

Judicial Officers' Fraud and Corruption Workshop

Palau

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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
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 <u>Prevention of Bribery Act</u> ss 2, 3, 4, 5, 6, 8

³ Prevention of Bribery Act 2007



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



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Chapter 2: Palau - Summary of Elements of the Offences

Under the two offence categories, the below offences pursuant to the [Penal Code of the Republic of Palau](#) 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 2600. Theft

A person commits theft if the person does any of the following:

...

- (b) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.

...

Fraud: s 2614. Theft of government property in the first degree.

A person commits the offense of theft of government property in the first degree if the person intentionally or knowingly embezzles, steals, purloins, converts, sells, conveys or disposes of any money, funds, or thing of value of the national government of the Republic, its political subdivisions, state or municipal governments, or of any ministry, bureau or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined or converted.

Theft of government property is a class C felony if the value of the government property is three hundred dollars (\$300) or less. Theft of government property is a class B felony if the value of the government property is more than three hundred dollars (\$300) but less than twenty thousand dollars (\$20,000). Theft of government property is a class A felony if the value of the government property is twenty thousand dollars (\$20,000) or more.

Fraud: s 2615. Theft of government property in the second degree.

A person commits the offense of theft of government property in the second degree if that person without proper authority intentionally or knowingly possesses or removes from its location any property of any kind, wherever situated, of the government of the Republic, its political subdivisions, states or municipal governments.

Theft of government property in the second degree is a misdemeanor.

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



Bribery: s 4100. Bribery

- (1) A person commits the offense of bribery if:
 - (a) The person confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant’s vote, opinion, judgment, exercise of discretion, or other action in the public servant’s official capacity; or
 - (b) While a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person’s vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.
- (2) It is a defense to a prosecution under subsection (a) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.
- (3) For purposes of this section, “public servant” includes in addition to persons who occupy the position of public servant as defined in 17 PNC section 3800, persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.
- (4) Bribery is a class B felony. A person convicted of violating this section, notwithstanding any law to the contrary, shall not be eligible for a deferred acceptance of guilty plea or no contest plea under Part 1 of 17 PNC Chapter 6 of this Penal Code.

Partner Court / Topic	Fraud	Bribery
PALAU	<i>Penal Code of the Republic of Palau</i>	
Legislative Provisions	s 2300 Definitions (11) Control over the property, (14) Deception, (15) Deprive, (24) Intent to defraud, (27) Obtain s 2600 Theft s 2614 Theft of government property	s 4100 Bribery
Elements of the Offence	s 2600 Theft 1. A obtains or exerts control over property of X 2. A does so through deception 3. A does so with the intent to deprive X of the property s 2614 Theft of government property in the first degree 1. A embezzles, steals, purloins, converts, sells, conveys or disposes of any money, funds, or thing of value of the national government of the Republic, its political subdivisions, state or municipal governments, or of any ministry, bureau or agency thereof; 2. A does so knowingly or with intent	s 4100 Bribery 1. X is a public servant as defined in s 4100(c) 2. A confers, offers, or agrees to confer a pecuniary benefit upon X 3. A thereby intends to influence X ’s conduct as a public servant ALTERNATIVELY 1. A is a public servant as defined in s 4100(c) 2. A solicits, accepts, or agrees to accept any pecuniary benefit



	<p>ALTERNATIVELY</p> <ol style="list-style-type: none"> 1. A receives, conceals, or retains the same with intention to convert into A's use or gain 2. A knows it to be embezzled, stolen, purloined or converted <p>s 2615 Theft of government property in the second degree</p> <ol style="list-style-type: none"> 1. A possesses or removes from its location 2. Any property of any kind, wherever situated X 3. X belongs to the government of the Republic, its political subdivisions, states or municipal governments 4. A does so without proper authority 5. A does so intentionally or knowingly 	<ol style="list-style-type: none"> 3. A does so with the intention that A's conduct as a public servant will be influenced
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Chapter 3: Palau - 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
PALAU	
<p>Common defences s 301 (justification a defense) - justification is a defense, including the following: (a) conduct which the person believes is necessary to avoid imminent harm or evil to another, unless reckless or negligent – s 302; (b) conduct required or authorised by performance of public duty, the execution of a legal process, judgment or order of Court/tribunal, the lawful conduct of war, or any other duty imposing a public duty – s 303; (c) use of force in self-protection when such force is immediately necessary to protect oneself against unlawful force of another – s 304; (d) protect a third person if in the circumstances perceived by the actor, the use of force will protect a third person – s 305; (e) use of force to protect property, including where there is trespass or burglary, to prevent unlawful entry onto the Property, or prevent theft, criminal mischief or the taking of moveable Property, with any requests required – s 306; (f) use of force in law enforcement to assist in making an arrest or where such force is immediately necessary to effect a lawful arrest – but only when the arresting person makes known the purpose of the arrest or if made under a valid warrant – s 307; (g) use of force to prevent suicide or the commission of a crime – s 308; (h) use of force by persons with special responsibility for care, discipline or safety of others, including parents or guardians, teachers, principal’s, doctor, therapist, etc – s 309;</p>	
<p>s 2600 (theft) - No express defences but see general defences relating to theft at s 2605 including: (a) being unaware of ownership and that the property or service was that of another (b) reasonably believe that they are entitled to the property or services under a claim of right</p>	<p>s 4100 (bribery) - The accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion – s 4100(2)(b)</p>



(c) if one is the spouse living together at the time of conduct

s 2614 (theft of government property in the first degree)

- No express defences but see general defences at s 2605 above, which are likely applicable to the offence

s 2615 (theft of government property in the second degree)

- No express defences but see general defences at s 2605 above, which are likely applicable to the offence



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

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

⁷ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

⁸ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



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.

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

Rule 801. Definitions

The following definitions apply under this article:

...

- (c) **Hearsay.** “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) **Statements which are not hearsay.** A statement is not hearsay if
- (1) **Prior statement by witness.** The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or to rehabilitate the declarant’s credibility as a witness when attacked on another ground, or (C) one of identification of a person made after perceiving the person; or
- (2) **Admission by party-opponent.** The statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant’s authority under subdivision (C), the agency or employment relationship and the scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Rule 802. Hearsay Rule.

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court.

Rule 803. Hearsay Exceptions; Availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

...

- (6) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (7) **Absence of entry in records kept in accordance with the provisions of paragraph (6).** Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

Expert Evidence

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of opinion testimony by experts.

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on ultimate issue.

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Rule 705. Disclosure of facts or data underlying expert opinion.

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.



Evidence Admissible Against Co-accused Defendants

At the time research was undertaken, we have been unable to identify relevant provisions regarding the *Admissibility of Evidence Against Co-accused Defendants* within the *Rules of Evidence for the Courts of the Republic of Palau*.

Electronic Evidence

Rule 1001. Definitions.

For purposes of this article the following definitions are applicable:

- (1) **Writings and recordings.** “Writings” and “recordings” consist of letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

Relevancy of Evidence

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means 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.

Rule 402. Relevant evidence generally admissible; Irrelevant evidence inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the Republic of Palau, by these rules, or by other rules prescribed by the Supreme Court pursuant to constitutional authority. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice on grounds of prejudice, confusion, or waste of time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

