

Judicial Officers' Fraud and Corruption Workshop

Papua New Guinea

Table of Contents

Chapter 1: Similarities and difference of provisions across all jurisdictions

Chapter 2: Papua New Guinea - Summary of Elements of the Offences

Chapter 3: Papua New Guinea - Elements of the Defences

Chapter 4: Evidentiary issues

Annex A: Offence provision/s by jurisdictions

Annex B: Evidence provision/s and rules by jurisdictions

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
Kiribati	ss 121, 251, 266	s 85

³ Prevention of Bribery Act 2007



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



Chapter 2: Papua New Guinea - Legislative Provisions and Elements of the Offences

Under the two offence categories, the below offences pursuant to the [Criminal Code Act 1974](#), 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 365. Definition of Stealing

In this section–

“owner”, in relation to a thing, means–
the owner or a part-owner of the thing; or
any person having possession or control of, or a special property in, the thing;

“special property” includes–
any charge or lien on the thing in question; and
any right arising from or dependent on holding possession of the thing in question, whether by the person entitled to the right or by some other person for his benefit.

Subject to the succeeding provisions of this Code, a person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act. A person who takes or converts anything capable of being stolen shall be deemed to do so fraudulently if he does so with intent–
to permanently deprive the owner of the thing of it; or

to permanently deprive any person who has any special property in the thing of that property; or

to use the thing as a pledge or security; or

to part with it on a condition as to its return that the person taking or converting it may be unable to perform; or

to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion; or

in the case of money, to use it at the will of the person who takes or converts it, even if he intends to afterwards repay the amount to the owner.

In the case of a conversion, it is immaterial–

whether the thing converted is taken for the purpose of conversion, or is at the time of the conversion in the possession of the person who converts it; and
that the person who converts the property–

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



is the holder of a power of attorney for the disposition of it; or
is otherwise authorized to dispose of it.

A taking or conversion may be fraudulent, even if it is effected without secrecy or attempt at concealment.

When a thing converted has been lost by the owner and found by the person who converts it, the conversion shall not be deemed to be fraudulent if at the time of the conversion the person converting the thing—
does not know who is the owner; and
believes, on reasonable grounds, that the owner cannot be discovered.

Fraud: s 383A. Misappropriation of Property

A person who, dishonestly applies to his own use or to the use of another person-
Property belonging to another; or

Property belonging to him which is in his possession or control (either solely or conjointly with another person) subject to trust, direction or condition or on account of any other person, is guilty of the crime of misappropriation of property.

An offender guilty of the crime of misappropriation of property is liable to imprisonment for a term not exceeding five years except in any of the following cases when he is liable to imprisonment for a term not exceeding 10 years:-

Where the offender is a director of a company and the property dishonestly applied is company property;

Where the offender is an employee and the property dishonestly applied is the property of his employer;

Where the property dishonestly applied was subject to trust direction or condition;

Where the property dishonestly applied is of value of K2,000.00 or upwards.

For the purposes of this section-

Property includes money and all other property real or personal, legal or equitable, including things in action and other intangible property; and

A person's application of property may be dishonest even although he is willing to pay for the property or he intends to restore the property afterwards or to make restitution to the person to whom it belongs or to fulfil his obligation afterwards in respect of the property; and

a person's application of property shall be taken not to be dishonest, except where the property came into his possession or control as trustee or personal representative, if when he applies the property he does not know to whom the property belongs and believes on reasonable grounds that such person cannot be discovered by taking reasonable steps; and

persons to whom the property belongs include the owner, any part owner, any person having a legal or equitable interest in or claim to the property and any person who, immediately before the offender's application of the property, had control of it.

Fraud: s 403. False Pretence: Wilfully False Promise

(1) A representation made by words or otherwise of a matter of fact, past or present that—

(a) is false in fact; and



- (b) the person making it knows to be false or does not believe to be true, is a false pretence.
- (2) A promise made by words or otherwise to do or omit to do any thing by a person who at the time of making the promise—
(a) does not intend to perform it; or
(b) does not believe he will be able to perform it,
is a wilfully false promise.

