 200, 290, 291, 292, 293, 317, 318, 319(1)(b), 323, 324, 325, 327, 328, 329, 330	s 4, 133, 134, 135, 136, 137, 138 <i>Prevention of Bribery Act</i> ss 2, 3, 4, 5, 6, 8
Kiribati	ss 121, 251, 266	s 85
Nauru	ss150, 153, 166-168, 179	s 173
Palau	ss 2600, 2614, 2615	s 4100
Papua New Guinea	s406, s365 s 383A, s403, s404, s405	ss 87, 97B, 119, 120
Republic of Marshall Islands	ss 223.0, 223.3, 240.7	s 240.0 s 240.1
Samoa	s 172	s 138
Solomon Islands	ss 129, 258, 273, 308	s 91
Tokelau	ss 27, 31, 73(1)	s 72 (1), 72 (2)
Tonga	ss 53, 143, 144, 145	ss 50, 51
Vanuatu	ss 122, 123, 124, 125	s 73



*PJIP is funded by the Department of Foreign Affairs and Trade
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Chapter 2: Kiribati - Summary of Elements of the Offences

Under the two offence categories, the below offences pursuant to the [Penal Code 1977](#) have been identified as falling within the scope of “*corruption*”. Power is used corruptly if it has been “used to obtain some private advantage or for any purpose foreign to the Power”.⁴ For the purposes of this program, “*corruption*” refers to the abuse of entrusted power by public servants, with particular reference to the dishonest pursuit of gain. ALTERNATIVELY: we have used this term in its generic meaning opposed, to its legal connotation.

Fraud: s 121. Frauds and Breaches of Trust by Persons Employed in the Public Service

Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of a misdemeanour.

Fraud: s 251. Definition of Theft

- (1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof: Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.
- (2)
- (a) The expression "takes" includes obtaining the possession-
 - (i) by any trick;
 - (ii) by intimidation;
 - (iii) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained; or
 - (iv) by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps.
 - (b) The expression "carries away" includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached.
 - (c) The expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

Fraud: s 266. Larceny and Embezzlement by Clerks or Servants

Any person who-

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⁴ *State v Gamato* [2021] PGNC 485, 136 (Berrigan J).



- (b) being employed in the public service of Her Majesty-
 - (i) steals any chattel, money or valuable security belonging to or in the possession of Her Majesty or entrusted to or received or taken into possession by such person by virtue of his employment; or
 - (ii) embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever except for the public service any chattel, money or valuable security entrusted to or received or taken into possession by him by virtue of his employment; or
- (c) being appointed to any office or service by or under a council established under the [Local Government Ordinance](#) or any law or laws repealing and replacing the same, or being appointed to any office or service by or under any other local government council or other public body-
 - (i) fraudulently applies or disposes of any chattel, money or valuable security received by him (whilst employed in such office or service) for or on account of any local government council or other public body or department, for his own use or any use or purpose other than that for which the same was paid, entrusted to, or received by him; or
 - (ii) fraudulently withholds, retains, or keeps back the same, or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to his office or service aforesaid,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

Fraud: s 301. False Pretences

Any person who by any false pretence-

- (a) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or

...

is guilty of a misdemeanour, and is liable to imprisonment for five years.

Bribery: s 85. Corruption and the Abuse of Office

Any person who –

- (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony and shall be liable to imprisonment for 7 years.



