



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Solomon Islands

Review of *Solomon Islands*' implementation of articles 5 - 14 of Chapter II. "Preventive measures" and articles 51 - 59 of Chapter V. "Asset recovery" of the United Nations Convention against Corruption for the second review cycle (2016 - 2020)

by *Republic of Korea* and *Viet Nam*

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.
5. In the review process and in the completion of the comprehensive self-assessment checklist, items considered included relevant legislation, subsidiary legislation, case law, reports and news articles.

II. Process

6. The following review of the implementation by Solomon Islands of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Solomon Islands, any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Republic of Korea, Viet Nam and Solomon Islands, by means of e-mail exchanges and a country visit and involving, inter alia, the following experts:

Solomon Islands:

- Derek Futaiasi, Deputy Secretary to Prime Minister

Republic of Korea:

- Ilsu Lim, Gwangju District Prosecutors' Office
- Seongjin Park, Busan Prosecutors' Office
- Soyeong Yoon, Anti-Corruption and Civil Rights Commission

Viet Nam:

- Nguyen Xuan Son, Head of the Team
- Do Thu Huyen, focal point of Vietnam Team, Government Inspectorate
- Nguyen Hoanh Dat, Vietnam Procuracy
- Nguyen Thi Tuyet Giang, Ministry of Justice
- Nguyen Phuong Mai, Ministry of Foreign Affairs

Secretariat:

- Jason Reichelt, Crime Prevention and Criminal Justice Officer
- Maria Adomeit, Regional Anti-Corruption Adviser (Pacific)

7. A country visit, agreed to by Solomon Islands, was conducted from 20 to 22 September 2017. During the country visit, the reviewing experts met with the following Solomon Islands representatives:

III. Executive summary

1. Introduction: overview of the legal and institutional framework of Solomon Islands in the context of implementation of the United Nations Convention against Corruption

Solomon Islands acceded to the Convention on 6 January 2012 and the Convention entered into force on 5 February 2012. Solomon Islands was reviewed in the fourth year of the first cycle of the Implementation Review Mechanism (CAC/COSP/IRG/I/4/1/Add.3).

Solomon Islands achieved self-governance in 1976 and obtained political independence from the United Kingdom on 7 July 1978. At independence, Solomon Islands adopted a Constitution pursuant to the Solomon Islands Independence Order 1978. The State operates under a dualist system.

The Constitution is the supreme law and any inconsistent law shall, to the extent of the inconsistency, be void. Section 75 authorizes the Solomon Islands Parliament to enact provisions for the application of laws, including customary law and for “peace, order and good governance of Solomon Islands”. Acts of the United Kingdom Parliament, in force since 1 January 1961, were adopted by Schedule 3 of the Constitution, subject to the Constitution and to Acts of the Solomon Islands Parliament.

The principles and rules of common law and equity are recognized in Schedule 3.2 of the Constitution and while the legal doctrine of judicial precedent is used within the Courts of Solomon Islands, any pronouncements from English Courts made after independence are not binding.

The absence of comprehensive case examples and statistics frequently limited the review to a legislative compliance only.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or

bodies (arts. 5 and 6)

Solomon Islands has established a Steering Committee, led by the Office of the Prime Minister and including public sector, civil society and private sector representatives to coordinate the oversight of the National Anti-Corruption Strategy (NACS), which was unanimously endorsed by Parliament in March 2017. NACS focusses on five priority areas and addresses recommendations of the first implementation review cycle and other mandatory provisions of the Convention. NACS has a detailed implementation plan accompanied by a monitoring, evaluation and reporting framework, which would benefit from further elaboration. Principles of good governance and anti-corruption are enshrined also in the National Development Strategies.

The proposed anti-corruption legislation is still to be enacted, although multiple corruption offences already exist in the Penal Code (Sections 91, 258, and 374). There is no central law reform process but each ministry can initiate a review under its purview. The Office of the Ombudsman (the Ombudsman) has the authority to review the adequacy of administrative procedures and mechanisms.

There is no single anti-corruption agency. The draft Anti-Corruption Bill seeks to establish the Solomon Islands Independent Commission against Corruption. Currently, the Anti-Corruption Investigations Unit within the Royal Solomon Islands Police Force (RSIPF) leads all anti-corruption investigations. The Ombudsman is tasked with investigating claims of maladministration of public offices, while the Leadership Code Commission (LCC) investigates claims of misconduct of public officials, including conflicts of interest, misuse of official information, and non-disclosure of assets. Both the LCC and the Ombudsman may also initiate investigations at their own initiative. The Office of the Auditor General is responsible for auditing the public accounts.

The Ombudsman is not subject to the direction or control of any person or authority and has an independent budget, with the caveat that the Prime Minister may order an investigation to be stopped for reasons of national security (Constitution art. 98).

Coordination takes place through the government Integrity Group Forum tasked with improving accountability and promoting integrity among public officials. The Committee for Combatting Corruption, led by the Office of the Ombudsman, provides a forum for senior officials to strategize a more effective and efficient collaborative approach to the prevention of corruption.

Solomon Islands participate in regional initiatives and organisations that assist in the prevention of corruption, including the following: The ADB/OECD Anti-Corruption Initiative; Asia Pacific Group on Money Laundering; Extractive Industries Transparency Initiative; the Pacific Islands Legal Officers' Network; Pacific Islands Forum Secretariat; Pacific Association of Financial Intelligence Units; Pacific Prosecutors Association; Secretariat of the Pacific Community; and the Pacific Association of Supreme Audit Institutions.

Solomon Islands was reminded of its obligation to inform the Secretary-General of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Public Service Commission appoints public officials, including their confirmation, removal and disciplinary control. The public sector hiring and recruitment processes are merit based, transparent, inclusive and accountable to the Public Service Commission (Public Service Commission (Amendment) Regulations 2006, art. 22). Salary scales and entry level of first appointment are based on level of education and are codified (General orders, Chapter E, Sections 1 and 2). An appeals mechanism exists against all human resources decisions (Public Service Commission (Amendment) Regulations 2006, art. 14, 15, 16). There are no specific procedures for the selection, rotation and training of individuals considered especially vulnerable to corruption.

Permanent Secretaries of government institutions are appointed by the Public Service Commission with the concurrence of the Prime Minister (Constitution Ch. XIV, art. 128). Tenure of office of the Public Solicitor, the Director of Public Prosecutions, the Commissioner of Police and Auditor General is also regulated in the Constitution (Ch. XIV, art. 129).

Some training programmes exist for public service employees. In order for an employee to be selected for training that would lead to qualifications for promotion, a proposal must be made to the Public Service Commission, which is then obligated to ensure that the selection is based on merit (Public Service Commission Regulations, art. 42, 43).

The criteria for the qualification and disqualification of those standing for elected public office are outlined in the Constitution (art. 48 and 49), which also includes eligibility criteria to run for Parliament. The Political Parties Integrity Act 2014 established regulations for political parties, including financial reporting requirements, and a commission to monitor compliance. The Political Parties Commission has issued integrity standards, which apply to all members of political parties (Political Parties Integrity Standards 2014).

A code of conduct exists for all public officers and provides disciplinary measures for noncompliance, including dismissal (Public Service Code of Conduct, pg. 6). While the code calls for the reporting of fraud, misconduct, or any other inappropriate behaviour to the responsible officer and prohibits reprisal against those reporting in good faith (pg. 10), no measures or systems are in place to facilitate the reporting by public officials of acts of corruption to appropriate authorities nor protection of reporting persons. Some bodies and organizations have their own additional codes. The Government of Solomon Islands has also published information for managers in public service, such as a guide to the disciplinary process.

All public officials, including Members of Parliament, are governed by the Leadership Code (Further Provisions) Act 1999. The Leadership Code requires asset disclosures, including gifts and any directorships in companies as well as government or corporate contracts (art 8). The Leadership Code Commission has the authority to request additional information regarding asset disclosures and investigate allegations of misconduct (art 7, 9, 10). Violations of the Leadership Code may result in monetary penalties. Also the Penal Code contains a provision on conflicts of interest, which applies to all public sector employees (Cap 26).

Members of the judiciary and the Director of Public Prosecutions also fall under the purview of the Leadership Code. In addition, documents such as the Magistrates Courts Bench Book 2004 provide ethical principles for the judiciary. Judges can be removed for misconduct, and investigations of complaints are conducted internally by the Registrar with the guidance of the Chief Justice, who makes the final decision on corrective

measures. Public prosecutors are subject to the requirements of the Leadership Code and the general code of conduct for public servants. In addition, prosecutors are governed by a practice manual, and the Director of Public Prosecution oversees matters pertaining to training, discipline and the exercise of prosecutorial discretion.

Public procurement and management of public finances (art. 9)

In Solomon Islands, the procurement system is decentralised. No national procurement legislation exists, but the Public Financial Management Act 2013 (PFMA) calls for the Minister of Finance to “prepare rules and regulations for procurement,” which were promulgated through Chapter 7 of Finance Circular 08-2013. The Ministry of Finance’s website contains standard forms for procurement. The Government produced a guide in 2013 entitled the SIG Procurement and Contract Administration Manual. At present, there is no law against fixing prices on public tenders and sole-source procurements make up 10 per cent of total procurement. Additionally, State Owned Enterprises do not have to follow many of the present rules. There is also no system of domestic review and appeal of procurement decisions. The NACS calls for new procurement legislation to be drafted and submitted to Parliament by 2019.

Procurements of more than SI\$100,000 (approximate equivalent USD12,000) and up to SI\$500,000 are required to be approved by a Ministerial Tender Board. Procurements in excess of SI\$500,000 must be approved by the Central Tender Board. Competitive tendering is required for all procurement exceeding SI\$100,000. Those below SI\$100,000 are decided by the Permanent Secretary of the relevant Ministry.

The Finance Minister is required to present estimates of revenue and expenditure each year, based on information provided by all Ministries, in the form of an Appropriation Bill to Parliament for approval (Const. art. 102). The PFMA outlines the budgeting process. The Ministry of Finance and Treasury is responsible for the preparation, management, and monitoring of the annual budget. The Act calls for the national budget for a financial year to be brought before Parliament at least two months before the end of that financial year (PFMA, art. 48). A budget review of the first six months’ expenditures is to be published no later than seven months into the financial year. A review of the entire previous year is to be published within four months of the new financial year (art. 52(1)(b)).

Beginning in 2013, all Ministries were required to establish a Budget Implementation Committee. The role of each Committee was to identify the priority areas for their respective ministries to address, guided by the fiscal and economic outlook provided in the Budget Strategy.

The PFMA also provides for the establishment of the Internal Audit Office. All functions of the Office must be performed in accordance with the International Professional Practices Framework (Public Financial Management (Internal Audit) Regulations 2016, art. 13(1)). Although resources distributed pursuant to the Constituency Development Funds Act 2013 are subject to expenditure reporting requirements, there is at present no effective mechanism for audit and oversight of these expenditures.

There is no legislation requiring the general maintenance of government financial records for a specified period of time.

Public reporting; participation of society (arts. 10 and 13)

Although identified in the NACS, Solomon Islands does not yet have a specific access / right to information legislation in place but remains a general principle.

In Solomon Islands, the general approach to records is that they are available to the public unless they fall under the jurisdiction of legislation governing secrecy or confidentiality of specified records. Solomon Islands has an Official Secrets Act, which makes it an offence to wrongfully communicate secret official information (Section 5). Cabinet documents are considered strictly confidential and a security clearance is needed to have access to them (Solomon Islands Cabinet Handbook 2005, Section 7). According to the National Archives Act, official records submitted for permanent preservation are not to be publicly available for thirty years, unless the Archives Advisory Committee decides otherwise with the approval of the Prime Minister (art. 8(1)).

Some divisions of government, such as Parliament and the Ministry of Finance and Treasury, have published information regarding their operations and functions online. However, most ministries do not maintain an official website.

In terms of participation of society in public decision-making processes, Article 70 of the Constitution requires that the proceedings of Parliament be held in public. The Standing Orders of Parliament state that members of the public and the press shall be allowed as spectators to sittings of Parliament. As a practice, civil society is heard on pending legislation and policy decisions.

The drafting and implementation of the National Anti-Corruption Strategy involves representatives from civil society as members of the Steering Committee. The Strategy also seeks to maximize citizen input into “the policy process.” Additionally, NACS aims to implement anti-corruption curricula at all levels of education.

Solomon Islands regularly marks International Anti-Corruption Day, including through radio awareness-raising programmes on corruption and its effects, and public discussion panels. The LCC occasionally conducts public awareness and outreach programmes to educate the public on the effects of corruption and reporting complaints. Neither the LCC nor the Ombudsman has a functioning website.

Private sector (art. 12)

The Companies Act requires companies to keep certain documentation at its registered office, including all minutes of meetings and resolutions from within the past seven years (art. 112). Directors of a company are required to ensure that correct accounting records are kept (art. 124). The implementation of Companies Act is overseen by the Company Registrar.

The recording of non-existent expenditures, the use of false documents, the intentional destruction of bookkeeping documents, and the entry of liabilities with incorrectly identified objects are all prohibited under the Penal Code, if these acts are committed with the intent to deceive or defraud (art. 305).

Regulations promulgated under the Companies Act guide the preparation of financial statements. Financial statements of public companies must comply with international standards or state how and why they do not comply (Companies Regulations 2010, arts. 9, 10).

Under the National Anti-Corruption Strategy, cooperation with the private sector is essential. Two members of the Steering Committee are representatives from the private

sector. The NACS would require for private sector investors to implement anti-corruption compliance programmes. Failure to comply would lead to sanctions. Also, any company or person awarded a government tender would also be required to comply with legal and administrative regulations. The NACS also calls for the organisation of anti-corruption compliance programme training for private sector firms.

Solomon Islands does not expressly disallow the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The Money Laundering and Proceeds of Crime Act 2002 (MLPCA) is a comprehensive regulatory and supervisory regime that established the Anti-Money Laundering Commission, which oversees the regulation of the financial services industry, and the Financial Intelligence Unit (SIFIU), which receives and investigates suspicious transaction reports. The Act requires both financial institutions and cash dealers to report any suspicious transactions to the SIFIU (MLPCA art. 14). The definitions of financial institutions and cash dealers were expanded under a 2010 amendment to the MLPCA.

Financial institutions, cash dealers, and legal practitioners assisting clients in certain matters are required by the MLPCA to verify the identity of any customer conducting a transfer of funds. Any type of funds transfer must include originator information (MLPCA 2010, arts. 12, 12A, 12I, 13B).

The SIFIU follows an administrative model and is a member of the Egmont Group. SIFIU officials have participated in training and exchange programmes in Cook Islands and Fiji. The SIFIU has also entered into MOUs with the FIUs of the Philippines, Indonesia, Chinese Taipei (Taiwan) and Sri Lanka.

The Currency Declaration Act (art. 16) requires a person who enters or leaves Solomon Islands with currency in the amount of \$50,000 Solomon Islands Dollars or above (or its equivalent in foreign currency) to make a declaration to an authorised officer in a prescribed form. The Act provides sanctions for both the failure to declare and for false declarations (art. 3(3)).

Solomon Islands is a member of the Asia/Pacific Group (APG) on Money-Laundering. A self-evaluation of anti-money laundering and counter-terrorist financing measures was conducted in 2016, and Solomon Islands will undergo the APG 2nd Mutual Evaluation in 2018.

2.2. Successes and good practices

- Adoption of the National anti-corruption strategy at highest level, following extensive stakeholder consultations (arts. 6 and 13)
- The stand-alone budget for the Ombudsman's Office to ensure its financial independence (art. 6)
- Mandatory nature of the Leadership Code and the accountability and oversight provided by the Leadership Code Commission (art. 8)

2.3. Challenges in implementation

It is recommended that Solomon Islands:

- *Develop a comprehensive monitoring, evaluation and reporting mechanism for the NACS, and allocate adequate resources to ensure its effective implementation and independence (art. 5)*
- *Adopt appropriate anti-corruption legislation to further implementation of the Convention (art. 5)*
- *Consider measures to clarify mandates, strengthen independence and allocate adequate resources to bodies charged with preventing corruption, including the Ombudsman's Office and the LCC, and the possible establishment of an Independent Commission against Corruption (art. 6)*
- *Endeavour to adopt procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (art. 7)*
- *Consider establishing measures or systems, including through legislation, to facilitate the reporting by public officials of acts of corruption to appropriate authorities and the protection of persons reporting suspected corruption (whistle-blowers) (art. 8(4))*
- *Consider revisions to procurement legislation to address price-fixing and strengthen the competitive process, as well as extend its application to State Owned Enterprises (art. 9(1))*
- *Strengthen the systems of public procurement, including through the public distribution of information relating to procurement procedures, invitations to tender and information on the award of contracts, such as through e-procurement processes (art. 9(1))*
- *Establish, within public procurement systems, an effective system of domestic review and appeal, and provide legal recourse and remedies to address disputes over adherence to applicable rules and procedures (art. 9(1))*
- *Review and take appropriate measures to promote transparency and accountability in the management of public resources distributed pursuant to the Constituency Development Funds Act (art. 9(2))*
- *Consider measures to establish requirements for the general maintenance of government financial records for a specified period of time (art. 9(3))*
- *Continue to consider comprehensive legislation and administrative measures to strengthen access to information, further to implementation of the National Anti-Corruption Strategy, as well as the establishment of guidelines and tools to enable public institutions to ensure effective and timely access to information (arts. 10, 13)*
- *Consider measures to enable and strengthen periodic public reporting of activities of government institutions engaged in the prevention of corruption, including the Ombudsman's Office, the Leadership Code Commission and the Ministry of Finance (art. 10)*
- *Consider taking additional measures to prevent the misuse of procedures regulating private entities regarding licenses and permits granted by public authorities for commercial activities, and promote transparency and accountability in royalty payments, in particular in the natural resource extractive industries (art. 12(2)(d))*
- *Consider taking additional measures to prevent conflicts of interest in the private sector (art. 12(2)(e))*
- *Ensure the disallowance of the tax deductibility of expenses that constitute bribes*

(art. 12(4))

- *Continue to strengthen participation of society in the prevention of corruption through the NACS, and in particular through contributions to the public decision-making processes, public awareness measures and public education programmes (arts. 10, 13)*
- *Take additional measures to ensure that the relevant anti-corruption bodies are known to the public and that reporting procedures, including anonymously, are established and accessible to the public (art. 13 (2))*

2.4. Technical assistance needs identified to improve implementation of the Convention

- *Collection of statistical data.*

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The SIFIU has a mandate to exchange financial intelligence with other States in relation to money-laundering and terrorist financing. The MLPCA empowers courts to cooperate with foreign jurisdictions (art. 54) and its article 23 overrides bank secrecy.