Fraud: s 404. Obtaining Goods or Credit By False Pretence or Wilfully False Promise

- (1) A person who by a false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, and with intent to defraud—
(a) obtains from any other person any chattel, money or valuable security; or
(b) induces any other person to deliver to any person any chattel, money or valuable security,
is guilty of a crime.
Penalty: Imprisonment for a term not exceeding five years.
- (2) It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence or the wilfully false promise, or partly by the false pretence and partly by the wilfully false promise, as the case may be.
- (3) A person incurring a debt or liability who obtains credit by a false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, or by any other fraud, is guilty of a misdemeanour.
Penalty: Imprisonment for a term not exceeding one year.

Fraud: s 405. Obtaining Execution of Valuable Security by False Pretence or Wilfully False Promise

- (1) A person who, by false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, and with intent to defraud, induces any person—
(a) to execute, make, accept, endorse, alter or destroy the whole or part of a valuable security; or
(b) to write, impress or affix a name or seal on or to a paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security,
is guilty of a crime.
Penalty: Imprisonment for a term not exceeding three years.

Fraud: s 406. Cheating

A person who, by means of any fraudulent trick or device—
obtains from any other person any thing capable of being stolen; or
induces any other person—



to deliver to any person any thing capable of being stolen; or
to pay or deliver to any person any money or goods, or any greater sum of money or greater quantity of goods than he would have paid or delivered but for the trick or device,

is guilty of a misdemeanour.

Penalty: Imprisonment for a term not exceeding two years.

Bribery: s 87. Official Corruption

(9) A person who—

(a) being—

(i) employed in the Public Service, or the holder of any public office; and

(ii) charged with the performance of any duty by virtue of that employment or office, (not being a duty touching the administration of justice), corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of any thing done or omitted to be done, or to be 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, on or for any person, any property or benefit on account of any such act or omission on the part of a person in the Public Service or holding a public office,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding seven years, and a fine at the discretion of the court.

(10) A person shall not be arrested without warrant for an offence against Subsection (1).

Bribery: s 97B. Bribery of Member of the Public Service

(9) A person who offers to a person employed in the Public Service, or being a person employed in the Public Service, solicits or accepts a gratification as an inducement or reward for—

(a) the person employed in the Public Service voting or abstaining from voting at any meeting in favour of or against any measure; or

(b) the person employed in the Public Service performing or abstaining from performing or aiding in procuring or hindering the performance of an official act; or

(c) the person employed in the Public Service aiding in procuring or preventing the passing of any vote or granting of any contract in favour of any person; or

(d) the person employed in the Public Service showing or refraining from showing any favour or disfavour in his capacity as a person employed in the Public Service,

is guilty of an offence.

Penalty: A fine at the discretion of the Court or imprisonment for a term not exceeding seven years, or both.



- (10) An offence under Subsection (1) is committed notwithstanding that the person employed in the Public Service had no right or opportunity to show or refrain from showing favour or that the inducement was not in relation to the affairs of the public body.

Bribery: s 119. Judicial Corruption

- (1) In this section, “**holder of a judicial office**” includes an arbitrator or umpire.
- (2) A person who—
- (a) being the holder of a judicial office, corruptly asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit for himself or any other person on account of any thing done or omitted to be done, or to be done or omitted to be done, by him in his judicial capacity; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for any person holding a judicial office, or to, on, or for any other person, any property or benefit on account of any such act or omission on the part of a person holding the judicial office,
- is guilty of a crime.
- Penalty: Subject to Subsection (3), imprisonment for a term not exceeding 14 years, and a fine at the discretion of the court.
- (3) In the case of an offence committed by or with respect to an arbitrator or umpire the longest term of imprisonment that may be imposed for an offence against Subsection (2) is seven years.
- (4) A person who commits an offence against Subsection (2) shall not be arrested without warrant for the offence.
- (5) A prosecution for an offence against Subsection (2)(a) cannot be begun except by the direction of the Public Prosecutor.

Bribery: s 120. Official Corruption not Judicial but Relating to Offences

A person who—

being a justice not acting judicially, or being a person employed in the Public Service in any capacity not judicial for the prosecution or detention or punishment of offenders, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit for himself or any other person, on account of anything done or omitted to be done, or to be done or omitted to be done, by him, with a view to—

corrupt or improper interference with the due administration of justice; or

the procurement or facilitation of the commission of an offence; or

the protection of an offender or intending offender from detection or punishment; or

corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, on, or for any person, any property or benefit on account of any such act or omission on the part of the justice or other person so employed,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years, and a fine at the discretion of the court.