Partner Court / Topic	Fraud	Bribery
KIRIBATI	<i>Penal Code 1977</i>	
Legislative Provisions	<p>s 121 Frauds and breaches of trust by persons employed in the public service</p> <p>s 251 Definition of theft</p> <p>s 266 Larceny and embezzlement by clerks or servants</p> <p>Definition of:</p> <p>s 301 False Pretences</p>	s 85 Official Corruption
Elements of the Offence	<p>s 121 Frauds and breaches of trust by persons employed in the public service</p> <ol style="list-style-type: none"> 1. A is employed in the public service 2. A commits any fraud or breach of trust affecting the public (whether or not it would have been criminal if committed against a private person) 3. A did so in the discharge of the duties of his office <p>s 251 Definition of theft</p> <ol style="list-style-type: none"> 1. A takes or carries away anything capable of being stolen 2. A does so without the consent of the owner 3. A does so fraudulently 4. A does so without a claim of right made within good faith 5. A does so with intent to permanently deprive the owner of the thing <p>s 266 Larceny and embezzlement by clerks or servants</p> <ol style="list-style-type: none"> 1. A is a clerk or servant or employed (or acting in the capacity thereof) 2. A steals any chattel, money or valuable security belonging to, or in the possession or power of his master or employer <p>ALTERNATIVELY</p>	<p>s 85 Official Corruption</p> <ol style="list-style-type: none"> 1. A is employed in the public service 2. A asks X for a benefit as consideration for doing something in the duties of A's office 3. A does so corruptly <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> 1. X is employed in the public service 2. A gives any benefit to X on account of X doing something in the duties of X's office 3. A does so corruptly



	<p>1. A is a clerk or servant or employed (or acting in the capacity thereof)</p> <p>2. A embezzles the whole or part of any chattel, money or valuable security delivered, received or taken into possession by him for or in the name or on the account of his master or employer</p> <p>3. A does so fraudulently</p> <p>s 301 False Pretences</p> <p>1. A obtains, procures or causes any chattel, money, or valuable security of any other person to be delivered or paid to himself for the use, benefit or on account of himself or any other person</p> <p>2. A does so by false pretences (s 308)</p> <p>3. A does so with intent to defraud</p> <p>ALTERNATIVELY</p> <p>1. A causes or induces X to</p> <ul style="list-style-type: none"> • execute, make, accept, endorse, or destroy the whole or any part of any valuable security; OR • write, impress, or affix his name or the name of any other person, or the seal of any body corporate or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security <p>2. A does so by false pretences (s 308)</p> <p>3. A does so with intent to defraud or injure any person</p> <p>4. A does so fraudulently</p>	
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Chapter 3: Kiribati - Summary of Elements of the Defences

Under the two offence categories, the below common defences have been identified across each jurisdiction. The **offence** is highlighted by **orange font**; the **common defence** is identified by **pink font** and the **elements of the defence** in **blue font**.

Fraud	Bribery
KIRIBATI	
<p>Common defences</p> <p>s 8 (bona fide claim of right)</p> <p>s 9 (offence occurs by accident, or the result intended to be caused by act/omission is immaterial)</p> <p>s 10 (honest and reasonable mistake of fact not responsible to any greater extent than if the real state of things had been such as he believed to exist)</p> <p>s 12 (insanity)</p> <p>s 13(2) (intoxication without consent, or insane by reason of intoxication)</p> <p>s 14 (immature age)</p> <p>s 15 (judicial officer in the exercise of his judicial functions)</p> <p>s 16 (compelled by another to do act)</p> <p>s 19 (married women coerced by husband)</p> <p>s 20 (cannot be punished twice for same offence)</p>	
<p>s 121 (frauds and breaches of trust by persons employed in the public service)</p> <ul style="list-style-type: none"> - No express defences <p>s 251 (definition of theft)</p> <ul style="list-style-type: none"> - consent of the owner - has a claim of right made in good faith - did not intend to permanently deprive the owner thereof <p>s 266 (larceny and embezzlement by clerks of servants)</p> <ul style="list-style-type: none"> - No express defences but general theft defences likely applicable from s 259: 	<p>s 85 (official corruption)</p> <ul style="list-style-type: none"> - No express defences



<ul style="list-style-type: none">- consent of the owner- has a claim of right made in good faith- did not intend to permanently deprive the owner thereof	
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Chapter 4: Evidentiary issues

From the PJIP needs assessment and ongoing discussions with Partner Courts, the following evidentiary issues were identified.

A summary of the similarities and differences between the jurisdictions are discussed below.

Exceptions to Hearsay – Bankers’ books & business records

In all jurisdictions, there are statutory or common law exceptions to the rule against hearsay evidence. Most jurisdictions (Federated States of Micronesia, Kiribati, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Fiji and Papua New Guinea) have statutory provisions pertaining to the admissibility of business records or bankers’ books. In six jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands and Tonga) these provisions are framed as exceptions to the rule against hearsay evidence. In Fiji and Papua New Guinea, the relevant legislation contains provisions regarding the admissibility of trade or business records more generally. However, it is likely that hearsay evidence would be admitted pursuant to these provisions.