The Anti-Money Laundering Commission has the power to authorise the disclosure of any report or information to a foreign governmental department or agency or an international organisation that has powers, functions, and duties similar to those of the FIU (MLPCA, art. 11I). There is no legislative basis for the spontaneous transmission of information to another State party, thus, transmission of information can only be made in response to a formal request.

The Convention is not considered a legal basis for mutual law enforcement cooperation in Solomon Islands, but measures are under consideration to strengthen international cooperation and there are in place memoranda of understanding with several foreign law enforcement bodies, including through the Melanesian Spearhead Group.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions, cash dealers and legal practitioners are required to verify each customer's identity, retain customer records, and conduct ongoing scrutiny of all transactions undertaken (MLPCA 2010, arts. 12, 12I).

The Financial Institutions Act requires the Central Bank to take numerous measures to

ensure the legitimate operation of all financial institutions, including correspondent banking services (art. 12D), prior to the issuance of licenses to operate. There is, however, no requirement that a bank or financial institution maintain a physical presence in Solomon Islands, nor is there a legal definition of shell banks. Nevertheless, the non-binding SIFIU Guidelines expressly advise financial institutions to refuse to engage in a banking relationship with an institution that has no physical presence.

The 2010 amendment to the MLPCA expanded the definition of “politically exposed persons” to encompass both individuals in Solomon Islands and those in other States. Financial institutions, cash dealers and legal practitioners are required have risk management systems that can determine whether a customer is a politically exposed person. If so, they must take additional monitoring actions (art. 12C(1)(c)).

Although the Leadership Code requires certain categories of public officials to adhere to a financial disclosure system, there is no legislative or other provision for sharing such information with competent authorities of other States parties when necessary to investigate, claim and recover proceeds of corruption offences, other than upon issuance of an order by a court of competent jurisdiction. Although the financial disclosure system requires disclosure of all interests in financial accounts and property held in foreign countries, there is no requirement that appropriate records be kept for such accounts or property.

The powers of the SIFIU to obtain information, records and reports from banks and covered institutions are set out in section 11H of the MLPCA. Section 11K further authorizes the examination of such records. Section 11H(2)(h) provides that the powers of the Unit include acting on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority, or auditing authority of another country for purposes of the MLPCA.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

There is no legislation to permit other States parties to stand before Solomon Islands courts to claim damages or otherwise receive compensation for the damages incurred, although States can bring a direct action to claim property or damages if represented by an attorney licensed to practice in Solomon Islands.

Section 13 of the Mutual Assistance in Criminal Matters Act (MACMA) provides for the enforcement of foreign confiscation or restraining orders. Solomon Islands recognizes all foreign confiscation orders as long as they are in force in the foreign country. The Act makes no distinction between conviction-based and non-conviction based confiscation orders.

The Attorney General has the authority to refuse the mutual legal assistance request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of Solomon Islands on such terms and conditions as he thinks fit (section 4, MACMA). A request may also be refused if the Attorney General does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

Section 7 of the MACMA details that a request for confiscation should contain details of

the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and in the case of a request to restrain or forfeit assets, details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order.

Solomon Islands does not require a treaty to provide cooperation for purposes of confiscation. As a member of the Commonwealth, the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth could, in principle, be applied by and to Solomon Islands, but has not been used to date.

The Director of Public Prosecutions may request an order to freeze or seize property in response to a request by a State party that provides a reasonable basis to do so, subject to an eventual order of confiscation (Section 49 MLPCA). Sections 70, 75 and 77 of the MLPCA authorize the Attorney General to take measures, upon request, to assist a foreign State in locating property in Solomon Islands believed to be the proceeds of a serious crime committed in that State.

Solomon Islands furnished the relevant laws in the course of the review process. The rights of bona fide third parties are protected by section 36 of the MLPCA.

There is no minimum value threshold for the provision of assistance. Solomon Islands does not use the Convention as a legal basis for international cooperation. There is a duty to consult the requesting State, section 4(2)(c) MACMA, before postponing a request on the grounds that it would interfere with an ongoing investigation or proceeding in Solomon Islands.

Return and disposal of assets (art. 57)

Although Solomon Islands has had no international asset recovery experience, the legal framework is in place to enable appropriate measures to be taken. Section 34 of the MPLCA provides that where property ordered to be confiscated is registered property, the property vests in the Government of Solomon Islands in equity but not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with; and the Director of Public Prosecutions has the authority to register the Government of Solomon Islands as owner of the property, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

Section 36 of the MLPCA safeguards the rights of bona fide third parties. Section 36 gives any person who claims an interest in the property subject to confiscation to apply to the court for an order declaring the nature, extent and value at the time the order was made of the person's interest. "Person" is defined to include any public body, company or association, and any body of persons corporate or unincorporated (Interpretation and General Provisions Act, art. 16(1)). If the confiscation order has already been issued and executed, the competent court shall direct that the property or part thereof to which the interest of the applicant relates be returned to the applicant; or an amount equivalent to the value of the interest of the applicant be paid to the applicant.

Although there is no legislative basis to enable the waiving of the requirement of a final judgement in the requesting State, assets can still be returned upon a sufficient showing of a reasonable basis for ownership by another State party through the MACMA.

Solomon Islands has and would bear the ordinary costs associated with executing a mutual legal assistance request. Moreover, consultations would take place with the requesting State if the expenses to be incurred would be of a substantial or extraordinary nature. There are no present bi-lateral or multi-lateral agreements between Solomon Islands and other States.

3.2. Successes and good practices

- *Solomon Islands allows non-conviction based confiscation, also based on foreign orders and requests (Art. 54).*

3.3. Challenges in implementation

It is recommended that Solomon Islands:

- *Require financial institutions to maintain a physical presence in Solomon Islands and be affiliated with a regulated financial group in order to obtain a license to operate (art. 52(4))*
- *Consider taking additional measures to permit competent authorities to share financial disclosure information obtained pursuant to the Leadership Code with other States parties (art. 52(5))*
- *Consider measures to require public officials to disclose any interest or signature or other authority related to financial accounts in a foreign country, and maintain appropriate records related to such accounts (art. 52(6))*
- *In view of the dualist nature of Solomon Islands, ensure the required domestication process for the Convention as a legal basis for mutual legal assistance and international cooperation for purposes of confiscation and asset recovery (arts. 55(6) and 59)*
- *Consider granting legal authority to the Attorney General to proactively transmit information to a foreign competent authority in relation to asset recovery, without a prior request, where such information could assist in initiating or carrying out investigations, prosecutions or judicial proceedings of Convention offences (art. 56)*

3.4. Technical assistance needs identified to improve implementation of the Convention

- *Collection of statistical data.*

IV. Implementation of the Convention

A. Ratification of the Convention

8. Solomon Islands acceded to the United Nations Convention against Corruption (UNCAC) on 6 January 2012, and it entered into force on 5 February 2012.

B. Legal system of Solomon Islands

1. Sources of Law

9. The Solomon Islands was granted self-government in 1976 and it achieved independence from the United Kingdom on 7 July 1978, under the Solomon Islands Independence Order 1978. At independence, the Solomon Islands adopted a Constitution, enacted as a schedule of the Solomon Islands Independence Order 1978. Section 75 of the Constitution authorizes the Solomon Islands Parliament to make provision for applicable laws, including custom. Schedule 3 of the Constitution applies until Parliament makes such a provision. The Solomon Islands Parliament has not yet acted to provide for the applicable laws, and Schedule 3 therefore continues in effect. The laws as provided under that schedule include the Constitution, acts of the Solomon Islands Parliament, certain pre-independence legislative enactments of the British Parliament, customary law, and the rules and principles of common law and equity of England. The State operates under a dualist system, and international treaties are not self-executing.

Constitution

10. Section 2 of the Constitution declares that the Constitution “is the supreme law of the Solomon Islands and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void”.
11. The Constitution can be amended by Parliament by special majorities. Amendment of most of the provisions requires a vote of not less than two-thirds of all members of Parliament at the final voting, which is to be taken after two separate readings. Several provisions can be amended only by at least three-quarters of the members. These provisions include rights and freedoms, legal system, Office of Ombudsman, Parliament and the Office of the Auditor General.

Acts of Parliament

12. The Constitution confers on the Solomon Islands Parliament the power to make laws “for the peace, order and good government of Solomon Islands”. Legislation passed by the Parliament is the next superior law.

Acts of the United Kingdom Parliament

13. The acts of the United Kingdom Parliament of general application in force on 1 January 1961 are adopted by Schedule 3 of the Constitution, subject to the provisions of the Constitution and to acts of the Solomon Islands Parliament.
14. Legislative enactments in the form of rules or regulations made by the colonial administration and the pre-independence Assembly, though not specifically referred to by the Constitution, are also included in this category of law, as they were made pursuant to British enactments.
15. The Solomon Islands Independence Order 1978 provides in Section 5 that “the existing laws” that are in conformity with it and with the Constitution continue to apply. The expression “existing laws” is defined by Section 2 of the Order to include: “Acts of the Parliament of the United Kingdom, Orders of Her Majesty in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Solomon Islands (whether they have been brought into operation) immediately before the appointed day but does not include any order revoked by this Order”.

Customary Law

16. Customary law, defined by Schedule 3.3(3) of the Constitution to mean “rules of customary law prevailing in an area of Solomon Islands” is next in the hierarchy of the laws. Schedule 3.3(2) provides that the customary laws to be applied must not be inconsistent with the Constitution or with acts of Parliament, including the United Kingdom statutes applying by adoption.
17. Schedule 3 also provides for an act of Parliament to establish the proof and pleading of customary law, regulate the manner in which or the purposes for which customary law is to be recognised, and provide for the resolution of conflicts of customary law. There has not been any enactment of this to date, although a number of statutes provide for the recognition and application of custom in specific areas, such as the Local Courts Act (Chapter 46).

Common Law

18. The principles and rules of common law and equity are adopted by Schedule 3.2 of the Constitution. Although the Constitution does not expressly spell out the provenance of the common law, the High Court has presumed it to be that of the United Kingdom. The application of common law is subject to a number of qualifications. Firstly, the common law rule must not be inconsistent with the Constitution or acts of Parliament; second, it must be not “inapplicable to or inappropriate in the circumstances of Solomon Islands”; and third, it must not be inconsistent with customary law.
19. The Constitution provides that statutory modifications of the principles and rules of common law and equity made by the United Kingdom Parliament after the date that the Solomon Islands became independent; do not form part of the rules and principles received, unless the modifying statute has been expressly made applicable to the Solomon Islands. The Constitution further stipulates that judicial pronouncements by English or other foreign courts made on or after independence do not bind the

Solomon Islands courts. At least one (temporary) judge of the High Court has held that pre-independence decisions of the English courts are binding on the Solomon Islands courts.

2. Constitutional System: National Government

(a) Executive

Head of State

20. The Constitution declares, “The executive authority of the people of the Solomon Islands is vested in the Head of State”. The English monarch is Head of State, represented by the Governor General. The Governor General, who must be a person eligible to be a member of the Solomon Islands Parliament, is appointed by the Queen on the advice of the Solomon Islands Parliament.

21. The Constitution, Section 32, obliges the Government to keep the Governor General informed of the conduct of the Government and the country in general. The Governor General is not merely a figurehead. The Governor General is required to act and to exercise independent judgment in the following situations:

- 1) Appointment of a Minister to act as Prime Minister if the Prime Minister and the Deputy Prime Minister are ill or absent from the country, or if the Prime Minister is, in the opinion of the Governor General, unable to advise the latter on which Minister should act in that Office;
- 2) Appointment of two members of the Committee on the Prerogative of Mercy;
- 3) Removal of judges and acting judges in certain cases;
- 4) Appointment of a member of the Judicial and Legal Services Commission;
- 5) Removal of the Commissioner of Police; and
- 6) Decisions on pensions for public officers, including constitutional office holders.

Cabinet/ Executive

22. The Constitution provides in Chapter V for a Cabinet that is responsible to Parliament. The Cabinet is headed by a Prime Minister who is elected by Parliament from among its members. The Prime Minister advises the Governor General on the appointment of other Cabinet ministers. The number of Ministers in Cabinet is currently fixed by law at eleven. Each Minister is responsible for overseeing the administration of a Government Department. The Cabinet is collectively responsible for decisions made by the Cabinet or by individual ministers.

23. There are two *ex officio* members of the Cabinet, the Attorney General and the Permanent Secretary to the Cabinet. Ministers of the Cabinet, including the Prime Minister, hold office until another general election or until a vote of no-confidence is successfully brought against the Prime Minister. Ministers can be removed by the Governor General on the advice of the Prime Minister.

(b) Legislature

24. The Solomon Islands Parliament established under Chapter VI of the Constitution has the power to “make laws for the peace, order and good governance of the Solomon Islands”. Acts of Parliament may not alter the separation of powers of the three branches of Government. An attempt by the legislature to usurp the powers and independence of the judiciary was thus held unconstitutional by the Court of Appeal (*Kenilorea v. Attorney General* [1984] SILR 179). Bills can be introduced by any member, apart from bills on taxation or other matters that would impose a charge on the consolidated funds or other fund, which must be supported by a recommendation of Cabinet. Bills passed by Parliament become law after the assent of the Governor General and operate upon publication in the Gazette.
25. To qualify for election to Parliament, a person must be a citizen of the Solomon Islands, be twenty-one years old or older, and resident in the electorate.
26. Members of Parliament vacate their seats on dissolution of Parliament; on their resignation; if elected Speaker or appointed Governor General; if they are absent from two consecutive meetings of Parliament without permission, unless the Speaker determines otherwise; or if a condition of disqualification for membership exists.
27. Parliament is presided over by a Speaker, assisted by a Deputy Speaker, both of whom are elected by Parliament from among its members. The conduct of Parliament is in accordance with its standing orders and, if these do not provide for a particular matter, the usage and practice of the British House of Commons can be followed. It has been held that this includes a power in the Speaker to make rulings in answer to questions raising points of order that may have some bearing on the interpretation of constitutional provisions; and that this does not constitute a usurpation of the court’s powers to interpret a constitutional law.
28. Proceedings are open to the public unless otherwise provided by parliamentary rules of procedure. A quorum is half the sitting members. The Constitution provides for the Governor General, on the Speaker’s advice, to appoint as leader of the official opposition a person who has the numerical support of opposition members of Parliament.
29. Parliament is dissolved every four years. By an absolute majority vote, Parliament can dissolve itself before the expiration of its four-year term. On the dissolution, a general election must be held within four months.
30. Two commissions deal with electoral matters. The Electoral Boundaries Commission investigates and makes recommendations to Parliament regarding the number of electoral constituencies and their boundaries. The number of constituencies must not be less than thirty or more than fifty. Currently, there are thirty-eight. The Electoral Commission supervises the registration and conduct of elections.

(c) Judiciary

31. Solomon Islands operates under an adversarial legal system. As stated in *R v Niger*

Pitisopa (Unrep. Criminal Appeal Case No. 120 of 1999), “[I]n our present criminal Justice system, the Court is not supposed to conduct a criminal trial on behalf [of] the Crown Prosecutor. Its duty is to be impartial, hear the evidence on both sides, weigh the evidence and decide the case on its facts. It does not descend into the arena of conflict between the Crown Prosecutor and Defence Counsel.” In criminal trials, the prosecution bears the burden of proving the charges beyond a reasonable doubt.