A person shall not be arrested without warrant for an offence against Subsection (1).



Partner Court / Topic	Fraud	Bribery
PAPUA NEW GUINEA	<i>Criminal Code Act 1974</i>	
Legislative Provisions	<p>s 406 Cheating s 365 Definition of Stealing s 383A Misappropriation of property s 403 False Pretence: Wilfully False Promise definitions s 404 Obtaining Goods or Credit by False Pretence or Wilfully False Promise s 405 Obtaining Execution of Valuable Security by False Pretence or Wilfully False Promise</p>	<p>s 87 Official Corruption s 97B Bribery of Public Servants s 119 Judicial Corruption s 120 Official Corruption not Judicial but relating to offences</p>
Elements of the Offence	<p>s 365 Definition of Stealing 1. A takes or carries away any property 2. the property belongs to someone other than A 3. A does so without the consent of the owner 4. A does so without a claim of right made in good faith 5. A does so dishonestly 6. A does so with the intention of permanently depriving the owner of the property</p> <p>s 383A Misappropriation of property 1. A dishonestly applies a) to his own use; or b) to the use of another 2. Property: a) Belonging to another; or b) Belonging to him which is in his possession or control (either solely or conjointly with another person) subject to: (i) Trust; or (ii) direction; or (iii) condition; or (iv) on account of any other person.</p> <p>s 406 Cheating</p>	<p>s 87 Official Corruption 1. A is employed by the public service or holder of any public office 2. A acted in this capacity 3. A is charged with the performance of any duty by virtue of that employment or office 4. A corruptly gives, confers, procures, promises or offers to give or confer or to procure or attempt to procure to, on or for any person, any property or benefit on account of any such act or omission</p> <p>s 97B Bribery of Member of Public Service 1. A is the person offering to or is a person employed by the Public Service 2. A offers, solicits or accepts a gratification as an inducement or reward for the person employed in the Public service: a) Voting or abstaining from voting at any meeting in favour of or against any measure; or b) Performing or abstaining from performing or aiding in procuring or hindering the performance of an official act</p>