The Federated States of Micronesia, Palau and the Republic of Marshall Islands have provisions which are almost identical. For the exception to apply to business records, two conditions must be established by the testimony of the custodian of the records, another qualified witnesses or, in the Republic of Marshall Islands only, a permitted certificate submitted to the court. First, the records were kept in the course of a regularly conducted business activity. Second, it was the regular practice of that business to make those records. Similar conditions are required in Fiji, Papua New Guinea, Samoa, Solomon Islands and Tonga.

In addition to these requirements, three jurisdictions (Fiji, Tonga, and Samoa) specify that witnesses must not be available before the business records can be admitted. In Fiji, the person who supplied the statement in the record must be either dead, unfit to give evidence as a witness, missing or cannot be reasonably expected to have any recollection of the matters dealt contained in the record. Samoa’s legislation contains similar provisions and two additional alternatives. Specifically, that the Judge may consider first, that the witness would not be useful to the proceedings as the person cannot be reasonably expected to recollect the matters dealt with in the record or secondly, it would cause undue expense or delay if the person were required to be a witness.

Papua New Guinea’s provisions specify that the court is not required to admit business records if, having regarding to all of the relevant circumstances, it would not be in the interests of justice to do so. Papua New Guinea also has provisions in relation to bankers’ books; however, the legislation does not specify any rules in relation to admissibility of hearsay evidence.

We have been unable to identify any relevant statutory provisions in Tokelau and Vanuatu. Consequently, in these jurisdictions hearsay contained in business records is not admissible because there is no such exception at common law.⁵

⁵ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



Expert Evidence

In all jurisdictions, expert opinion evidence is admissible as an exception to the rule against the admissibility of opinion evidence. Generally, expert opinion testimony is admissible at common law if the witness is qualified as an expert by knowledge, skill, experience, training or education and the expert's opinion will assist the court to understand a fact or issue relevant to the matter. Some jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga) have provisions in their statutes or court rules pertaining to the qualification of experts or competency of witnesses more generally. In these jurisdictions, except Tokelau, the common law exception is codified in the relevant statute (Samoa, Solomon Islands, Tonga) or court rules (Federated States of Micronesia, Palau, Republic of Marshall Islands).

In the Federated States of Micronesia, Palau and Republic of Marshall Islands the specific rules are almost identical. In those jurisdictions, a court may require an expert to disclose underlying facts or data prior to testifying or during cross-examination. Facts or data which an expert relies upon to form an opinion do not need to be admitted as evidence if that evidence is of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. Testimony which is admissible is not objectionable if it relies upon a contested fact which is to be determined by the ultimate decision maker. In the Republic of Marshall Islands and Palau, facts or data which are relied on by an expert that are inadmissible do not need to be disclosed to the jury unless the court determines that the probative value of evidence, in assisting the jury to evaluate the expert's opinion, substantially outweighs their prejudicial effect.

We have been unable to identify any relevant statutory provisions in Fiji, Kiribati, Nauru, Papua New Guinea, Tokelau and Vanuatu. However, it is our understanding that the common law exception exists in all of these jurisdictions.⁶

Evidence Admissible Against Co-accused Defendants

Two jurisdictions (Papua New Guinea and Vanuatu) contain statutory provisions regarding accessorial liability. We have been unable to identify provisions in nine jurisdictions (Fiji, Kiribati, Nauru, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga).⁷

Regarding the admissibility of evidence against a co-accused, the common law position applies in most jurisdictions.⁸ At common law, the co-conspirator's rule permits acts or statements of a co-accused in furtherance of a conspiracy to be admissible against a co-accused.

We have been able to identify provisions in five jurisdictions (Papua New Guinea, Samoa, Solomon Islands and Tonga).