High Court and Court of Appeal

32. The Constitution establishes a High Court and a Court of Appeal, which have inherent jurisdiction. The High Court has unlimited jurisdiction in all cases and can hear appeals from all subordinate courts. It has original jurisdiction in cases dealing with fundamental rights or constitutional questions. If constitutional questions arise in the lower courts, they are to be referred to the High Court for its interpretation.
33. The High Court also has advisory and supervisory jurisdiction. Its supervisory role is over subordinate courts for the purposes of ensuring that justice is duly administered.
34. The Court of Appeal hears appeals from the High Court in both civil and criminal matters. The *Court of Appeal Act 1978* specifies in detail the grounds for and manner of appeal to the Court of Appeal, and the *Court of Appeal Rules 1983* provide the procedure of appellate cases.
35. The High Court is headed by a Chief Justice. Parliament is empowered to make provisions for other judges. The Court of Appeal consists of a President, other justices of appeal as prescribed by Parliament, and the Chief Justice and other judges of the High Court sitting as *ex officio* members. All judges are appointed by the Governor General on the advice of the Judicial Services Commission. To qualify for appointment to these judicial positions, a person must hold or have held high judicial office in a Commonwealth or other court prescribed by Parliament or be qualified to practice as a barrister or solicitor and have been practicing for at least five years.
36. Judges cease to hold office when their terms expire or they resign. They may be removed by the Governor General acting on advice from a tribunal established for the purpose of investigating allegations of inability to perform the duties of the office. Judges may also be removed for misbehaviour. Judges or justices of appeal who are citizens cannot hold office beyond the age of sixty years. If the office of the Chief Justice becomes vacant, a judge of the High Court can be appointed as acting Chief Justice. If there is a vacancy in the position of a judge, a person qualified to be a judge of the High Court can be appointed to act as a judge. If the Office of the President of the Court of Appeal is vacant, another member of the Court of Appeal or a person qualified to be a judge can be appointed to act as President.

Subordinate Courts

37. Within the hierarchical court system, three courts are subordinate to the High Court and the Court of Appeal. These are the Magistrates’ Court, the Local Court, and the Customary Land Appeal Court.

38. The *Magistrates' Courts Act* (Chapter 3) confers both criminal and civil jurisdiction on Magistrates' Courts to hear and determine cases that arise in the area for which they are established. Magistrates' Courts are established by the Chief Justice, who can also, by warrant, confer extraterritorial jurisdiction on individual magistrates. The Chief Justice decides on the jurisdiction to be exercised by each court and can confer on a court specific jurisdiction to hear particular cases normally outside its jurisdiction.
39. Magistrates' Courts can be a Principal Magistrates' Court or, in order of hierarchy, a Magistrates' Court of the First or Second Class. A Principal Magistrates' Court exercises wide jurisdiction in terms of geographical area and has more freedom regarding civil damages and criminal penalties than the Magistrates' Courts of the First or Second Class. In 2007, jurisdiction for all Magistrates was increased by an amendment to the original Act. In all personal suits, Principal Magistrates now have jurisdiction over cases involving claims of up to SI\$50,000. For Magistrates' Courts of the First Class, the jurisdictional limit is SI\$20,000, and for Second Class Magistrates, the limit is SI\$5,000.
40. The Magistrates' Court of the First or Second class has jurisdiction to try criminal offences carrying a maximum penalty of imprisonment for one year, a fine of SI\$200, or both. A Principal Magistrates' Court has jurisdiction to try offences carrying a maximum of fourteen years' imprisonment or fine or both, but it cannot impose a prison sentence of a term exceeding five years, a fine exceeding SI\$1,000, or both. The Magistrates' Courts Regulations (Chapter 3) specify the offences that can be heard by the Magistrates' Courts. The Chief Justice or a judge can confer on a particular Magistrates' Court jurisdiction to deal with other offences. Magistrates' Courts also hear appeals from Local Courts operating within their area.
41. There are four Magistrates' Courts, one for each district of the Solomon Islands, presided over by qualified lawyers. There are plans to create more Magistrates' Courts in order to have a Magistrates' Court in every province.
42. The second set of subordinate courts are the Customary Land Appeals Courts, which hear appeals from the Local Courts on customary land matters and from Area Councils on timber rights permits. The Magistrates' Courts do not have power to hear appeals from Local Courts on customary land matters. The Customary Land Appeal Courts do not follow strict rules of procedure, although they must observe the basic principles of an independent tribunal. Decisions of this Court are subject to appeal to the High Court, but only on points of procedure or points of law other than customary law.
43. The third level of subordinate courts are the Local Courts, created under the *Local Courts Act* (Chapter 46). They are established in almost all provinces. Their jurisdiction is exercised by three justices who are knowledgeable in the customary law in that particular area. A Government Clerk provides advice and administrative support. The Chief Justice appoints both the justices and the Court Clerk.
44. Local Courts have jurisdiction in the geographical areas for which they are established and can hear all customary law claims, and they have exclusive jurisdiction in customary land matters. Still, before the Court can exercise that

jurisdiction, the dispute must have first been referred to the chiefs, all traditional means of dispute resolution must have been exhausted, and no decision accepted by both parties may have been made by the Chief.

45. Local Courts also have criminal jurisdiction over simple offences created under bylaws made by the Area Councils (or, in the case of Honiara, the Honiara Town Council) if the offender is a Solomon Islander who has committed the offence within the area of the court. The *Local Courts (Criminal Jurisdiction) Order 1978* limits their jurisdiction to cases involving prison sentences of up to six months and/or fines not exceeding SI\$200. The act gives the Chief Justice power to confer special jurisdiction on Local Courts in both criminal and civil cases.

46. The following legislative acts have been referred to in the self-assessment:

Companies Act 2009

Companies Regulations 2010

Constituency Development Funds Act 2013

Constitution 1978

Co-operative Societies Act [Cap 164]

Credit Union Act [Cap 165]

Financial Institutions Act 1998

Financial Instructions

General Orders

Insurance Act [Cap 82]

Law Reform Commission Act [Cap 15]

Leadership Code (Further Provisions) Act [Cap 86]

Local Government Act [Cap 117]

Magistrates' Courts Act

Money Laundering and Proceeds of Crime Act 2002

Money Laundering and Proceeds of Crime (Amendment) Act 2010

National Archives Act [Cap 147]

National Parliament Electoral Provisions Act

Official Secrets Act [Cap 25]

Ombudsman (Further Provisions) Act [Cap 88]

Ombudsman Act 2017

Penal Code [Cap 26]

Police Act 2013

Political Parties Integrity Act 2014

Public Finance and Audit Act [Cap 120]

Public Financial Management Act 2013

Public Service (Terms and Conditions of Service) (Chairman Leadership Code Commission) Rules (LN 15) 2006

Standing Orders of the National Parliament of the Solomon Islands

State Owned Enterprises Act 2007

47. The following proposed bills were considered in the review:

Anti-Corruption Bill 2016

Whistleblowers Protection Bill 2016

48. The following policies and measures were also considered in the review:

National Anti-Corruption Strategy 2017-2020

Asia/Pacific Group on Money Laundering, Mutual Evaluation Report, Solomon Islands

Country Review Report of Solomon Islands, Review by Iraq and the Slovak Republic of the implementation by the Solomon Islands of articles 15 - 42 of Chapter III. "Criminalization and law enforcement" and articles 44 - 50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010 - 2015

Government of the Solomon Islands, National Development Strategy 2011-2020

Government of the Solomon Islands, National Development Strategy 2016-2035

Learning and Development Prospectus July – November 2011, IPAM, Ministry of Public Service

Magistrates Courts Bench Book 2004

Solomon Islands Budget 2016

Solomon Islands Cabinet Handbook 2005

Solomon Islands Law Review Commission, First Interim Report, Corruption Offences Parts X and XXXVIII of the Penal Code 2011

Solomon Islands Public Sector Satisfaction Survey, Institute for Social Science Research, University of Queensland, 2016

Transparency International, National Integrity Systems Report, 2004

The following were considered to be successes and good practices in the implementation of the chapters of the Convention that are under review:

- Adoption of the National anti-corruption strategy at highest level, following extensive stakeholder consultations (arts. 6 and 13)
- The stand-alone budget for the Ombudsman's Office to ensure its financial independence (art. 6)
- Mandatory nature of the Leadership Code and the accountability and oversight provided by the Leadership Code Commission (art. 8)

- Solomon Islands allows non-conviction based confiscation, also based on foreign orders and requests (Art. 54).

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

49. The Government continues to address the recommendations from the Cycle 1 review process that focused on UNCAC Chapter III (Criminalization and law enforcement) and IV (International cooperation). With the lead of the Office of the Prime Minister, Solomon Islands has developed a National Anti-Corruption Strategy which was launched by the Prime Minister on 9 December 2016, and unanimously endorsed by the Parliament in March 2017. The strategy focusses on the following five agendas throughout the next three years:

- 1) Strengthen effectiveness of the public administration to prevent corruption;
- 2) Build the capacity of the law enforcement bodies to detect, investigate and prosecute corruption;
- 3) Strengthen the integrity of the judiciary to effectively adjudicate corruption cases;
- 4) Improve public participation to strengthen public trust in Solomon Islands society in general and in the institutions in particular;
- 5) Strengthen the integrity in the private sector to reduce the external corruption pressure on administration.

50. The Strategy was designed based on the UNODC guidelines for developing national anti-corruption strategies (NACS).¹ Most importantly, a series of consultative events preceded the production of the Strategy and its Action Plan, at the central and provincial level. Each of the nine provinces was visited by teams made up of officials from the Office of the Prime Minister and Cabinet, as well as national and international consultants. These teams held discussions with provincial officials in order to hear their views, suggestions, and challenges. A Steering Committee, which also included representatives from the private sector and civil society, was

¹ https://www.unodc.org/documents/corruption/Publications/2015/National_Anti-Corruption_Strategies_-_A_Practical_Guide_for_Development_and_Implementation_E.pdf

established to oversee the design and implementation process. The Strategy document reflects on the findings and recommendations of the first cycle review of the Convention, gaps identified during the preparations for the second cycle, and the main issues derived from the consultation process. It also provides a timeline for each step of the implementation process.

51. The Strategy takes the approach of preventing corruption through reducing opportunities for it to happen. It emphasizes identifying and managing risks in the following five sectors: Public administration, judiciary, law enforcement, civil society, and the private sector. Within each sector, priority areas of intervention were identified and specific steps planned. For example, in addressing corruption in the public sector, priority areas were capacity building, conflict of interest and ethics, career and retention policies, and public procurement. For each area, the Strategy detailed concrete actions to be taken.
52. During the country visit, Solomon Islands informed that the implementation of the national anti-corruption strategy would be undertaken jointly with the United Nations Development Programme (UNDP), in line with a joint cooperation and cost-sharing agreement and a detailed project document. Solomon Islands had committed three million Solomon Island dollars to this effort. The United Nations Office on Drugs and Crime (UNODC) would also support these efforts as implementation partner for certain activities.
53. Additionally, there is a draft Anti-Corruption Bill that seeks to establish the Solomon Islands Independent Commission Against Corruption. There is also a draft Whistleblower Protection Bill. Both are yet to be adopted by the Parliament. Both were announced at the International Anti-Corruption Day in 2015 by the Prime Minister, together with other proposed measures:
- (a) *Anti-Corruption Bill 2016*
This bill would be the first comprehensive anti-corruption legislation. It would consolidate old and new corruption offences and proscribe stronger penalties. It would also establish the Solomon Islands Independent Commission against Corruption (SIICAC).
 - (b) *The Whistle Blowers Protection Bill 2016*
This legislation would provide protection from discrimination and retaliatory actions for persons reporting in good faith suspected acts of corruption, maladministration and/or improper conduct of officials.
 - (c) *The Ombudsman (Special Provisions) Bill 2016*
In the new Ombudsman Act, the powers of the Ombudsman would be revised to include a requirement that findings by the Ombudsman must be acted upon without delay.
 - (d) *The Leadership Code (Further Provisions) Bill*
The new Leadership Code bill would provide clarity regarding the overlap in the jurisdiction of the Leadership Code Commission and that of the Ombudsman. The bill would also establish the Leadership Tribunal to hear cases of misconduct in office.
 - (e) *The National and Provincial Election (Further Provisions) Bill*
The election bill would provide for a new election system, under which the 2018 General Election would be conducted. A new anti-defection measure would also be established.

(f) *The Freedom of Information Bill*

This bill would create transparency measures and make available government information to the public. It would also establish a right for Solomon Islanders to have access to official information from any government agency. The Prime Minister stated, "It is our intention that this Bill is enacted by Parliament towards the end of 2016."

(g) *Review of the Political Parties Integrity Act 2014*

Re-examination of the current *Political Parties Integrity Act* will be conducted using the 2014 election to assess its effectiveness.

54. In addition to the National Anti-Corruption Strategy, the Solomon Islands Government has also developed a National Development Strategy (NDS). The first version of this plan was drafted in 2011 and released as the *National Development Strategy 2011 to 2020*. The NDS 2011-2020 stated that it "underlines the importance of good governance and public sector reforms. Good governance and the existence of credible and stable policies are fundamental conditions for private sector growth. The Public Sector Reform Program will impart a clear sense of direction on our public service, improve accountability and enhance the efficiency of service delivery. Fiscal governance is critical for achieving the goals of the NDS and the Government's expenditure program will be driven by the Strategy." Under this plan, Objective 8 was to "Improve Governance and Order at National, Provincial and Community Levels and Strengthen Links at All Levels."

55. The *National Development Strategy 2016-2035* was created to cover a twenty-year period, a longer time frame than the previous NDS. The NDS 2016-2035 states that this will "provide a longer term framework for planning that lays the foundations for recovery and long term sustainable development" and "provide greater stability and continuity."

56. A first draft was prepared by the Ministry of Development Planning and Aid Coordination (MDPAC) based on analysis of the performance of the National Development Strategy 2011-2020 and consultations at the technical level with line ministries. It took into account priorities identified by the Government as outlined in its 2015 Democratic Coalition for Change Government Policy Statement. It also used varied sector and provincial strategic development plans and feedback from the Provinces, including surveys. A National Development Strategy Framework document was prepared based on the first draft, outlining both long term and more immediate objectives.

57. The National Development Strategy Framework was then discussed in meetings with a broad range of audiences from August to November in 2016. This included consultations with stakeholders in the Provinces. Consultations were held in all nine Provinces and involved public officials, leaders, church groups, other faith based organisations (FBO), non-government organisations (NGOs), and communities. This process helped ensure ownership by all stakeholders. The long-term objectives and medium term strategies were generally supported during these consultations and received some suggestions for refinement. The main concern raised by participants, however, was the implementation of programmes at the provincial level. Participants requested for more to be done and for more delegation of decision making to the Provinces. Other significant concerns included lack of infrastructure and suitable

roads. Poor governance and perceptions of increasing corruption were commonly referenced.²

58. The consultations regarding the Framework informed the accretion of the *National Development Strategy 2016-2035*. The NDS 2016-2035 expands the National Development Strategy Framework into a more detailed plan that includes medium term strategies for achieving the larger goals. These medium term strategies are further elaborated in the Medium Term Development Plan (MTDP), a rolling five-year plan that translates the NDS into actionable programmes and projects. Revised annually, the MTDP also provides budget plans for individual ministries.

59. National Development Strategy Objective 5 calls for “Unified nation with stable and effective governance and public order.” The following medium term strategies have been created to achieve Objective 5.

- Medium Term Strategy 12: Efficient and effective public service with a sound corporate culture.
- Medium Term Strategy 13: Reduce corruption and improve governance at national, provincial and community levels.
- Medium Term Strategy 14: Improve national unity and peace and promote cultural heritage at all levels.
- Medium Term Strategy 15: Improve national security, law and order and foreign relations.³

60. For the Medium Term Strategy 13 (“Reduce corruption and improve governance at national, provincial and community levels”), the NDS lists several performance indicators to be utilized in analysing the effectiveness of the plan. Those are public perceptions, taken by survey and/or consultation, and the publication of all payments made to governments under resource contracts.⁴ The NDS also listed as a performance target improving the placement of the Solomon Islands in various international corruption reports, including the Transparency International’s Corruption Perception Index and ADB’s Annual Country Performance Report.

61. During the country visit, Solomon Islands informed that last year, its Ministry of Planning had launched a Monitoring and Evaluation (M&E) Unit to review the implementation of the National Development Strategy framework, with an aim to evaluate both the short-term and long-term strategic plans.

(b) Observations on the implementation of the article

62. Solomon Islands has established a Steering Committee, led by the Office of the Prime Minister and including public sector, civil society and private sector representatives to coordinate the oversight of the National Anti-Corruption Strategy (NACS), which was unanimously endorsed by Parliament in March 2017. NACS focusses on five priority areas and addresses recommendations of the first implementation review

² Solomon Islands, National Development Strategy 2016-2035, pp 6-7.

³ Solomon Islands National Development Strategy 2016-2035, p 14.

⁴ *Id.* at 70

cycle and other mandatory provisions of the Convention. NACS has a detailed implementation plan accompanied by a monitoring, evaluation and reporting framework, which would benefit from further elaboration. The implementation of the Strategy will be jointly undertaken with UNDP, in line with a joint cooperation agreement and a detailed project document. Principles of good governance and anti-corruption are enshrined also in the National Development Strategies.