	<p>1. A either</p> <ul style="list-style-type: none"> • obtains from X anything capable of being stolen, OR • induces any other person to <ul style="list-style-type: none"> ○ deliver any person anything capable of being stolen; OR ○ To pay or deliver to any person any money or goods, or any greater amount of money or goods that would have been paid or delivered but for the trick or device <p>2. A does so by means of any fraudulent trick or device</p> <p>s 404 (1) (a)</p> <p>A) Date B) Place C) Accused Person D) (1) False Pretence (2) Wilfully False Promise (3) Partly False Pretence and Partly Wilfully False Promise E) Complainant F) Obtain from Another G) Property H) Intent to Defraud</p> <p>s 404 (1) (b)</p> <p>A) Date B) Place C) Accused Person D) (1) False Pretence (2) Wilfully False Promise (3) Partly False Pretence and Partly Wilfully False Promise E) Complainant F) (1) False Pretence (2) Wilfully Promise (3) Partly False Pretence and Partly Wilfully False Promise</p>	<p>c) Aiding in procuring or preventing the passing of any vote or granting of any contract in favour of any person; or</p> <p>d) Showing or refraining from showing any favour or disfavour in his capacity as a person employed in the public service</p> <p>s 119 Judicial Corruption</p> <p>1. A is a holder of judicial office 2. A asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit for any person 3. A does so on account of any past or conduct done or to be done by A in A's judicial capacity 4. A does so corruptly</p> <p>ALTERNATIVELY</p> <p>1. X is a judicial officer 2. A gives, confers or procures, or promises or offers to give or confer, or to procure or attempts to procure to, on or for any person 3. A does so on account of any conduct done or to be done by X in X's judicial capacity 4. A does so corruptly</p> <p>s 120 Official Corruption not Judicial but relating to offences</p> <p>1. A is employed in the public service in any capacity for the prosecution or detention or punishment of offenders; not being a judge acting judicially 2. A asks or obtains (or attempts to do so) any property or benefit for any person 3. A does so on account of A's past or future conduct 4. A does so corruptly 5. A does so with a view to</p> <ul style="list-style-type: none"> • Corrupt or improper interference with the due administration of justice
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	<p>G) Induce H) Complainant I) Deliver to Another Person J) Property K) Intent to Defraud</p> <p>s 404 (3) A) Date B) Place C) Accused Person D) Incurred (1) Debt (2) Liability E) Obtain Credit F) From Another Person G) By means of (1) False Pretence (2) Wilfully Promise (3) Partly False Pretence and Partly Wilfully False Promise (4) Fraud</p> <p>s 405 (1) A) Date B) Place C) Accused Person D) (1) False Pretence (2) Wilfully False Promise (3) Partly False Pretence and Partly Wilfully False Promise E) Induce F) Any Person (1) execute, make, accept, endorse, alter or destroy (2) write, impress, affix a name or seal on or to a paper or parchment so it converts to, used as or dealt with as G) whole or part of valuable security</p>	<ul style="list-style-type: none"> • The procurement of facilitation of the commission of an offence • The protection of an offender or intending offender from detection or punishment <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> 1. X is employed in the public service in any capacity for the prosecution or detention or punishment of offenders; not being a judge acting judicially 2. A gives or procures (or promises such) any property or benefit to or for any person 3. A does so on account of X's past or future conduct 4. A does so corruptly 5. A does so with a view to <ol style="list-style-type: none"> a) Corrupt or improper interference with the due administration of justice b) The procurement of facilitation of the commission of an offence c) The protection of an offender or intending offender from detection or punishment
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	H) Intent to Defraud	
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Chapter 3: Papua New Guinea - 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
PAPUA NEW GUINEA	
<p>Common defences</p> <p>s 17 (former conviction or acquittal) - Accused has already been tried and convicted or acquitted of which he has been convicted of, or of which he might be convicted on the indictment or complaint</p> <p>s 23 (ignorance of law, bona fide claim of right) - ignorance of the law for an act or omission affords an excuse, but only if knowledge of the law is expressly declared to be an element of the offence - in the exercise of an honest claim of right and without intention to defraud where an offence relates to property</p> <p>s 24 (intention: motive) - act or omission occurs independently of the exercise of his will, event occurs by accident, or the result intended to be caused by an act or omission is immaterial</p> <p>s 25 (mistake of fact) - honest and reasonable, but mistaken, belief in the existence of any state of things</p> <p>s 26 (extraordinary emergencies) - a person is not criminally responsible for an act or omission made in a sudden or extraordinary emergency - circumstances are such that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act</p> <p>s 28 (insanity) - at the time of act or omission, person in state of mental disease of natural mental infirmity - the mental disease of infirmity deprives him of being able to: (a) understand what he is doing, (b) control his actions, or (c) know that he ought not to do the act or make the omission</p> <p>s 29 (intoxication)</p>	



<p>- mind is disordered by intoxication or stupefaction caused, without intention, by drugs or intoxicating liquor or by any other means, but not to a person who has intentionally caused himself to become intoxicated or stupefied</p> <p>s 30 (immature age)</p> <p>- person under the age of seven years is not criminally responsible for any act or omission</p> <p>- <14 years = not criminally responsible for an act or omission, unless it can be proved that person at the time had capacity to know not to do act or omission</p> <p>s 31 (judicial officers)</p> <p>- judicial officer not criminally responsible</p> <p>- act or omission must be done by him in the exercise of his judicial functions</p> <p>s 32 (justification and excuse: compulsion)</p> <p>- not criminally responsible where act or omission done:</p> <p>(a) in execution of the law; or</p> <p>(b) in obedience to a competent authority; or</p> <p>(c) when act is reasonably necessary to resist actual and unlawful violence; or</p> <p>(d) in order to save oneself from death or grievous bodily harm threatened or inflicted on him by some person actually present and in a position to execute threats and where that person cannot escape</p> <p>s 33 (compulsion of husband)</p> <p>- women not criminally responsible if compelled by husband to do or omit to do an act and is done or omitted in his presence, except with respect to an offence punishable by death, or the offence of wilful murder, or an offence of which grievous bodily harm to another is an element</p> <p>s 33 (conspiracy between husband and wife)</p> <p>- no criminal responsibility when there is a conspiracy between husband and wife alone</p>	
<p>s 365 (definition of stealing)</p> <p>- No express defences</p> <p>s 383A Misappropriation of property</p> <p>-No express defences</p> <p>s 406 (cheating)</p> <p>- No express defences</p>	<p>s 87 (official corruption)</p> <p>- No express defences</p> <p>s 97B (bribery of member of public service)</p> <p>- No express defences</p> <p>s 119 (judicial corruption)</p> <p>- No express defences</p> <p>s 120 (official corruption not judicial but relating to offences)</p> <p>- No express defences</p>



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.