The Solomon Islands and Samoa have provisions which specify that the common law position in relation to the admissibility of statements by co-conspirators prevails. In the Solomon Islands, this is only in relation to confessions. The statute also provides that a co-accused is considered a competent and compellable witness. They may also offer propensity evidence only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

⁶ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

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Comparatively, in Papua New Guinea, a person charged with an offence shall not be called as a witness in any legal proceedings in connection with the offence. Notwithstanding this, where a person charged with an offence is a witness they may be asked any questions in cross-examination.

Electronic Evidence

We have been unable to identify any provisions regarding the evidentiary rules applicable to electronic evidence generally in all jurisdictions except for Papua New Guinea and Tonga. In Papua New Guinea, the *Electronic Transactions Acts 2021* specifies that the evidential requirements of admissibility and weight provided by the *Evidence Act* apply to electronic records or data messages. In Tonga, the *Evidence Act* contains provisions regarding the admissibility, standards and authentication of electronic evidence generally.

Some jurisdictions specify that forms of evidence include electronic records or documents stored electronically. The Federated States of Micronesia, Palau and Republic of Marshall Islands specify that writings and records includes electronic recordings. In Samoa, the meaning of ‘documents’ includes ‘information electronically recorded or stored, and information derived from that information’. In Kiribati, the *Evidence Act 2003* contains a provision regarding the ‘[a]dmissibility of statements produced by computers’.

Some jurisdictions have specific evidentiary rules or exceptions in relation to electronic evidence. For example, in the Solomon Islands section 122(1) of the *Evidence Act 2009* provides that the hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail, fax, telegram, letter gram or telex.

Relevance of Evidence

Five jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Solomon Islands, Tonga) have provisions in either their statutes or court rules regarding the relevancy of evidence. In all of these jurisdictions relevant evidence is generally admissible.

In the Federated States of Micronesia, Palau and Republic of Marshall Islands, relevant evidence is defined as ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence’. Comparatively, in Tonga, any evidence which is admissible under the relevant provisions is deemed relevant.

Some jurisdictions (Papua New Guinea and Samoa) specify in their statutes that the relevancy of evidence can be questioned during later stages of criminal proceedings, such as during cross-examination or following the end of submissions.



Unless otherwise specified, all references to statutory provisions and rules are to the following:

- **Federated States of Micronesia:**
 - [Code of the Federated State of Micronesia Title 6, Chapter 13 - Evidence](#)
 - [Rules of Evidence for the Trial Division of the Supreme Court of the Federated States of Micronesia](#)
- **Fiji:**
 - [Evidence Act 1944](#)
- **Kiribati:**
 - [Evidence Act 2003](#)
- **Nauru:**
 - [Criminal Procedure \(Amendment\) Act 2020](#)
- **Palau:**
 - [Rules of Evidence for the Courts of the Republic of Palau](#)
- **Papua New Guinea:**
 - [Evidence Act 1975](#)
 - [Electronic Transactions Act 2021](#)
 - [Criminal Practice Rules – Fraud & Corruption Related Offences 2013](#)
- **Republic of Marshall Islands:**
 - [Title 28 – Evidence Act of 1989](#)
- **Samoa:**
 - [Evidence Act of 2015](#)
- **Solomon Islands:**
 - [Evidence Act 2009](#)
- **Tokelau:**
 - [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:**
 - [Evidence Act 2020](#)
- **Vanuatu:**
 - [Chapter 136 - Criminal Procedure Code](#)

	Exceptions to Hearsay	Expert Evidence	Evidence Against Co-accused	Electronic Evidence	Relevance of Evidence
Federated States of Micronesia	Rules 801, 802, 803	Rules 601, 602, 702, 703, 704, 705, 706	N/A	Rule 1001	Rules 401, 402, 403
Fiji	s 4	N/A	N/A	N/A	N/A
Kiribati	ss 32, 33, 34	N/A	N/A	s 28	N/A
Nauru	ss147A, 176	N/A	N/A	N/A	N/A
Palau	Rules 801, 802, 803	Rules 702, 703, 704, 705	N/A	Rule 1001	Rules 401, 402, 403