63. The proposed anti-corruption legislation is still to be enacted, although multiple corruption offences already exist in the Penal Code. During the country visit, Solomon Islands informed that the draft Anti-Corruption Bill was recently withdrawn from the Parliament for more amendments by Prime Minister's Office, as identified by the Bills and Legislations Committee. At the time of the country visit, the Bill was before the Cabinet, which planned to re-submit it for the consideration of the Parliament later in 2017.
64. While the adoption of the NACS at highest level, following extensive stakeholder consultations was identified as a good practice, Solomon Islands is recommended to develop a comprehensive monitoring, evaluation and reporting mechanism for the NACS, and allocate adequate resources to ensure its effective implementation. Further, Solomon Islands is recommended to adopt appropriate anti-corruption legislation to further implementation of the Convention under review.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

65. Many of the corruption prevention efforts in Solomon Islands have been legislative. Several laws promoting transparency were passed over the last few years. The *Police Reform Act 2013* was enacted in March 2014 and covers integrity within the police department. As required by the Act, the Royal Solomon Islands Police Force started releasing an annual report to the public detailing statistics and operations. The *Constituency Development Fund Act 2013* affects the Ministry of Rural Development, and helps to regulate funds provided to Members of Parliament that are distributed to their communities.
66. While no single anti-corruption agency exists, agencies and departments in Solomon Islands have collaborated to prevent corruption. Please see more details under article 6, paragraph 1.
67. Also the National Anti-Corruption Strategy calls for inter-institutional cooperation. It further calls for monitoring and evaluation of implementation, and for transparency to citizens through regular progress reporting.
68. The monitoring and evaluation component of the NACS begins with the Steering Committee. The Steering Committee will provide advice, input, and oversight for all

of the agencies and groups working together to implement the Strategy. The Government will monitor the implementation of the Strategy to be sure it is being put into effect as planned and that it is having the desired effect. The Strategy also calls for the Government to conduct risk assessments to determine vulnerabilities to corruption. Reports on progress of the NACS implementation have not been released.

(b) Observations on the implementation of the article

69. Many of the corruption prevention efforts in Solomon Islands have been legislative. Several laws promoting transparency were passed over the past few years, and more are in a draft stage.

70. The National Anti-Corruption Strategy calls for inter-institutional cooperation. It outlines areas in which improved practices should be established for the prevention of corruption. It further calls for monitoring and evaluation of implementation, and for transparency to citizens through regular progress reporting.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

71. There is no central law reform process but each ministry can initiate a review under its purview.

72. The Law Reform Commission of the Solomon Islands was established under the *Law Reform Commission Act*. It reviews laws that are referred to it by the Ministry of Justice. The functions of the Commission include reviewing laws with the systematic development and reform of the law in mind; making recommendations regarding law-making; making recommendations relating to the consolidation and the repeal of laws that are obsolete or unnecessary; making recommendations regarding the restatement, codification, amendment or reform of traditional or customary laws; and making recommendations for addressing the changing legal needs of Solomon Islands society and its individual members.

73. Beginning in 2008, Law Reform Commission started conducting a review of the Penal Code and Criminal Procedure Code. The First Interim Report, issued in 2011, focused on Corruption Offences, which are codified in Parts X and XXXVIII of the Penal Code. The Report is available at: <http://www3.pacii.org/sb/lawreform/SBLawRComm/2011/1.pdf>.

74. To date, no steps have been taken by Parliament to address the recommendations of the Law Reform Commission regarding corruption offences. The Law Reform Commission is currently reviewing property offences under the Penal Code, sentencing provisions (including possible sentencing guidelines), and administration of justice. During the country visit, Solomon Islands informed that, beyond the Penal

Code, the Law Reform Commission had to date not reviewed legislation relevant to anti-corruption.

75. Solomon Islands further informed that law review can also be initiated through the Cabinet's referral. Prime Minister's Office would initiate a legal reform and, following Parliament's approval, a working group would be established for the review process.
76. During the country visit, Solomon Islands informed that the Ministry of Public Service was currently reviewing its governance framework. A Public Service Bill was reported to be in an advanced draft stage, including amendments to strengthen principles and values of the public service. The Bill would also enshrine the Code of Conduct for the public service. In addition, Solomon Islands informed that there was an on-going review of the General Orders of the public sector by the Ministry of Public Service, conducted by the Permanent Secretary of Public Service.
77. During the country visit, Solomon Islands informed that the Office of the Ombudsman (the Ombudsman) had the authority to review the adequacy of administrative procedures and mechanisms. This includes complaints received from persons about the adequacy of procedures. The Ombudsman can also initiate certain investigations in a government department or ministry on its own, and propose changes.
78. Solomon Islands further informed that the Internal Audit Office provides review of the independent control framework for the Ministry of Finance. The Internal Audit Office also oversees internal audit functions across the rest of the Government. The Auditor-General is also required to audit and report annually on the public accounts of Solomon Islands, of all Ministries, offices, courts and authorities of the government, of the government of Honiara city and of all provincial governments.
79. Several groups outside of the Government have also conducted reviews:
- Transparency International conducted a review of the National Integrity System of the Solomon Islands in 2004.
 - The Asia/Pacific Group on Money Laundering conducted its Mutual Evaluation Report of the Solomon Islands in 2010. This report assessed Solomon Islands' capacity to prevent money laundering and the financing of terrorism. It was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004. This report provides a summary of the AML/CFT measures in place in the Solomon Islands. It also analyses those measures, describes the levels of compliance with the FATF 40+9 Recommendations, and provides recommendations on how aspects of the system could be strengthened.
 - Diagnostic Study of Law of Solomon Islands for Anti-Corruption Purposes was produced in July 2008 by Primo Afeau and Victoria Aitken (<https://dfat.gov.au/about-us/corporate/freedom-of-information/Documents/report-diagnostic-study-law-solomon-islands-anti-corruption.pdf>)

(b) Observations on the implementation of the article

80. There is no central law reform process in Solomon Islands but each ministry can initiate a review under its purview. Beginning in 2008, Law Reform Commission started conducting a review of the Penal Code and Criminal Procedure Code. The First Interim Report, issued in 2011, focused on Corruption Offences. To date, no steps have been taken by Parliament to address those recommendations, however, during the country visit, Solomon Islands informed that most of them were reflected in the draft Anti-Corruption Bill.

81. The Office of the Ombudsman (the Ombudsman) has the authority to review the adequacy of administrative procedures and mechanisms.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

82. The Solomon Islands is a member of: the Pacific Islands Legal Officers' Network; Pacific Islands Forum Secretariat; Pacific Association of Financial Intelligence Units; Pacific Prosecutors Association; Pacific Islands News Association; Oceania Customs Organisation; Pacific Immigration Directors Conference; Pacific Patrol Boat Program; Secretariat of the Pacific Community; Pacific Association of Supreme Audit Institutions; and various other international law enforcement agencies and the private industry (i.e. Pacific Island Forum Fisheries Agency).

83. The Regional Assistance Mission to Solomon Islands (RAMSI) was a partnership between the people and Government of Solomon Islands and fifteen contributing countries of the Pacific region. RAMSI was established in 2003, after the Prime Minister of Solomon Islands at the time, Sir Allan Kemakeza, made an urgent request for assistance. Until mid-2017, when its mission came to an end, RAMSI helped Solomon Islands lay the foundations for long-term stability, security and prosperity. In particular, it worked extensively with the Solomon Islands Police Force to build and modern, effective and independent police force that has the confidence and support of the community. For example, it provided extensive training and had dedicated advisors assigned to assist the Anti-Corruption Unit and Fraud Unit of the Solomon Islands Police Force.

84. The joint UNODC-UNDP United Nations Pacific Regional Anti-Corruption (UN-PRAC) Project has provided extensive support to the Solomon Islands over the years. Recently, it supported the development of the National Anti-Corruption Strategy,

and the creation of a national project for its implementation. It has also provided training on the investigation and prosecution of corruption, facilitated Solomon Islands' participation in an attachment programme with the Fiji Financial Intelligence Unit, facilitated South-South exchange on the replication of PNG's Phone against Corruption initiative in Solomon Islands, and supported the civil society through training and involvement in UN-PRAC regional workshops. The Solomon Islands participated also in the UNDP Parliamentary Strengthening Project.

85. As mentioned under article 5(1), UNDP is currently supporting Solomon Islands to implement its national Anti-Corruption Strategy, partly funded by the Government of Solomon Islands.

86. The Australian Government's Anti-Money Laundering Assistance Team (AMLAT) has worked closely with the Central Bank of Solomon Islands (CBSI) to implement anti-money laundering systems, including comprehensive support to establish what is now an operational Financial Intelligence Unit (FIU) within the Central Bank of Solomon Islands. Future assistance priorities include building the FIU's capacity to supervise reporting entities, and supporting Customs authorities in preventing money laundering, including trade-based laundering. Training to the Financial Intelligence Unit has been provided also by AUSTRAC, AMLAT, APG, UN-PRAC and the World Bank.

87. The Auditor-General's Office of Solomon Islands (OAG), together with the Pacific Association of Supreme Audit Institutions (PASAI) and the Pacific Financial Technical Centre (PFTAC), hosted a Pacific regional workshop in Honiara, Solomon Islands in December 2016 under the theme "Strengthening Oversight Functions of Public Financial Management through Internal and External Audit." PASAI also conducts regular reviews of auditing capacity in the region.

88. The Solomon Islands became a member of the Asia Pacific Group on Money Laundering in May 2007. The Solomon Islands Mutual Evaluation Report was adopted by the APG in July 2010 and is available online: <http://www.apgml.org/members-and-observers/members/member-documents.aspx?m=eed1590a-5054-4596-9b39-60e2b845aca1>

89. In 2012, Solomon Islands became a member of the ADB/OECD Anti-Corruption Initiative. Like all members of the Initiative, Solomon Islands will be obliged to meet the anti-corruption requirements under the Initiative. A formal review has not been conducted.

90. The Pacific Islands' Law Officers' Network (PILON), under the Pacific Islands Forum, provides another opportunity for collaboration and cooperation. This collaboration is also reflected at the national level, and coordination occurs under the Ombudsman's Office. Country reports are presented to the Anti-Corruption Working Group at a plenary every year and reflect activities that have been undertaken.

91. Solomon Islands has been a member of the Extractive Industries Transparency Initiative (EITI) since 2012. A report issued on 10 January 2017 can be found here: https://eiti.org/sites/default/files/documents/si_comments_from_the_national_secre

tariat_on_the_validation_report.pdf.

(b) Observations on the implementation of the article

92. Solomon Islands participates in regional initiatives and organizations that assist in the prevention of corruption, share good practices and discuss challenges.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

93. Anti-Corruption Investigations Unit within the Royal Solomon Islands Police Force (RSIPF) leads all anti-corruption investigations.

94. JANUS is a joint anti-corruption task force by the Royal Solomon Islands Police Force and the Ministry of Finance and Treasury. Also the Department of Public Prosecution (DPP), Leadership Code Commission (LCC), Public Service Commission (PSC), Auditor General (AG), Accountant General and the Ombudsman are engaged. JANUS has already pursued a number of arrests of senior public servants who have allegedly misappropriated public funds.

95. At the policy level, the Office of the Prime Minister established a Steering Committee mandated to coordinate the development of the National Anti-Corruption Strategy and oversee its implementation. The Steering Committee is composed of members of the public sector, the civil society (represented by the Transparency International Chapter and Development Exchange Services), the private sector (represented by Solomon Islands Chamber of Commerce and Industry), the Ombudsman and other public officials. The secretariat and main convener of meetings is the anti-corruption team within Office of the Prime Minister.

96. Integrity Group Forum (IGF) is formed by government entities whose common goal is to improve accountability, and law and order in the Government. While the membership is open, currently the following institutions are members of the IGF: LCC, Ombudsman, AG, Royal Solomon Islands Police Force (the Anti-Corruption Unit), Solomon Islands Prison Services, Central Bank of Solomon Islands, DPP. The secretariat is with the Ombudsman Office. The IGF meets on a semi-regular basis

(between 4 and 6 meetings a year) and has a revolving chair. During the country visit, Solomon Islands explained that IGF also works to raise awareness among leaders and parliamentarians on the importance of corruption prevention.

97. The Committee Combating Corruption's (CCC) mandate is to provide a forum for senior officers to meet and develop strategies to enable a more effective and efficient collaborative approach to combat corruption in the Solomon Islands. Members of the CCC are: AG, Accountant General, Auditor General, Chair of the Public Service Commission, Chair of the LCC, Commissioner of Police, DPP, Ombudsman, Secretary to Cabinet. The body is yet to elect its chair and set regular, monthly meetings. The secretariat of this body is also with the Ombudsman Office.

98. The *Anti-Corruption Bill*⁵, which has yet to be adopted by the Parliament, seeks to establish the Solomon Islands Independent Commission Against Corruption (SIICAC). The functions of SIICAC are to include determining the appropriate action to take on conclusion of corruption investigations, prosecuting corruption offences with the consent of the Director of Public Prosecutions, and the prevention of corruption. During the country visit, Solomon Island clarified that SIICAC would not be a constitutional commission, but established by legislation.

99. Solomon Islands further clarified that the establishment of the SIICAC would not replace other institutions mandated to work on the prevention of corruption, due to its mainly law enforcement-focused mandate. However, according to Solomon Islands, it is likely that mandates of different institutions would be harmonized. While focussing mainly on law enforcement, the Commission would also engage in public awareness and would be tasked to oversee the implementation of the anti-corruption strategy.

100. The following are sections from the draft Anti-Corruption Bill 2016:

Part 2- Solomon Islands Independent Commission against Corruption

Division -1 Establishment

6. Solomon Islands Independent Commission against Corruption established

- (1) The Solomon Islands Independent Commission against Corruption is established.
- (2) The Commission is a body corporate with perpetual succession.

7. Functions and powers

The Commission has the following powers and functions:

- (a) to determine the appropriate action to take on conclusion of corruption investigations;
- (b) to prosecute corruption offences with the consent of the Director of Public Prosecutions;
- (c) to prevent corruption through its functions under Part 3;
- (d) to direct the Director-General in the operation of the Commission;

⁵ Please see also <http://www.radionz.co.nz/international/pacific-news/303971/solomons-pm-urged-to-press-on-with-anti-corruption-bill>

(e) any other powers and functions conferred on it by this or any other Act.

8. Independence

Except as provided for in this or another Act, the Commission is not subject to the direction or control of the Minister or any other person in the exercise of its powers or the performance of its functions.

9. Liaison with other bodies

In the exercise of its powers and the performance of its functions, the Commission must liaise and cooperate with the following office holders and bodies as appropriate:

- (a) the Ombudsman;
- (b) the Leadership Code Commission;
- (c) the Public Service Commission;
- (d) the Auditor-General;
- (e) the Police Force;
- (f) the Director of Public Prosecutions;
- (g) the Electoral Commission established by section 57 of the Constitution;
- (h) the Political Parties Commission established by section 4 of the Political Parties Integrity Act 2014.

101. Under the proposed Bill, the Independent Commission against Corruption would be led by a Chairperson, a Deputy Chairperson, and four other members. The Commission must include at least two persons of each gender, include at least one person who is qualified or experienced in accounting or financial management, and represent a reasonable geographical spread of the provinces of Solomon Islands.

102. The bill also outlines the nomination process. The nominating committee would consist of the Chairman of the Law Reform Commission as Chairperson, a judge of the High Court nominated by the Chief Justice, the Chairman of the Public Service Commission, the President of the National Council of women, the General Secretary of the Solomon Islands Christian Church Association. A person can only be appointed by the Governor General if he or she has been nominated by this committee.

103. The bill requires certain criteria in order for a person to be eligible for nomination. He or she must be a person of high integrity and be capable of exercising “diligence, sound judgment, confidentiality and impartiality” in the performance of his or her functions. He or she must also have “knowledge and experience relevant to the prevention of corruption” and a “sound knowledge of the culture and values of Solomon Islands.”

104. Additionally, the bill does not allow commissioners to be members of Parliament, a Provincial Assembly, or a local government council established under section 3 of the Local Government Act or the Honiara City Council established by section 4 of the Honiara City Act 1999. Commissioners also cannot be members of a political party registered under section 25 of the Political Parties Integrity Act 2014. Potential commissioners cannot have been convicted of a corruption offence or any other offence carrying a potential penalty of a fine of at least \$200 or at least 6 months imprisonment. Finally, they cannot have been determined by the Leadership Code

Commission to have been engaged in misconduct in office in relation to conduct engaged in within the previous 5 years. In order for a person to be nominated for chairperson of the Commission, they must also meet the qualifications for appointment as a judge of the High Court.

105. Once appointed, a Commissioner would be able to serve for up to five years, unless a shorter term was agreed upon. After the end of a term, a Commissioner may be re-appointed for up to five years.

106. The bill also has a three-part scheme in the prevention of corruption. It describes the role of the Government, the Minister, and of the Commission itself. For the Government, the bill calls for the consideration of corruption prevention during the formulation of legislation and policies. The Government is tasked with consulting civil society, the Commission, as well as the private sector. It is further tasked to cooperate with international organizations seeking to prevent corruption in any way that is consistent with Solomon Islands law.

107. The bill calls for the Minister to issue a national Anti-Corruption Strategy within six months of the bill's enactment. That strategy must be made public and the Minister must review it regularly to ensure its effectiveness. The Minister must also report to Parliament at least once per year regarding the status of the national strategy.

108. Finally, the Commission's role in corruption prevention would involve raising awareness, reviewing legislation and policies, providing advice and guidelines to public and private bodies, and providing training.

109. As another preventative measure, the bill requires each public body to designate an integrity officer. That person would then be tasked with raising awareness within that public body about the role of the Commission and with receiving and initiating corruption complaints and referring them to the Commission.

110. Other relevant bodies in Solomon Islands include the following:

- Ombudsman;
- Leadership Code Commission;
- Auditor-General;
- Public Accounts Committee;
- Attorney General;
- Commissioner of Police and Police Force;
- Electoral Commission;
- Director of Public Prosecutions;
- Public Service Commission;
- Political Parties Commission;
- Anti-Money Laundering Commission; and
- Financial Intelligence Unit.