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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

s 61. Business Records

- (1) In this section, “**writing**” includes a photographic reproduction or photostatic reproduction of a document.
- (2) Subject to Subsection (3), a writing purporting to be a memorandum or record of an act, matter or event is admissible in evidence in a court as proof of the facts stated in it if it appears to the court that–
 - (a) the memorandum or record was made in the regular course of a business at or about the time of the doing or occurrence of the act, matter or event; and
 - (b) the source of information, and the method and time of the preparation of the memorandum or record, were such as to indicate its trustworthiness.
- (3) Subsection (2) does not require a court to admit in evidence a writing if it appears to the court that the interests of justice would not be served by its admission.
- (4) For the purposes of this section, a court, in considering whether a writing should be admitted in evidence, shall have regard to all relevant circumstances, including–
 - (a) the source from which the writing is produced; and
 - (b) the circumstances of its receipt and custody by the person producing it or by any person from whom it has been obtained for the purpose of producing it in evidence.
- (5) In the exercise of the discretion of a court under this section, the court is not obliged to receive formal testimony but may inform itself in any way that it thinks fit and in particular by the affidavit, oath, affirmation or certificate of a person who professes to have knowledge of any of the matters to which the writing relates or of the circumstances relating to its preparation.

s 91. Entries in bankers’ books

Subject to this Part, a copy of an entry in a banker’s book is, in all legal proceedings, prima facie evidence of the entry and of the matters, transactions and accounts recorded in the book.

s 92. Documents purporting to be copies of entries

A copy of an entry in a banker's book is not admissible in evidence under this Part unless an officer of the bank testifies orally or by affidavit that—

- (a) he has compared the copy with the original entry; and
- (b) the copy is a correct copy of an entry that was made in the usual and ordinary course of business in a book that, at the time when the entry was made, was one of the ordinary books of the bank; and
- (c) the book is in the custody or control of the bank.

s 93. Production of books by bankers

In any legal proceedings to which the bank is not a party, a banker or an officer of a bank is not compellable—

- (a) to produce a banker's book the contents of which can be proved under this Part; or
- (b) to appear as a witness to prove the matters, transactions, or accounts recorded in such a book, unless otherwise ordered by the court or a Judge.

s 94. Inspection of bankers' books

- (1) On the application of any party to any legal proceedings, the court or a Judge may order—
 - (a) that the party be at liberty to inspect and take copies of entries in the books of a bank for any of the purposes of the proceedings; and
 - (b) that, on payment of the prescribed charge, the bank prepare and deliver to the party copies of such entries as are required for evidence in the proceedings.
- (2) An order under Subsection (1) shall be served on the bank at least three clear days before it is to be obeyed, unless the court or Judge directs otherwise.
- (3) The costs of an application to a court or Judge under this section, and the costs of anything done or to be done under an order of a court or Judge made under this section, are in the discretion of the court or Judge.
- (4) Where costs referred to in Subsection (3) have been occasioned by a default or delay on the part of the bank, the court or Judge may order that the costs, or any part of them, be paid to any party by the bank.
- (5) An order under Subsection (4) against a bank may be enforced as if the bank were a party to the proceedings.

Expert Evidence

At the time research was undertaken, we have been unable to identify relevant provisions regarding the *Expert Evidence* within the [Evidence Act 1975](#), [Electronic Transactions Act 2021](#); and, [Criminal Practice Rules – Fraud & Corruption Related Offences](#).