Papua New Guinea	s61, 91, 92, 93, 94 (Evidence Act)	N/A	s 9, 14 (Evidence Act)	s 12 (Electronic Transactions Act) ss 64, 65, 66, 67 (Evidence Act)	s 26 (Evidence Act)
Republic of Marshall Islands	s3 Rules 803, 902	s3 Rules 702, 703, 704, 705	N/A	s3 Rule 1001.	s3 Rules 104, 401, 402, 403
Samoa	ss 9, 10, 11	ss 2, 16	s 6	s 2	s 70, 83
Solomon Islands	ss 102, 103, 117, 118, 120	ss 24, 30, 129, 130	s 39, 40, 172	s 122	ss 20, 21, 22
Tokelau	ss 163, 175	ss 164, 175	s 175	N/A	N/A
Tonga	ss 88, 89	s24, 25	s 4	ss 2, 54A, 54C, 54D, 54E, 54F	s 14
Vanuatu	N/A	s86	N/A	N/A	N/A

Exceptions to Hearsay – Bankers’ books & business records

32. Definitions

In sections 33 to 37 unless inconsistent with the context or subject matter -

"Bank" means any person lawfully carrying on the business of bank under any law of Kiribati, and such foreign institute in the nature of a bank as to which the Court recognizes its general acceptance as that kind of institution;

"Book of account" includes ledger, day book, cash book, account book, and any other document used in the ordinary business of a bank, or in the ordinary course of any other business for recording the financial transactions of the business and also includes any document used in the ordinary course of any business to record production in, or stock in trade held for, the business;

"court" means a court in Kiribati on any level.

33. Entries in book of account to be evidence

Subject to the provisions of sections 32 to 37, in all legal proceedings –

- (a) an entry in a book of account shall be *prima facie* evidence of the matters transactions and accounts therein recorded; and
- (b) a copy of an entry in a book of account shall be *prima facie* evidence of the entry and of the matters transactions and accounts therein recorded; and
- (c) where in the ordinary course of business a copy of the original book of account has been made and retained as the ordinary book of account, and the original book of account has been destroyed, then an entry in the copy book of account shall be *prima facie* evidence of the matters transactions and accounts therein recorded.

34. Proof that book is a book of account

- (1) An entry or a copy of an entry in a book of account shall not be admissible in evidence under this section unless it is first proved that the book was at the time of the making of the entry one of the



ordinary books of account of the business to which it purports to relate and that the entry was made in the usual and ordinary course of that business.

- (2) Such proof may be given by a responsible person familiar with the books of account of the business and may be given orally or by an affidavit sworn or by a declaration made before any commissioner or person authorized to take affidavits or statutory declarations.

Expert Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding *Expert Evidence* within the *Evidence Act 2003*.

Evidence Admissible Against Co-accused Defendants

At the time research was undertaken, we have been unable to identify relevant provisions regarding *Evidence Admissible Against Co-accused Defendants* within the *Evidence Act 2003*.

Electronic Evidence

28. Admissibility of statements produced by computers

- (1) In any legal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document produced by a computer and tending to establish that fact shall be admissible as evidence of that fact, if it is shown that the conditions mentioned in sub-section (2) are satisfied in relation to the statement and computer in question.
- (2) The said conditions are –
 - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
 - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub-section (2) was regularly performed by computers, whether –
 - (a) by a combination of computers operating over that period; or
 - (b) by different computers operating in succession over that period; or by different combinations of computers operating in succession over that period; or
 - (c) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers –



- (d) all the computers used for that purpose during that period shall be treated as constituting a single computer; and references to a computer shall be construed accordingly.
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following –
- (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
 - (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate;
 - (d) and signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate);
 - (e) shall be evidence of any matter stated in the certificate;
- and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- (5) Any person who in a certificate tendered in evidence by virtue of sub-section (4) wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, shall be guilty of an offence and shall be subject to imprisonment for not more than two years or a fine or both.
- (6) For the purposes of this section –
- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
 - (b) where, in the course of activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
 - (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- (7) The court may in its discretion reject any statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be contrary to the interests of justice that the statement should be admitted.
- (8) Subject to sub-section (3), in this section "computer" means any device for storing or processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Relevancy of Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding the *Relevancy of Evidence* within the *Evidence Act 2003*.