Ombudsman

111. The Office of the Ombudsman is created under section 96 of the Constitution. The Ombudsman is appointed for a five-year term by the Governor-General, acting in

accordance with the advice of a committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission. The Office of the Ombudsman investigates complaints about the administrative actions of members of the public service, Police Force, prisons service, the Government of Honiara City, Provincial Governments, and such other offices, commissions, corporate bodies or public agencies as prescribed by Parliament.

112. The Ombudsman can be removed only “for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.”

113. In 2017, the Parliament of Solomon Islands passed *Ombudsman Act 2017*. At the time of the country visit, it was waiting for enactment. It replaces the *Ombudsman (Further Provisions) Act*.

114. There are several differences between the old and new law. The Ombudsman Act 2017 allows persons making complaints to do so orally or writing. If the complaint is made orally, it must be put into writing by a staff member of the Ombudsman’s Office. The proposed bill would also allow complaints to be made by third parties on behalf of the complainant. It further establishes an independent budget for the Office.

115. The Ombudsman has finalised annual reports up to 2011. These can be found here: <http://www.paclii.org/sb/cases/SBOM/>

[Constitution 1978](#)

CHAPTER IX: THE OMBUDSMAN

Office of Ombudsman

96. (1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting in accordance with the advice of a committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission.

(3) If the person appointed as Ombudsman is a member of parliament or a provincial assembly, he shall forthwith cease to be such a member.

(4) The Ombudsman shall not perform the functions of any other public or provincial government office, and shall not, without the approval of the Governor-General in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.

(5) Subject to the provisions of the next following subsection, the Ombudsman shall vacate his office at the expiration of five years from the date of his appointment.

(6) The Ombudsman may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the procedure for the removal of a judge of the High Court as set out in subsections (4) to (7) of section 80 of this Constitution.

Functions of Ombudsman

- 97.(1) The functions of the Ombudsman shall be to
- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof;
 - (b) assist in the improvement of the practices and procedures of public bodies; and
 - (c) ensure the elimination of arbitrary and unfair decisions.

(2) Parliament may confer additional functions on the Ombudsman.

(3) This section applies to members of the public service, the Police Force, the Prisons Service, the government of Honiara city, provincial governments, and such other offices, commissions, corporate bodies or public agencies as may be prescribed by Parliament:

Provided that it shall not apply to the Governor-General or his personal staff or to the Director of Public Prosecutions or any person acting in accordance with his instructions.

(4) Nothing in this section or in any Act of Parliament enacted for the purposes of this Chapter shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions.

Discharge of functions of Ombudsman

98.(1) In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands.

(3) The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law.

Further provisions

99. Parliament may make provision for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of this Chapter.

116. During the country visit, Solomon Islands provided examples on successful investigations by the Ombudsman. Solomon Islands further clarified that following the receipt of a complaint, the Ombudsman conducts a screening process to determine whether the case is likely to include a criminal offence. If the Ombudsman discovers a potential criminal offence at the screening stage, or at any point during the investigation, it refers the case to the police or the Director for Public Prosecution.

117. Below table shows the complaints received and own motion investigations by the Office of the Ombudsman from 2013 to 2016:

Year	Total of Cases in OOSI's carriage per year	Complaints		Own Motion Investigation	Disposed			Report to Parliament ¹
		By Individuals	Referral from MP		Summarily Dismissed	Investigated	Referred	
2013	90	90	0	0	0	66	24	0
2014	116	116	0	0	9	58	49	0
2015	146	144	0	2	43	24	81	0
2016	164	160	0	4	55	24	85	0
TOTAL	516	510		6	107	172	239	0

Leadership Code Commission

118. The Leadership Code Commission is established under the *Leadership Code (Further Provisions) Act*. Section 2 of the Act defines a “Leader” as “any person who or whose office or position is included in section 93 of the Constitution and any person appointed to the office of Ambassador or High Commissioner in accordance with section 127 of the Constitution.” Those included under section 93 of the Constitution are the Governor-General, the Prime Minister and other Ministers, the Leader of the Official Opposition and the Leader of the Independent Members, all other members of Parliament, the Speaker, members of any constitutionally established Commission, all public officers, officers of the government of Honiara city, provincial government officers, members of the Honiara city council and provincial assemblies, officers of statutory corporations and Government agencies, and such other officers as Parliament may prescribe.

119. The Leadership Code Commission is composed of a Chairman and two Commissioners. The membership of the Leadership Code Commission is selected, according to Section 4(1) of the Act, by a nominating committee comprised of the Prime Minister, the Leader of the Opposition and the Attorney-General. The appointment is made by the Governor General.

120. The budget for the Leadership Code Commission comes from the Prime Minister’s Office. The Leadership Code Commission has two key tasks: (1) to investigate possible infringements of the Leadership Code and (2) to maintain records of business and financial dealings of all leaders. When a person becomes a leader, he or she is required to provide a statement of assets to the Commission.

121. In initiating an investigation, the Leadership Code Commission does not require that a complaint have been made, and in undertaking their investigations, the Commission has available to it all the powers of a magistrate. The Commission is empowered to investigate and make binding findings of the charge of official misconduct which is defined as:

- the use of office for personal gain;
- the neglect of office to the degree of misconduct;
- the acceptance or solicitation of bribery;
- the presence of leaders in conflict of interest situation;
- non-disclosure of assets, gifts or business interests;

- the misuse of official information; and
- the possession by leaders of property or assets deemed to be acquired by misconduct.

122. During the country visit, Solomon Islands reported that the work on the new Leaders Code Bill had slow down due to the low progress in the Anti-Corruption Bill. These Bills ought to be synchronized, especially in terms of corruption offences featured in both draft Bills, as well as the role of the foreseen Leadership Tribunal vs. the Independent Anti-corruption Commission.

123. Solomon Islands further clarified that the Leadership Code Commission was not required to produce reports to the public, but as a matter of practice, provided reports to the Prime Minister.

124. The Leadership Code Commission has received support from RAMSI.

Auditor General's Office

125. The Auditor General is established by section 108 of the Constitution. The Auditor-General is to be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission. The Auditor-General is required to audit and report on annually the public accounts of Solomon Islands, all Ministries, offices, courts and authorities of the government, the government of Honiara city, and all provincial governments.

126. Independence of the office is guaranteed by section 108 (5) of the Constitution, which states “In the exercise of his functions under this section, the Auditor-General shall not be subject to the direction or control of any person or authority.” However, there is no legislated guarantee of funding for salaries of auditors and other operating costs of the Office.

Constitution 1978

Auditor-General

108.(1) There shall be an Auditor-General whose office shall be a public office.

(2) The Auditor-General shall be appointed by the Governor-General, acting in accordance with the advice of the Public Service Commission.

(3) The public accounts of Solomon Islands, of all Ministries, offices, courts and authorities of the Government, of the government of Honiara city and of all provincial governments, shall be audited and reported on annually by the Auditor-General, and for that purpose the Auditor-General or any person authorised by him in that behalf shall at all times be entitled to access to all books, records, returns and other documents relating to such accounts.

(4) The Auditor-General shall submit his reports to the Speaker who shall cause them to be laid before Parliament; and he shall also send a copy of each report to the Minister of Finance and the Minister concerned.

(5) In the exercise of his functions under this section, the Auditor-General shall not be subject to the direction or control of any other person or authority.

- (6) Nothing in this section shall prevent the performance by the Auditor-General of
- (a) such other functions in relation to the accounts of the Government and the accounts of other public authorities and other bodies administering public funds in Solomon Islands as may be prescribed by Parliament; or
 - (b) such other functions in relation to the supervision and control of expenditure from public funds in Solomon Islands as may be so prescribed.

Public Finance and Audit Act [Cap 120]

PART VI* THE AUDITOR-GENERAL

*In this Part -

- (a) any reference to Government property includes a reference to property held by or on behalf of a Provincial Assembly or Provincial Executive; and
- (b) any reference to a public officer includes a reference to a provincial government officer - Vide Schedule 8, part II of Act No. 7 of 1981.

Powers and duties of Auditor-General generally

34. The Auditor-General shall have and may exercise all the powers and authority and shall perform the duties conferred and imposed upon him by this Act and by section 108 of the Constitution.

Legal requirements of the Auditor-General

35.(1) In exercising the powers conferred by section 108(3) of the Constitution of audit and examination of accounts the Auditor-General may require evidence so far as is reasonably practicable—

- (a) that all reasonable precautions have been taken to safeguard the collection and custody of revenue and that the Act, Regulations and Instructions relating thereto have been duly observed;
- (b) that moneys which have been appropriated and disbursed have been applied to the purposes for which they were so appropriated, and that the expenditure conforms to the authority which governs it;
- (c) that public moneys other than those which have been appropriated have been dealt with in accordance with proper authority;
- (d) that expenditure has been incurred with due regard to economy and the avoidance of waste;
- (e) that all reasonable precautions have been taken to safeguard the receipt, custody, issue and proper use of Government property including stamps, securities and stores and that the Regulations and Instructions relating thereto have been duly observed; and
- (f) that adequate Regulations and Instructions exist for the guidance of accounting officers.

(2) Notwithstanding the provisions of this section, the Auditor-General shall not be required to examine, enquire into or audit the accounts of any trust or other fund or

account not provided for in section 108(3) of the Constitution or section 38 of this Act unless the officer administering such fund or account has been directed by the Minister in accordance with subsection (2) of that section to prepare, sign and transmit to the Auditor-General an account of such fund or account.

Further powers of Auditor-General

36. (1) In the exercise of his duties, the Auditor-General or any person duly authorised by him in writing shall have access to all records, books, vouchers, documents appertaining to matters of finance and accounts; and to all cash, stamps, securities, stores or other Government property whatsoever in the possession of any public officer, any person duly authorised by him in writing shall have access to all records, books, vouchers, documents appertaining to matters of finance and accounts; and to all cash, stamps, securities, stores or other Government property whatsoever in the possession of any public officer.

(2) In the exercise of his duties to audit, enquire into and examine accounts the Auditor-General may—

- (a) call upon any officer for any explanations and information which he may require in order to enable him to discharge his duties;
- (b) authorise any person publicly carrying on the profession of accountant or any public officer to conduct on his behalf any enquiry, examination, or audit and such person shall report thereon to the Auditor-General;
- (c) without payment of any fee, cause search to be made in and extracts to be taken from any book, document or record appertaining to matters of public finance or accounts; and
- (d) lay before the Attorney-General a case in writing on any question regarding the interpretation of any Act concerning the powers of the Auditor-General and the discharge of his duties, and the Attorney-General shall give a written opinion upon such case.

Delegation of functions

37. Anything which, under the authority of section 108 of the Constitution or of this Act, is directed to be done by the Auditor-General, other than the certifying and reporting of accounts, may be done by any of his staff so authorised by him.

127. Section 38 requires, within six months of the end of each financial year, that statements of account showing the financial position of the Solomon Islands be sent to the Auditor-General. This must include statements of assets and liabilities, receipts and payments, actual and estimated revenue, actual and estimated expenditure, special funds, advances, deposits, guarantees entered into by the Government, investments, public debt, loans made by the Government, summaries of unallocated stores and manufacturing accounts, and a statement of losses, abandoned claims and ex gratia payments.

Annual accounts

38.(1) Subject as hereinafter appearing, within a period of six months after the end of each financial year there shall be prepared and transmitted to the Auditor-General—

(a) by the Permanent Secretary, signed statements of account showing fully the financial position of Solomon Islands Government at the end of the financial year which shall include—

- (i) a statement of assets and liabilities;
- (ii) a statement of receipts and payments;
- (iii) a comparative statement of actual and estimated revenue;
- (iv) a comparative statement of actual and estimated expenditure;
- (v) a statement of Special Funds;
- (vi) a statement of advances;
- (vii) a statement of deposits;
- (viii) a statement of guarantees entered into by Government;
- (ix) a statement of investments;
- (x) a statement of the public debt;
- (xi) a statement of outstanding loans made by the Government;
- (xii) tabular summaries of unallocated stores and manufacturing accounts; and
- (xiii) a statement of losses, abandoned claims and ex gratia payments;

(b) by each accounting officer, for each financial year and for the heads or the moneys for which he is responsible, such statements of account as the Permanent Secretary may specify:

Provided that in exceptional circumstances which shall be explained to the satisfaction of the Auditor-General the Permanent Secretary may deliver the required documents under paragraph (a) within 180 days of the period specified.

(2) Within a period of two months after the close of such period of account as may be prescribed in any law relating thereto, or in the absence of such law, at the end of the financial year—

(a) any officer administering a Special Fund; and

(b) if so directed by the Minister any officer administering any trust or other fund or account not provided for in this section,

shall prepare, sign and transmit to the Auditor-General an account of such fund or account relating to a period of account in such form as the Permanent Secretary may from time to time require.

PART VII: THE AUDIT AND EXAMINATION OF PUBLIC ACCOUNTS

Reports on accounts

39.(1) On receipt of the accounts prescribed by section 38 the Auditor-General shall cause them to be examined and audited and shall, within a period of twelve months after the end of the financial year to which the accounts relate or such longer period as Parliament may approve, certify in respect of each account the result of the examination and audit, and shall within the aforesaid period prepare, sign and transmit to the Speaker a report upon the examination and audit of all such accounts

and shall send a copy of such report to the Minister together with copies of the accounts, certified as aforesaid.

(2) The Speaker shall cause the report of the Auditor-General to be laid before Parliament at its meeting next following the date on which such report was signed.

(3) The Auditor-General may at any time if it appears to him desirable transmit to the Prime Minister and to the Minister a special report on any matter incidental to his powers and duties under this Act.

Notification of irregularities to Minister

40. If at any time it appears to the Auditor-General that any substantial irregularities have occurred in the receipt, custody, issue or expenditure of public moneys or in the receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores or other Government property, or in the accounting for the same, he shall immediately bring the matter to the notice of the Minister.

Auditor-General may dispense with examination of vouchers and audit defective vouchers

41. Notwithstanding the provisions of sections 35 and 36, in the examination of any account it shall be lawful for the Auditor-General—

(a) in cases where it shall appear to him to be reasonable and expedient in the public interest and after satisfying himself that the vouchers have been examined and certified as correct by an accounting officer, to admit and allow without further examination the sums so certified in support of the charges to which they relate; and

(b) in cases where he is satisfied that the accuracy and propriety of the payment is not in doubt, to admit and allow any voucher supporting such payment notwithstanding that such voucher is defective in some particular.

Minister may authorise acceptance of lost, destroyed or defective vouchers

42. In the event that any voucher—

(a) has been lost or inadvertently destroyed; or

(b) is defective and is not admitted and allowed by the Auditor-General under the provisions of section 41(b),

the Minister may, if upon due enquiry he is satisfied with the accuracy and propriety of the payment and with the circumstances of such loss, destruction or defect, authorise the payment to stand charged in the accounts, and the Auditor-General shall accept such voucher or dispense with its production as the case may be.

Public officers to answer queries etc. raised by Auditor-General within reasonable period

43.(1) In exercising the powers conferred upon the Auditor-General under Parts VI, VII and VIII, the Auditor-General may stipulate a reasonable period within which

any public officer shall answer any queries raised, or submit to him for inspection any records, books, vouchers or other documents pertaining to the audit.

(2) Any public officer may, at any time within the stipulated period apply to the Auditor-General for an extension of the period within which the public officer is required to comply with the requirements of subsection (1).

(3) The application under subsection (2) shall include detailed reasons and other relevant information in support of the application.

(4) The Auditor-General may, after consultation with the Minister extend the period within which a public officer is required to comply with the requirements of subsection (1).

(5) Where the Auditor-General extends the period within which a public officer is required to comply with subsection (1), the public officer shall comply with that subsection or requirement within the extended period.

Offences

44. Any public officer who contravenes or fails to comply with the provisions of section 43 is guilty of misconduct in office.

Reference to misconduct in office

45. The references to 'misconduct in office' in sections 22 and 44 shall for the purposes of this Act be construed as acts of misconduct specified in Chapter VIII of the Constitution or the *Public Service Commission Regulations 1998* or any other rules or regulations applying to public officers.

PART VIII EXAMINATION AND AUDIT OF THE ACCOUNTS OF STATUTORY BOARDS, ETC

Application of Part VIII

46. This Part shall apply to everybody corporate established by law to which it may be applied by order by the Minister.

Examination and audit of accounts of statutory bodies

47.(1) Notwithstanding anything to the contrary in any law establishing a body corporate to which this Part is applied, the accounts of any such body corporate shall be examined and audited by the Auditor-General.

(2) In the exercise of his duties under this section the Auditor-General—

(a) shall have in relation to such bodies corporate, and its members, officers and employees, the same discretion and powers as are conferred upon him by sections 35 and 36 in relation to public officers, public moneys, stamps, securities, stores or other Government property;

(b) may authorise any person publicly carrying on the profession of accountant or any public officer to inspect, examine or audit the books and accounts of anybody corporate which the Auditor-General may be required to examine and audit pursuant to the provisions of this Part and such person or public officer shall

report thereon to the Auditor-General in such manner as the Auditor-General may direct.

(3) The Auditor-General shall prepare a report on the examination and audit of the accounts referred to in this section and shall transmit the same to the Minister concerned and to the body corporate.

(4) On receipt of the report of the Auditor-General required by subsection (3) the Minister concerned shall obtain the observations of the body corporate on any matter to which attention has been called by the Auditor-General in his report thereon and shall cause such accounts, report and observations to be laid before Parliament.