Evidence Admissible Against Co-accused Defendants

s 9. Witness interested or convicted of offence

A person shall not be excused from giving evidence in any legal proceedings on the ground that—

- (a) he has or may have an interest in the matter in question; or
- (b) he has or may have an interest in the result of the proceedings; or
- (c) he has previously been convicted of any offence.



s 14. Accused as witness for prosecution

- (1) A person charged with an offence shall not be called as a witness by the prosecution in any legal proceedings in connection with the offence.
- (2) Notwithstanding Subsection (1), where a person charged with an offence is a witness he may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence.

Electronic Evidence

[Electronic Transactions Act 2021](#)

s 12. Admissibility and evidential weight of electronic records or data messages

The evidential requirements of admissibility and evidential weight of electronic records or data messages provided by the *Evidence Act* (Chapter 48) shall apply.

[Evidence Act 1975](#)

s 64. Interpretation of Division 5

- (1) In this Division, “**computer**” means, subject to Subsection (2), a device for storing and processing information.
- (2) Where during a period the function of storing or processing information for the purposes of activities regularly carried on over the period, whether for profit or not, was regularly performed by computers, all the computers used for that purpose during the period shall be treated, for the purposes of this Division, as constituting a single computer, and references in this Division to a computer shall be construed accordingly.
- (3) For the purposes of this Division—
 - (a) a reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process; and
 - (b) information shall be taken to be supplied to a computer if it is supplied in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment; and
 - (c) where, in the course of activities carried on by a person or body, information is supplied with a view to its being stored or processed for the purposes of the activities by a computer operated otherwise than in the course of the activities the information, if duly supplied to the computer, shall be taken to be supplied to it in the course of the activities; and
 - (d) 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.

s 65. Admissibility of computerized information

- (1) In any legal proceedings a statement contained in a document produced by a computer is admissible as evidence of any fact, stated in the document, of which direct oral evidence would be admissible, if it is shown to the satisfaction of the court that—
 - (a) the document containing the statement was produced by the computer in the course of a period during which the computer was used regularly to store or process information for the purposes of activities regularly carried on over that period, whether for profit or not; and
 - (b) during the 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 was derived; and



- (c) throughout the material part of the period the computer was operating properly or, if not, that any defect in its operation during that part of the period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (2) For the purpose of deciding whether or not a statement is admissible in evidence under this section, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances (including, in the case of a statement contained in a document, the form and contents of that document).

s 66. Proof of Computer Statements

- (1) Where in any legal proceedings a statement contained in a document is proposed to be given in evidence under this Division it may be proved by the production of the document or (whether or not the document is still in existence) by the production of a copy of the document, or of the material part of the document, authenticated in such manner as the court approves.
- (2) Where in any legal proceedings it is desired to give a statement in evidence under this Division, a certificate—
- (a) identifying the document containing the statement and describing the manner in which it was produced; or
- (b) giving such particulars of any device involved in the production of the document as are appropriate for the purpose of showing that the document was produced by a computer; or
- (c) dealing with any of the matters referred to in Section 64(3), and purporting to be 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), is evidence of any matter stated in the certificate.
- (3) For the purposes of Subsection (2) it is sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

s 67. Weight to be attached to computer statements

In estimating the weight (if any) to be attached to a statement admissible in evidence under this Division, regard shall be had—

- (a) to all the circumstances from which an inference can reasonably be drawn as to the accuracy or otherwise of the statement; and
- (b) to the question, whether or not the information that the information contained in the statement reproduces or is derived from—
- (i) was supplied to the computer; or
- (ii) was recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in the information; and
- (c) to the question, whether or not any person concerned with—
- (i) the supply of information to the computer; or
- (ii) the operation of the computer or of equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.



Relevancy of Evidence

s 26. Cross-examination as to credit

- (1) If a question put, on cross-examination, to a witness in any legal proceedings relates to a matter not relevant to the proceedings except so far as it affects the credit of the witness by injuring his character, the court—
 - (a) shall decide whether or not the witness shall be compelled to answer it; and
 - (b) may, if it thinks fit, warn the witness that he is not obliged to answer it.
- (2) In exercising its discretion under Subsection (1), the court shall have regard to the following considerations:—
 - (a) such a question is proper if it is of such a nature that the truth of the imputation conveyed by it would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
 - (b) such a question is improper if the imputation that it conveys relates to a matter so remote in time or of such a character that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
 - (c) such a question is improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (3) This section does not make a witness compellable to give evidence on a matter that he is, by law, privileged from disclosing.