(5) If the Minister concerned fails within a reasonable time to lay the report of the Auditor-General before Parliament as required by subsection (4), the Auditor-General shall transmit a copy thereof to the Speaker to be presented to Parliament.

Audit fees

48. Anybody corporate the accounts of which are audited by the Auditor-General under the provisions of this Part shall in respect of such audit pay such fees as may be determined by the Auditor-General.

Public Accounts Committee

128. The Public Accounts Committee (PAC) is appointed under Standing Order 69 (1). The main powers of the committee are:

- to examine the accounts prescribed by section 38 of the Public Finance and Audit Act, together with the report of the Auditor-General thereon, and to report the results of such examination to Parliament.
- to report to Parliament in such a way that the report may inform Members prior to the Parliamentary debate thereon of the background to the Draft Estimates and draw attention to those matters which the Committee feels should be the subject for such Parliamentary debate; and
- to make such recommendations as the Committee sees fit and subsequently receive comments and reports on such recommendations from the Government.

[Standing Orders of the National Parliament of the Solomon Islands](#)

69. PUBLIC ACCOUNTS COMMITTEE

(1) There shall be a Standing Select Committee designated the Public Accounts Committee whose functions shall be -

- (a) to examine the accounts prescribed by section 38 of the Public Finance and Audit Act, together with the report of the Auditor-General thereon, and to report the results of such examination to Parliament;
- (b) to establish the causes of any excesses over authorised expenditure and to make recommendations to Parliament on any appropriate measures to cater for such excesses of expenditure;

- (c) to examine such other accounts laid before Parliament as the Committee may think fit, together with any auditor's report thereon and to report the results of such examination to Parliament;
 - (d) to summon any public officer to give information on any explanation, or to produce any records or documents which the Committee may require in the performance of its duties;
 - (e) to consider in detail the Draft Estimates prepared by the Government in support of the Annual Appropriation Bill;
 - (f) to summon and examine the Accounting Officers and Technical staff of Ministries and Departments and require the production of background information and explanation in relation to draft estimates;
 - (g) to report to Parliament in such a way that the report may inform Members prior to the Parliamentary debate thereon of the background to the Draft Estimates and draw attention to those matters which the Committee feels should be the subject for such Parliamentary debate; and
 - (h) to make such recommendations as the Committee sees fit and subsequently receive comments and reports on such recommendations from the Government.
- (2) The Auditor-General or his nominee shall be the Secretary to the Committee and shall make available to the Committee the services of his staff and other facilities of his office.

Attorney-General

129. Section 42 of the *Constitution* establishes the Attorney-General as principal legal adviser to the Government. The Attorney-General is to be appointed by the Judicial and Legal Service Commission acting in accordance with the advice of the Prime Minister.
130. The Attorney-General must be qualified to hold the office of Attorney-General unless he is entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor.

Constitution 1978

Attorney-General

- 42.(1) There shall be an Attorney-General whose office shall be a public office and who shall be the principal legal adviser to the Government.
- (2) The Attorney-General shall be appointed by the Judicial and Legal Service Commission acting in accordance with the advice of the Prime Minister.
- (3) No person shall be qualified to hold the office of Attorney-General unless he is entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor.
- (4) If the Minister responsible for justice is not a person entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor, the person holding the office of Attorney-General shall be entitled to take part in the proceedings of Parliament as adviser to the Government:

Provided that he shall not be entitled to vote in Parliament or in any election for the office of Prime Minister.

*CONSTITUTIONAL OFFICES (TERMS AND CONDITIONS OF SERVICE)
(ATTORNEY GENERAL) REGULATIONS 2010.*

1. (1) These Regulations may be cited as the Constitutional Offices (Terms and Conditions of Service) (Attorney General) Regulations 2010.

(2) These Regulations revoke and replace any terms and conditions of the Attorney General made under the Public Service Act.

2. (1) The term of office of the Attorney General shall be permanent unless otherwise specified in the contract of employment.

(2) If during the terms of office of the Attorney General his or her services are no longer required by the Government. The Judicial and Legal Service Commission shall be given at least three months' notice to the Attorney General except for incompetence or misconduct or if a criminal charge has been filed against him.

3. The duties of the Attorney General are those laid down in section 42 of the Constitution.

4. The Attorney General is entitled to a fortnightly salary set out in the Schedule.

5. The Attorney General shall make contributions to the National Provident Fund as required under the provisions of Solomon Islands National Provident Fund Act (Cap. 109).

6. The Attorney General shall on first appointment receive an appointment grant set out in the Schedule.

7. (1) The Attorney General shall be provided with an official residence free of rent.

(2) If the Attorney General is not provided with an official residence under sub regulation (1), he shall receive a monthly housing allowance as set out in the Schedule.

8. The cost of water, gas, telephone and electricity provided to the residence of the Attorney General shall be charged to the public funds and be paid for by the Government or at the option of the Attorney General he shall receive a monthly utilities allowance at the rate set out in the Schedule.

9. The wages payable for the service for one domestic employee and a gardener shall be charged to public funds and paid for by the Government.

10. The Attorney General shall be provided with one rent free official vehicle and a monthly fuel allowance at the rate set out in the Schedule.

11. The Attorney General is entitled to leave at the rate of three and half days a month or forty-two working days per annum for each year of completed service, which leave shall be taken during the year in which it accrues.

12.(1) The Attorney General and member of his family shall be provided with sea or air passages as appropriate to his home village and return passages to Honiara when proceeding on annual leave.

(2) In this regulation, "home village" includes the home village of the spouse.

Commissioner of Police and Police Force

131. The Constitution provides for the Commissioner of Police who is appointed by the Governor-General, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Police and Prisons Service Commission. Section 12 of the *Police Act 2013* provides for the independence of the Commissioner of Police.
132. There are two main anti-corruption sections within the Royal Solomon Islands Police Force (RSIPF). They are the Corruption Squad (formally called the Corruption Targeting Team) and the Professional Standards and Internal Investigations (PSII) Section. The Corruption Squad is charged with policing external corruption in all its forms while the PSII is charged with policing internal Police matters and the actions of staff members.
133. The Corruption Squad was established with RAMSI assistance in 2004 specifically to combat corruption of public officials. The Squad was established separately from the Fraud Squad which already existed. The Fraud Squad still remains and has a staff of four with two advisors. The Corruption Squad initially only targeted grand corruption (Ministers and large sums of money) but now investigates any allegation of corruption. They have two main avenues for receiving complaints: audit reports from the Office of the Auditor General and complaints from the public.

Police Act 2013

PART 2. GOVERNANCE AND ADMINISTRATION

Name of police force

3. The police force established by the Police Act (Cap.110) repealed by this Act shall continue in being, subject to this Act and be called the Royal Solomon Islands Police Force.

Statement of principles

4. This Act is based on the following principles –
- upholding the rule of law;
 - respecting customary law, cultural practices and ethnic diversity;
 - preserving the human rights of individuals;
 - demonstrating gender equity;
 - performing duties impartially and independently from improper influence;
 - professionalism, ethical behaviour and integrity;
 - conducting all aspects of policing with fairness, transparency and accountability;
 - working together with the local communities;
 - working together with non-government organisations, churches, faith based organisations and community based organisations; and
 - working co-operatively with other Government agencies.

Functions of the police force

7. The functions of the Royal Solomon Islands Police Force include –

- (a) maintaining law and order;
- (b) preserving the peace;
- (c) protecting life and property;
- (d) preventing and detecting crime;
- (e) apprehension of offenders;
- (f) upholding the laws of Solomon Islands;
- (g) maintaining national security;
- (h) assisting with the service and execution court processes and orders;
- (i) maintaining community safety, confidence and support;
- (j) fire prevention and suppression;
- (k) land and marine search and rescue;
- (l) explosive ordinance disposal;
- (m) assisting in dispute resolution; and
- (n) providing assistance during emergencies.

Electoral Commission

134. Section 57 of the Constitution establishes the Electoral Commission consisting of the Speaker as chairperson, and two other members appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission. A member of the Electoral Commission may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour. Removals must be conducted in accordance with the provisions of section 126 of the Constitution.
135. The Commission operates a website, <http://www.siec.gov.sb/>, which provides information to the public.

Constitution 1978

Electoral Commission

- 57.(1) There shall be an Electoral Commission consisting of -
- (a) the Speaker, who shall be Chairman of the Commission; and
 - (b) two other members (in this section referred to as "the appointed members") appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.
- (2) A person shall not be qualified to be an appointed member of the Commission if he is a member of, or a candidate for election to, Parliament or the Honiara city council or any provincial assembly.
- (3) Subject to the provisions of the next following subsection, an appointed member of the Commission shall vacate his office -
- (a) at the expiration of the period specified in the instrument by which he was appointed; or
 - (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified from appointment as such.

(4) The provisions of section 126 of this Constitution shall apply to an appointed member of the Electoral Commission as they apply to a member of the Public Service Commission except that subsection (7) shall apply as if for the words "in accordance with the advice of the Prime Minister" there were substituted the words "in accordance with the advice of the Judicial and Legal Service Commission".

Functions of Electoral Commission

58.(1) The Electoral Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of members of Parliament and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of Parliament or to the election of such members shall be referred to the Electoral Commission at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in Parliament or, as the case may be, the regulation or other instrument is made.

(3) The Electoral Commission may make such reports to the Governor-General concerning the matters under their supervision, or any draft Bill or instrument that is referred to them, as they may think fit, and if the Commission so request in any such report other than a report on a draft Bill or instrument that report shall be laid before Parliament.

Director of Public Prosecutions

136. The position Director of Public Prosecutions was established under section 91 of the Constitution. The Director of Public Prosecutions (DPP) is to be appointed by the Governor-General, acting with the advice of the Judicial and Legal Service Commission. A person is not qualified to hold office as DPP unless she or he is entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor.

Constitution 1978

Part III-The Director of Public Prosecutions and the Public Solicitor

Director of Public Prosecutions

91.(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor.

(4) The Director of Public Prosecutions shall have power in any case in which he considers it desirable to do so -

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (5) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.
- (6) The powers conferred on the Director of Public prosecutions by paragraphs (b) and (c) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:
- Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.
- (7) In the exercise of the powers conferred on him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:
- Provided that, where any case in any way concerns the defence, security or international relations of Solomon Islands, the Director of Public Prosecutions shall bring the matter to the attention of the Minister responsible for justice and shall, in the exercise of his powers in relation to that case, act in accordance with any directions that Minister may give to him.
- (8) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to any other court, shall be deemed to be part of those proceedings:
- Provided that the power conferred on the Director of Public Prosecutions by paragraph (c) of subsection (4) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.
- (9) During any period when the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform the functions of his office, those functions shall be performed by the Attorney-General.

Public Solicitor

- 92.(1) There shall be a Public Solicitor, whose office shall be a public office.
- (2) The Public Solicitor shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person shall not be qualified to hold or act in the office of Public Solicitor unless he is entitled to practise in Solomon Islands as an advocate or as a barrister and solicitor.

(4) The functions of the Public Solicitor are to provide legal aid, advice and assistance to persons in need in such circumstances and subject to such conditions as may be prescribed by Parliament, and in particular -

(a) to provide legal aid, advice and assistance to any person in need who has been charged with a criminal offence; and

(b) to provide legal aid, advice and assistance to any person when directed to do so by the High Court.

(5) A person aggrieved by a refusal of the Public Solicitor to provide legal aid, advice and assistance to him may apply to the High Court for a direction under paragraph (b) of the preceding subsection.

(6) Parliament may make provision for the Public Solicitor to make a reasonable charge for services provided by him to persons in need whom he considers are able to make a contribution towards the cost of those services.

(7) Except as provided in paragraph (b) of subsection (4) of this section, in the exercise of the functions conferred on him by or under this section the Public Solicitor shall not be subject to the direction or control of any other person or authority.

Public Service Commission

137. Section 115 of the *Constitution* establishes the Public Service Commission for Solomon Islands. This Commission consists of a Chairman and between two and four other members. Commissioners are to be appointed by the Governor-General for a period of three to six years.

[Constitution 1978](#)

CHAPTER XIII

Public Service Commission

115.(1) There shall be a Public Service Commission for Solomon Islands which shall consist of a Chairman and not less than two nor more than four other members appointed by the Governor-General for such period, being not less than three nor more than six years, as may be specified in their respective instruments of appointment.

(2) A person shall be disqualified for appointment as a member of the Public Service Commission if he is a member of Parliament or a public officer or an officer of any society or association which the Governor-General, in his own deliberate judgment, is satisfied is of a political nature.

(3) A person shall not, while he holds or is acting in the office of a member of the Public Service Commission or within a period of five years commencing with the date on which he last held or acted in that office, be eligible for appointment to or to act in any public office.

- (4) The office of a member of the Public Service Commission shall become vacant -
- (a) at the expiration of the period specified in the instrument by which he was appointed;
 - (b) if he becomes a member of Parliament;
 - (c) if he becomes an officer of any society or association which the Governor-General, in his own deliberate judgment, is satisfied is of a political nature; or
 - (d) if he is removed from office in accordance with section 126 of this Constitution.
- (5) Whenever the office of the Chairman of the Public Service Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, such one of the other members of the Public Service Commission as the Governor-General shall appoint may act in the office of the Chairman.
- (6) If the office of a member of the Public Service Commission other than the Chairman is vacant or the holder thereof is acting as the Chairman or is for any reason unable to perform the functions of his office, the Governor-General may appoint a person who is qualified for appointment as a member of the Commission to act as such a member; and any person so appointed may, subject to the provisions of subsection (4) of this section, continue to act until he is notified by the Governor-General that the circumstances giving rise to the appointment have ceased to exist.
- (7) Except as provided in subsections (2) and (4)(c) of this section, the powers conferred on the Governor-General by this section shall be exercised by him acting in accordance with the advice of the Prime Minister.

Appointments etc. of public officers

- 116.(1) Subject to the provisions of this Constitution, power to make appointments to public offices (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the Public Service Commission.
- (2) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.
- (3) The provisions of this section shall not apply in relation to -
- (a) the office of any judge of the High Court or the Court of Appeal;
 - (b) the office of Ombudsman, Director of Public Prosecutions, Public Solicitor or Auditor-General;
 - (c) any office to which section 116B or 118 of this Constitution applies;
 - (d) the office of any member of the Police Force or the Prisons Service; or
 - (e) any office to which section 127 of this Constitution applies.
- (4) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the Governor-General or in relation to any person holding or acting in any such office without the concurrence of the Governor-General, acting in his own deliberate judgment.

(5) Before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(6) Before making any appointment to the office of Clerk to the Legislature, the Public Service Commission shall consult the Speaker.

Political Parties Commission

138. The Political Parties Commission is established by section 4 of the *Political Parties Integrity Act 2014*. The Commission consists of five members who are to be selected from among former Governors-General, former Speakers of Parliament, retired judges, retired heads of faith-based organisations, and any other eminent citizens. Members are appointed by the current Governor-General on the recommendation of the Prime Minister and the Leader of Opposition. The Prime Minister is to recommend to the Governor-General a Commissioner to be appointed as Chairperson. Section 8 of the Act provides additional criteria for eligibility for appointment as a Commissioner. Potential appointees must have thorough knowledge of the political institutions and systems in the Solomon Islands and must not have been convicted of any crime. The Act also states that a person is ineligible for appointment as a Commissioner if he or she holds any elected office in the National Parliament, a Provincial Government or Local Government, or is a member of a political party.

139. During the country visit, Solomon Islands reported that the Political Parties Commission had completed a series of political parties training and development workshops in 2017 with the support of UNDP, and the Australian Government (DFAT and Electoral Commission). It also planned to conduct a political parties civic awareness programme, but it had been delayed due to funding issues and delays in the development of materials.

140. Solomon Islands further informed that the Political Parties Commission had undertaken the preliminary drafting of the new Political Parties Integrity Act Amendment Bill, the new Electoral Law Bill and the related Constitutional Amendment Bill. At the time of the country visit, Cabinet Papers and accompanying documents and analysis were being finalized for submission to the Cabinet.

[Political Parties Integrity Act 2014](#)

PART 2 — POLITICAL PARTIES COMMISSION

Objects of the Act

3. The objects of this Act are –

- (a) to provide a framework for the registration, administration, operation and development of political parties as corporate bodies operating under democratic principles and values;
- (b) to enhance and facilitate the development and administration of political parties and promote integrity in their operation; and
- (c) to constitute a political parties system for the purposes of improving political governance towards a more stable, tolerant and understanding Solomon Islands.

Division 1 — Establishment of the Commission

Establishment of the Commission

4. There is hereby established a statutory body to be known as the Political Parties Commission.

Composition of the Commission

5. (1) The Commission shall consist of five members who shall be persons selected from among former Governors-General, former Speakers of Parliament, retired judges and retired heads of faith-based organisations, and any other eminent citizens, appointed by the Governor-General on the recommendation of the Prime Minister and the Leader of Opposition.

(2) The Prime Minister shall recommend to the Governor-General one of the Commissioners to be appointed as the Chairperson of the Commission.

(3) The names of those appointed to the Commission shall be published in the gazette.

(4) Each Commissioner shall serve a term of three years and renewable for two further three year terms, but no more than a total of nine years.

(5) A Commissioner shall, before assuming his or her office, take an oath of office and secrecy specified in the First Schedule to the Official Oaths Act, with necessary modification, if any.

Powers and duties of the Commission

6. (1) For the purposes of achieving the objects referred to in section 3, the Commission shall have the following powers and duties —

(a) to formulate, monitor and review policies relating to the regulation of political parties;

(b) to oversee the registration, administration and development of political parties;

(c) to administer and ensure compliance with the Act;

(d) to deliver public education and raise public awareness in relation to the provisions of the Act and other laws dealing with political parties;

(e) to register political parties and remove such registered parties from the Register;

(f) to investigate and enquire into the affairs of a political party for the purpose of ascertaining any breach of the Act; and

(g) to issue integrity standards.

(2) The Commission may by an Act of Parliament be assigned any other functions and duties.

(3) The Registrar of Political Parties will be the Secretary to the Commission.

Financial Intelligence Unit and Anti-Money Laundering Commission

141. The Solomon Islands Financial Intelligence Unit (FIU) was established in the Central Bank of Solomon Islands (CBSI) following the publication of a gazette notice by the Minister of Justice on the coming into force of the Part 1 of the *Money Laundering and Proceed of Crime Act 2002* as amended. The FIU reports to the Anti-Money Laundering Commission, which is headed by the Attorney-General. The other members of the Commission are the Governor of the CBSI, the Permanent Secretary of Finance, and the Commissioner of Police. Administratively it reports to the Governor of the Central Bank, who also sits on the Commission. The FIU reports on a quarterly basis (and on as needs basis as well) to the Commission.
142. The Unit is allowed to apply for a production order, a restraining order, a monitoring order, or a search warrant from a judge of the High Court in order to obtain information and evidence relevant to an investigation or prosecution of any offence under this Act. This includes information from commercial databases and from databases maintained by government agencies or institutions. The Unit may also gather telecommunications data, such as telephone records, from any person under investigation.
143. Additionally, the Unit may provide training for financial institutions and educate the public regarding money laundering.

Money Laundering and Proceeds of Crime Act 2002

PART 1A – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE ANTI-MONEY LAUNDERING COMMISSION AND THE SOLOMON ISLANDS FINANCIAL INTELLIGENCE UNIT

Establishment of the Commission

11. (1) The Commission established under the repealed section 11 is hereby re-established and continues under this section as the Anti-Money Laundering Commission consisting of the following members –

- (a) the Attorney General or a representative of the Attorney General, as the Chairperson;
 - (b) the Governor of the Central Bank of Solomon Islands or a representative of the Governor, as the Deputy Chairperson;
 - (c) the Commissioner of Police or a representative of the Commissioner;
 - (d) the Permanent Secretary for Finance or a representative of the Permanent Secretary;
 - (e) the Comptroller of Customs, or a representative of the Comptroller.
- (2) The Director of the Unit or a representative of the Director shall be the secretary to the Commission.
- (3) The Commission may invite any technical expert or any other person to advise the Commission on any matter relating to this Act.
- (4) The Commission may regulate its own procedures.
- (5) The members of the Commission are entitled to allowances and other expenses as are prescribed.

Functions of the Commission

11A. The functions of the Commission are –

- (a) to provide overall management, control and supervision of the operations of the Unit and the Director;
- (b) to formulate, implement, monitor and review policies in relation to this Act;
- (c) to receive monthly reports from the Director in relation to the functions, powers operations and other responsibilities of the Unit;
- (d) to submit annual reports of its operations and of the Unit to the Minister for laying in Parliament;
- (e) to perform other functions conferred on it under this Act or any other written law.

Powers of the Commission

11B. The powers of the Commission are –

- (a) to appoint a suitably qualified person as the Director;
- (b) to appoint other suitably qualified officers, employees, consultants or agents of the Unit as are necessary for the administration and operation of this Act;
- (c) to determine the remuneration and other terms and conditions of employment of persons appointed under paragraphs (a) and (b) or of persons seconded to the Unit, including their promotion, transfer, suspension, discipline and dismissal;
- (d) to authorise in writing any person subject to any terms and conditions that the Commission may specify, to carry out any power, duty or function conferred on the Director under this Act; and
- (e) to exercise other powers conferred on it by this Act or under any other written law.

Establishment of the Unit

11D. (1) The Unit established under the repealed section 11A(4) is hereby re-established and continues under this section as the Solomon Islands Financial Intelligence Unit.

(2) The Unit shall be charged with the administration of the provisions of this Act, subject to the supervision and control of the Commission.

Director of the Unit

11E. (1) This section establishes the position of the Director of the Unit who shall be appointed under section 11B.

(2) A person is not entitled to be appointed as the Director if the person–

- (a) is, or has been a member of Parliament, provincial assembly or local authority at any time during the immediately last four years;

- (b) is or has been a director, officer or employee of or holds any shares in any financial institution or cash dealer; or
 - (c) is a financial institution or cash dealer.
- (3) The Director shall not hold any other office or be employed in any other occupation or capacity except with the prior approval of the Commission.

Powers and functions of the Director

11F. (1) The Director shall exercise all the powers, duties and functions of the Unit under this Act or any other written law.

(2) The Director shall report to the Commission on any exercise of the Director's or Unit's powers, duties and functions under this Act.

(3) The functions of the Director are—

- (a) to be responsible for the organisation and operation of the Unit, including preparing the annual reports of the Commission and the Unit and submit it to the Commission;
 - (b) to be responsible for the training of officers, employees, agents of the Unit or any other person on matters relating to this Act;
 - (c) to ensure that officers, employees, consultants, agents of the Unit or any other person acting on behalf of the Unit, take the prescribed oath of confidentiality and are issued with a certificate of identity as the authority to act on behalf of the Unit;
 - (d) to obtain, with prior consultation with the Commission, technical assistance from another country or international organisation, including but not limited to, the temporary employment of law enforcement and intelligence consultants from another country.
- (4) The Director shall not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report or information to the Unit, or a person or an entity about whom a report or information was provided under this Act.

(b) Observations on the implementation of the article

144. Currently, there is no single anti-corruption agency in Solomon Islands. The draft Anti-Corruption Bill seeks to establish the Solomon Islands Independent Commission against Corruption. Currently, the Anti-Corruption Investigations Unit within the Royal Solomon Islands Police Force (RSIPF) leads all anti-corruption investigations. The Ombudsman is tasked with investigating claims of maladministration of public offices, while the Leadership Code Commission (LCC) investigates claims of misconduct of public officials, including conflicts of interest, misuse of official information, and non-disclosure of assets. Both the LCC and the Ombudsman may also initiate investigations at their own initiative. The Office of the Auditor General is responsible for auditing the public accounts.

145.Coordination takes place through the government Integrity Group Forum tasked with improving accountability and promoting integrity among public officials. The Committee for Combatting Corruption, led by the Office of the Ombudsman, provides a forum for senior officials to strategize a more effective and efficient collaborative approach to the prevention of corruption.

146.It is recommended that Solomon Islands considers measures to clarify mandates, strengthen independence and allocate adequate resources to bodies charged with preventing corruption, including the Ombudsman's Office, the LCC, and the possible establishment of an Independent Commission against Corruption.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

147.The **Constitution** contains a provision regarding the removal of members of Commissions:

Removal from office of members of Commissions

126.(1) A person holding an office to which this section applies (in this section referred to as "a Commissioner") may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(2) A Commissioner shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(3) If the Governor-General considers that the question of removing a Commissioner ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal in accordance with the provisions of subsection (6) of this section; and

(b) that tribunal shall inquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether the Commissioner ought to be removed under this section.

(4) If the question of removing a Commissioner has been referred to a tribunal under this section, the Governor-General may suspend the Commissioner from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General, and shall in any case cease to have effect if the

tribunal advises the Governor-General that the Commissioner should not be removed.

(5) The offices to which this section applies are those of members of the Public Service Commission, appointed members of the Teaching Service Commission under section 116A (1) (b) of this Constitution, members of the Judicial and Legal Service Commission appointed under section 117(3) of this Constitution, and member of the Police and Prisons Service Commission appointed under section 119(3) of this Constitution.

(6) A tribunal appointed under this section shall consist of a chairman and two other members, and -

(a) in the case of a tribunal to investigate the removal of a member of the Judicial and Legal Service Commission appointed under section 117(3) of this Constitution, all members of the tribunal shall be persons who hold or have held high judicial office in some part of the Commonwealth; and

(b) in any other case, the chairman shall be a person who holds or has held such office.

(7) Except as provided in subsection (2) of this section, the functions of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister.

The Anti-Corruption Commission under the Draft Bill

148. Section 6 under Division 1 of the draft Anti-Corruption Bill establishes the independence of the Solomon Islands Independent Commission against Corruption (SIICAC). SIICAC would be a “body corporate” with “perpetual succession.” As a body corporate, the Commission has the power to sue or be sued, as well as to own property. Section 8 notes that the Commission is not subject to the direction or control of the Minister or anyone else. Still, in order to prosecute a corruption offence, the consent of the Director of Public Prosecutions must be obtained (See 7(b)).

149. Section 26 of Division 4 requires the Minister and Public Service Committee to ensure that the Commission has the necessary staff to function. In Section 28 under Division 5, the bill deems the Commission a government agency that would receive its own head of revenue and expenditure in the national budget. As a government agency, the Commission would be subject to the accounting requirements of the *Public Financial Management Act 2013*. Drafters of the bill stated that this classification ensures the Commission has the “maximum degree of financial autonomy possible for an agency funded out of the Consolidated Fund.”⁶

Division 2 Composition and Membership

10. Membership

⁶ <http://www.parliament.gov.sb/files/committees/bills&legislationcommittee/2016/Anti-Corruption%20Bill%202016.pdf>

(1) the Commission consists of the following members appointed by the Governor-General by Gazette notice:

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) 4 other members.

(2) The deputy chairperson has all the powers and functions of the chairperson at any time the chairperson is unable to exercise those powers or perform those functions.

(3) The membership of the Commission must:

- (a) include at least 2 persons of each gender; and
- (b) include at least one person who is qualified or experienced in accounting or financial management; and
- (c) represent a reasonable geographical spread of the provinces of the Solomon Islands.

(4) The Governor-General must appoint each Commission member in accordance with the nomination made by a committee (the “nominating committee”) consisting of the following:

- (a) the Chairman of the Law Reform Commission, who is chairperson of the nominating committee;
- (b) a judge of the High Court nominated by the Chief Justice;
- (c) the Chairman of the Public Service Commission;
- (d) the President of the National Council of Women;
- (e) the General Secretary of the Solomon Islands Christian Church Association.

(5) The nominating committee may only nominate [a] person to be a Commission member if the person meets the following eligibility criteria for membership:

(a) the nominating committee is satisfied that the person:

- (i) is a person of high integrity and is capable of exercising diligence, sound judgment, confidentiality and impartiality in the performance of their functions; and
- (ii) has knowledge and experience relevant to the prevention of corruption and a sound knowledge of the culture and values of Solomon Islands; and
- (iii) has the physical and mental capacity to perform his or her functions as a member;

(b) the person is not any of the following:

- (i) a member of Parliament or a Provincial Assembly;
- (ii) a member of a local government council established under section 3 of the Local Government Act (Cap. 117) or the Honiara City Council established by section 4 of the Honiara City Act 1999;
- (iii) a member of a political party registered under section 25 of the Political Parties Integrity Act 2014;
- (iv) insolvent or an undischarged bankrupt;

(v) a person convicted:

(A) in Solomon Islands, of a corruption offence or any offence carrying a potential penalty of a fine of at least \$200 or at least 6 months imprisonment; or

(B) outside Solomon Islands, of an offence that would be a corruption offence or an offence carrying a potential penalty of a fine of at least \$200 or at least 6 months imprisonment if committed in Solomon Islands;

(vi) a person the Leadership Code Commission has determined has engaged in misconduct in office in relation to conduct engaged in within the previous 5 years.

(6) In addition, the nominating committee may only nominate a person for appointment or re-appointment as chairperson of the Commission if the person is qualified at the time of the nomination for appointment as a judge of the High Court.

11. Duration of Appointment

(1) A Commission member holds office for 5 years or the shorter period specified in the instrument of appointment.

(2) A person may be re-appointment to be a Commission member for a further single term of up to 5 years, served either consecutively or after a break in service.

12. Vacation of office

(1) A person ceases to be a Commission member if:

(a) the person ceases to be eligible for membership under section 10(5)(b); or

(b) the person's appointment is terminated under subsection (2).

(2) The Governor-General may terminate the appointment of a Commission member by Gazette notice:

(a) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or

(b) if the Governor-General is satisfied the member has failed to comply with section 21.

(3) The exercise of a power or the performance of a function by the Commission is not affected only by a vacancy in its membership.

13. Oath of office

Each Commission member must make the oath or affirmation specified in the Schedule, Part 1, before the Governor-General before performing functions or exercising powers under this Act.

14. Remuneration and conditions of members

The remuneration and other condition of service of Commission members are as prescribed by regulation.

150. The bill would allow the Governor-General to terminate the appointment of a Commission under certain specific circumstances, which are physical or mental inability to satisfactorily perform the duties of the office and failure to comply with section 21. Section 21 is about the disclosure of interests, in order to avoid conflicts of interest. In line with Section 22, if a Commissioner has a personal interest in a matter being considered, he or she must disclose the nature and extent of the interest to the Commission. The specific language of the bill can be seen below:

21. Disclosure of interests generally

(1) Each Commission member must give the chairperson and the Director-General a copy of all disclosures made to the Leadership Code Commission under Part II of the Leadership Code (Further Provisions) Act 1999.

(2) The Director-General must keep a register of all disclosures by Commission members under this section.

22. Disclosure of interest in matter being considered

(1) This section applies if a Commission member has a personal interest in a matter being considered, or about to be considered, by the Commission.

(2) The member must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:

(a) the nature and extent of the interest;

(b) how the interest relates to the matter mentioned in subsection (1).

(3) If the relevant facts come to the member's knowledge at a time when the Commission is not meeting, the member must:

(a) make the disclosure mentioned in subsection (2) by written notice to each other member; and

(b) table a copy of the notice at the next meeting of the Commission.

(4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.

(5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.

(6) For this section, a member has a personal interest in a matter if the member:

(a) has a direct or indirect financial interest in the matter; or

(b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

23. Effect of personal interest

(1) If a Commission member has a personal interest in a matter that is required to be disclosed under section 21:

- (a) the member must not take part in any deliberation or decision of the Commission about the matter; and
 - (b) the member must be disregarded for the purpose of constituting the quorum of the Commission for the deliberation or decision.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Commission about the matter.

Ombudsman

151. Section 98(1) of the Constitution states that “In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.” If the Prime Minister gives notice that an investigation would be against national security interests, the Ombudsman must not investigate. Article 10 of the Ombudsman Act 2017 provides for an independent budget for the Office.

152. In a 2011 report, the Ombudsman stated that the office had many challenges regarding “finance and manpower.”⁷ The estimated budget for the Ombudsman’s Office in 2015 was 3.4 million, whereas in 2016 it fell to 3 million.⁸

Leadership Code Commission (LCC)

153. Commissioners are appointed to the Leadership Code Commission by the Governor-General, at the advice of a nominating committee. Current Parliament members, members of provincial assemblies, public officers, and any officer of a political body or association are not qualified to be appointed.

154. The estimated budget for the LCC in 2015 was 2.7 million (in SI \$). In 2016 and 2017, the budget estimate was 3.7 million.⁹

155. As stated in the [Leadership Code \(Further Provisions\) Act 1999:](#)

Appointment of the Leadership Code Commission.

5. (1) There shall be a Leadership Code Commission which shall consist of a Chairman and two other members appointed by the Governor-General acting in accordance with the advice of the Nominating Committee tendered under section 4.

(2) A person shall be disqualified for appointment as a member of the Commission if such person is -

- (a) a member of Parliament or a Provincial Assembly;
- (b) a member of the Honiara Town Council;
- (c) a public officer; or
- (d) an officer of anybody or association which is of a political nature.

⁷ <http://www.paclii.org/sb/cases/SBOM/2011/1.html>

⁸ http://www.mof.gov.sb/Libraries/Budgets/2016_Budget_Strategy_and_Outlook.sflb.ashx

⁹ *Id.*

(3) Whenever the office of Chairman of the Commission is vacant or the holder thereof is for any reason unable to perform the functions of his office, such one of the other members of the Commission as the Governor-General shall appoint may act in the office of Chairman.

(4) If the office of a member of the Commission other than the Chairman is vacant or the holder thereof is acting as the Chairman or is for any reason unable to perform the functions of his office, the Governor-General may in accordance with the advice tendered by the Nominating Committee appoint a person who is qualified for appointment as a member.

(5) Each member of the Commission shall, before commencing to exercise the powers conferred upon him by this Act, make before the Governor-General or some person authorized in that behalf by the Governor-General, an oath or affirmation of secrecy in the appropriate form set out in Schedule 1.

Administration.

6. (1) There shall be appointed to the Commission -

- (a) a Secretary;
- (b) a Legal Officer; and
- (c) such other officers as may be necessary from time to time, for the due administration of this Act.

(2) Any appointment made under paragraphs (a) and (c) of subsection (1) shall, if the person appointed is to be a public officer, be made in accordance with the Constitution but otherwise shall be made by the Minister.

(3) The Legal Officer appointed pursuant to paragraph (b) of subsection (1) shall be appointed by the Judicial and Legal Service Commission in accordance with the provisions of section 118 of the Constitution.

(4) Each officer of the Commission shall, before commencing to perform the duties required of him by this Act, make before the Chairman or some person authorised in that behalf by the Commission, an oath or affirmation of secrecy in the appropriate form set out in Schedule 2.

156. Note: §2, 3, and 9 – 32 of the Leadership Code (Further Provisions) Act 1999 are located under Article 8, Paragraph 1, and §8 of the Act can be found under Article 8, Paragraph 5.

Public Service (Terms and Conditions of Service) (Chairman Leadership Code Commission) Rules (LN 15) 2006

2. The person appointed as Chairman shall be grant entitled on first appointment to a tax-free appointment grant of \$10,000.00.3. The Chairman shall be paid a fortnightly salary of \$4,000.00

4. The Chairman shall be paid a housing allowance of \$5,000.00 a month.

5. The Chairman shall be entitled to a clothing allowance of \$10,000.00 a year.
6. The Chairman shall be entitled to an official allowance vehicle or if no official vehicle is provided to a transport allowance of \$2,000.00 per month and fuel allowance of \$500.00 a month.
7. The Chairman shall be entitled on official travel to an overseas allowance of US\$250.00 a day or one fifth of the daily allowance if the trip is externally funded
8. The Chairman shall be entitled to a daily allowance of \$150.00 per day whilst on official travel within Solomon Islands.
9. The Chairman shall be entitled to a grant of \$1,300.00 per month for the cost of water, gas and electricity.
10. The Chairman shall be entitled to an education grant of \$5,000.00 per year in respect of his dependent children.
11. The Chairman shall be entitled to a gratuity of 20% of his total basic salary at the end of his term of appointment. In the event the contract is terminated prematurely a gratuity of 20% of the total basic salary for the period served by the Chairman shall be paid.

Auditor-General

157. Section 108 (3) of the Constitution states that the Auditor-General, or any person authorised by him or her, shall at all times be entitled to access to all books, records, returns and other documents relating to” the public accounts of the Solomon Islands, all Ministries, offices, courts, and authorities of government. Section 108 (5) states that in “the exercise of his functions under this section, the Auditor-General shall not be subject to the direction or control of any other person or authority.”

Attorney-General

158. The Attorney-General is, according to the Constitution at Section 42, to be appointed by the Judicial and Legal Service Commission on the advice of the Prime Minister. The Attorney-General, however, is not subject to removal or disciplinary action by that Commission, according to Section 118(a). The Attorney-General may perform the functions of the Director of Public Prosecution if that office is vacant or if the holder is unable to perform his or her duties.

Commissioner of Police and Police Force

[Constitution 1978](#)

Commissioner of Police

- 43.(1) There shall be a Commissioner of Police, whose office shall be a public office.
- (2) The Commissioner of Police shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Police and Prisons Service Commission.

- (3) The Police Force shall be under the command of the Commissioner of Police.
- (4) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with regard to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.
- (5) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 37 of this Constitution for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

Appointments of officers in Police Force

120. (1) Save as provided in section 43(2) of this Constitution, power to make appointments (including power to confirm appointments) to offices in the Police Force of or above the rank of Inspector is vested in the Police and Prisons Service Commission.

(2) Power to make appointments (including power to confirm appointments) in the Police Force below the rank of Inspector is vested in the Commissioner of Police.

(3) There shall be in the Police Force such number of Police Promotion Boards, each consisting of officers in the Police Force above the rank of Inspector, as may be prescribed by regulations made under subsection (5) of this section.

(4) In the exercise of the powers to make appointments to offices in the Police Force vested in him, the Commissioner of Police may refer any question relating to the promotion of an officer in the Police Force to a rank below that of Inspector to a Police Promotion Board for their advice, but he shall not be obliged to act in accordance with the advice given him by any such Board.

(5) The Police and Prisons Service Commission may be [sic] regulations make provision for all or any of the following matters -

(a) the number of Police Promotion Boards which shall be established for the Police Force;

(b) the composition of any Police Promotion Board and the method of appointment and tenure of office of the members thereof; and

(c) the manner in which a Police Promotion Board shall perform its functions.

(6) The power to make appointments under subsection (1) of this section shall not extend to postings or transfers within the Police Force of officers in that Force, and the power to make such postings and transfers is vested in the Commissioner of Police.

Removal and discipline of members of Police Force

121.(1) Save as provided in section 129 of this Constitution and subsection (2) of this section, power to remove and to exercise disciplinary control over persons

holding or acting in offices in the Police Force is vested in the Police and Prisons Service Commission.

(2) The following powers are vested in the Commissioner of Police -

- (a) in respect of officers of or above the rank of Assistant Superintendent, the power to administer reprimands;
- (b) in respect of Inspectors, the power to exercise disciplinary control other than removal or reduction in rank; and
- (c) in respect of officers below the rank of Inspector, the power to exercise disciplinary control including the power of removal.

(3) The Commissioner of Police may, by directions in writing, and subject to such conditions as he thinks fit, delegate to any officer in the Police Force of or above the rank of Inspector any of his powers under subsection (2) (c) of this section other than the power of removal, but an appeal from any award of punishment by such an officer shall lie to the Commissioner.

Appeal

122. Any police officer upon whom the Commissioner has imposed any punishment which includes -

- (a) reduction in rank; or
- (b) removal,

May appeal to the Police and Prisons Service Commission against either the finding or the punishment or both, and the Commission may confirm, set aside or vary the finding and confirm, set aside, reduce, suspend or otherwise vary the punishment:

Provided that nothing in this section shall be construed as empowering the award of any greater punishment than could have been awarded by the officer inflicting the punishment.

Police Act 2013

Independence of the Police

6. Police officers shall act independently, subject to the command of the Commissioner, when carrying out any function or performing any duty authorised under this Act and shall not act in accordance with the directions, command or control of any person who is not authorised under this or any other Act or the Constitution to direct, command or control the actions of a police officer.

Commissioner of Police

10. (1) The Governor-General shall appoint a Commissioner of Police subject to the provisions of the Constitution.

(2) The Commissioner of Police shall by order, subject to the provisions of the Constitution –

- (a) provide for the command, supervision and direction of all police officers in accordance with this Act –
- (b) administer and control the operations of the police force;

- (c) determine the use of police officers and police force resources; and
- (d) make orders consistent with this Act or any regulations for the administration, safety, security, efficiency, discipline, training and good governance of the police force.

Commissioner's Responsibilities

11. The Commissioner, in addition to any other functions conferred under this Act or any other Act, has the following responsibilities;

- (a) to ensure the security and accuracy of all records and information systems;
- (b) to ensure the safe storage, recording and return of public property and exhibits;
- (c) to ensure that requests and complaints from all persons are dealt with in a fair, prompt and effective manner;
- (d) to monitor, record and report upon all significant incidents relating to public security and public order;
- (e) to maintain discipline and order through a fair and equitable process;
- (f) to ensure that all police officers and specialist employees recognise and respect different languages and different cultures in the workplace and in the community;
- (g) to ensure that the Statement of Principles in this Act is upheld;
- (h) to ensure that all police officers and specialist employees comply with the Code of Conduct;
- (i) to ensure safe and responsible distribution, usage and storage of all clothing, equipment, arms and property;
- (j) to ensure that all orders and policies comply with Solomon Islands laws and international legal obligations;
- (k) to facilitate and support close and effective working relationships between chiefs, community leaders, religious leaders, community members and the police force that contribute to public safety and public order; and
- (l) administer and account for all financial resources and public money issued to the police force.

Independence of the Commissioner

12. The Commissioner shall act independently of any person, including any Minister or person acting on the instructions of a Minister in relation to:

- (a) the maintenance of order regarding any individual or group of individuals;
- (b) the enforcement of the law in regard to any individual or group of individuals; and
- (c) decisions within the Commissioner's power about any police officer or employee.

Director of Public Prosecutions

Constitution 1978

91.(7) In the exercise of the powers conferred on him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that, where any case in any way concerns the defence, security or international relations of Solomon Islands, the Director of Public Prosecutions shall bring the matter to the attention of the Minister responsible for justice and shall, in the exercise of his powers in relation to that case, act in accordance with any directions that Minister may give to him.

Public Service Commission

Constitution 1978

CHAPTER XIII

115.(2) A person shall be disqualified for appointment as a member of the Public Service Commission if he is a member of Parliament or a public officer or an officer of any society or association which the Governor-General, in his own deliberate judgment, is satisfied is of a political nature.

Political Parties Commission

Political Parties Integrity Act 2014

Independence of the Commission

7. The Commission is not subject to direction or control by any person or authority other than a Court.

Eligibility for appointment

8. (1) A person is eligible for appointment as a Commissioner, if he or she —

- (a) has good knowledge of the political institutions and systems in the Solomon Islands; and
- (b) has not been convicted of any crime of dishonesty, or any criminal offence.

(2) A person is ineligible for appointment as a Commissioner, and a current Commissioner shall be removed from the Commission, if he or she —

- (a) holds any elected office in the National Parliament, a Provincial Government or Local Government;
- (b) is a member of, or is involved in the management of a political party; or
- (c) is convicted of any crime of dishonesty or any other offence.

(3) A Commissioner may resign from the Commission by giving 30 days written notice to the Governor-General.

Political Parties Commission Budget

9. (1) The budget of the Commission shall be as appropriated by Parliament.
- (2) The Commission shall control and manage its approved budget in full compliance with its obligations under the Public Financial Management Act 2013.
- (3) The Commission shall be allocated with a separate head of expenditure and revenue under the national budget and the Registrar shall be the accountable officer.

(b) Observations on the implementation of the article

159. Generally, for many of the bodies charged with preventing corruption in Solomon Islands, a provision regarding independence from outside influence is written into law. In the exercise of functions of their positions, the Auditor General, the Ombudsman, and the Director of Public Prosecution are not subject to any other person or authority. The Political Parties Commission is only subject to the judiciary.
160. During the country visit, Solomon Islands informed that the provision of adequate resources continued to be an issue under review by the preventive bodies. Solomon Islands is recommended to consider measures to strengthen independence and allocate adequate resources to bodies charged with preventing corruption, including the Ombudsman's Office and the Leadership Code Commission.
161. The review team noted the stand-alone budget for the Ombudsman's Office to ensure its financial independence as a good practice.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

162. The Solomon Islands has not yet notified the Secretary-General of the United Nations the name and address of the authority or authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

(b) Observations on the implementation of the article

163. The Solomon Islands was reminded of its obligation to inform the Secretary-General of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

164. Under the Constitution, “public office” does not include the office of any Minister, Leader of the Official Opposition, Leader of the Independent Members, Speaker or any member of Parliament, any member of the Committee on the Prerogative of Mercy, or any member of a Commission established by the Constitution. Officers of the government of Honiara City and provincial government officers are also not considered holders of public office.

165. The public service is divided into two categories, offices ranging from Level 3 to Super Scale III and other employees of government.

166. The power to make appointments to public offices, to confirm appointments, to remove, and to exercise disciplinary control over persons holding such offices is vested in the Public Service Commission. The Public Service Commission may delegate this power.

167. The power to make appointments to the office of Permanent Secretary is also vested in the Public Service Commission.

168. For the offices of Public Solicitor, Director of Public Prosecutions, Commissioner of Police, and Auditor General, the officer may only be removed due to inability to perform the functions of office or for misbehaviour. If either is alleged, the Governor

General will appoint a tribunal to investigate. When a vacancy occurs, Permanent Secretaries must ensure that all job descriptions are up to date and include objective selection criteria. Job offerings must be made public unless the job is a temporary position lasting less than three months. Often, vacancies are posted on government websites. The advertisement must be included with recommendations. Details of the following are published in the Public Service Commission Monthly Circular Memorandum: Appointments on probation or contract to established offices, appointment confirmations, acting appointments, promotions, retirements, dismissals, terminations of appointment for any other reason, and transfers.

169. When Permanent Secretaries make selections, a panel is generally used. If not, the Permanent Secretary must report why. A salary and promotion scale is written into law to ensure fairness.
170. During the country visit, Solomon Islands informed that the recruitment procedures are the same for all types of positions and levels. It further reported that a person can complain against a human resource decision to the Ministry of Public Service. Following a complaint, the Public Service Commission reviews the process, which at times can lead to a court process. Complaints regarding discrimination and other similar issue can also be made to the Ombudsman Office.
171. During the country visit, Solomon Islands reported that certain ministries have been identified to be vulnerable to corruption. However, while the sensitive areas have been identified, this doesn't extend to specific positions therein. There are no special procedures, rotational requirements nor special training for positions considered vulnerable to corruption.
172. With regard to salary levels and scales, the National Anti-Corruption Strategy reports that during the provincial consultations, the relatively low salaries and poor conditions of service for public servants compared to the rising cost of living, were noted as a matter of concern. Consequently, NACS indicates that public servants are vulnerable to soliciting and accepting bribes to provide for their family and to meet socio-cultural obligations. During the country visit, Solomon Islands noted that while general pay scales were low compared to the cost of living, they weren't so low that they would create a special risk of corruption. Under the NACS, the terms and conditions of public sector would be reviewed and measures developed to address these issues.
173. Finally, Solomon Islands reported that the Institute of Public Administration and Management offers training for public servants. Newly appointed officers attend two compulsory trainings, namely on public service in general and on the Code of Conduct. There are no refresher courses for more experienced officers.

[Constitution](#)

Ch. XIV *Appointment of Permanent Secretaries*

128. (1) Power to make appointments to the office of Permanent Secretary shall vest in the Public Service Commission acting with the concurrence of the Prime Minister.

(2) Power of posting or transfer of a person holding the office of Permanent Secretary shall vest in the Prime Minister, acting after consultation with the Public Service Commission.

Tenure of office of certain public officers

129. (1) The provisions of this section shall apply in relation to persons holding the offices of Auditor-General, Director of Public Prosecutions, Public Solicitor and Commissioner of Police.

(2) Subject to the provisions of this section, a person to whom this section applies shall vacate his office when he attains the age of fifty-five years:

Provided that the Governor-General may permit a person to whom this section applies who attains the age of fifty-five years to continue in office until he has attained such later age as may have been agreed between the Governor-General and that person.

(3) A person to whom this section applies may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(4) A person to whom this section applies shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (5) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Governor-General considers that the question of removing a person to whom this section applies from office for inability as aforesaid or for misbehaviour ought to be investigated, or if the Prime Minister represents to the Governor-General that that question ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman who is a person who holds or has held high judicial office in some part of the Commonwealth, and not less than two other members; and

(b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the person ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the question of removing a person to whom this section applies has been referred to a tribunal under subsection (5) of this section, the Governor-General may suspend the person from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the person should not be removed.

(7) Except as provided in subsection (4) of this section, the functions of the Governor-General under this section shall be exercised by him -

(a) in relation to the office of Auditor-General, in accordance with the advice of the Public Service Commission;

- (b) in relation to the office of Director of Public Prosecutions or Public Solicitor, in accordance with the advice of the Judicial and Legal Service Commission; and
- (c) in relation to the office of Commissioner of Police, in his own deliberate judgment.

(8) The provisions of this section shall not apply in relation to a person appointed to act in any office referred to in subsection (1) of this section during any period when that office is vacant or the holder thereof is unable to perform the functions of his office; and the appointment of such a person may be revoked by the Governor-General at any time before the expiration of that period.

(9) (a) Nothing in this section shall prevent the appointment of a person who is not a citizen of Solomon Islands to any office to which this section applies for a term of years.

- (b) A person appointed to an office to which this section applies under this subsection shall cease to hold office on the expiration of the term for which he was appointed but shall otherwise be removed from office only in accordance with the provisions of this section.

Powers of appointment and acting appointments

133.(1) Any reference in this Constitution to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable to perform the functions of that office.

(2) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person who is for the time being lawfully acting in or performing the functions of that office.

(3) Where by this Constitution any person is directed, or power is conferred on any person or authority to appoint a person, to act in or otherwise to perform the functions of an office if the holder thereof is unable to perform the functions of that office, the validity of any performance of those functions by the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

Reappointments and concurrent appointments

134.(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Whenever the holder of any office constituted by or under this Constitution, or any public office otherwise constituted, is on leave of absence pending relinquishment of his office -

- (a) another person may be appointed to that office; and
- (b) that person shall, for the purpose of any function of that office, be deemed to be the sole holder of that office.

Removal from office

135.(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that -

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any judge of the High Court or the Court of Appeal, the Ombudsman, the Director of Public Prosecutions, the Public Solicitor, the Commissioner of Police or the Auditor-General to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall, in the case of any officer mentioned in the preceding paragraph or an officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Commission or other authority that, if that officer had retired, would be the appropriate Commission or authority in relation to the awards of that officer under section 132 of this Constitution.

(2) Any provision of this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations

136. Save as otherwise provided in sections 34, 50 and 64 of this Constitution, any person who is appointed to or to act in any office established by this Constitution may resign from that office by writing under his hand addressed to the person by whom he was appointed; and the resignation of any person from any such office (including any seat in Parliament) by writing under his hand addressed in accordance with this Constitution to any other person shall take effect, and the office shall accordingly become vacant -

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by that other person, whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person to whom the resignation is addressed consents to its withdrawal.

Performance of functions of Commissions, etc.

137.(1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of their functions under this Constitution.

(2) Any decision by any such Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the chairman shall have and shall exercise a casting vote.

(3) Subject to the provisions of this section, any such Commission may regulate their own procedure.

(4) In the exercise of their functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority, except where otherwise provided by this Constitution.

(5) In addition to the functions conferred upon them by or under this Constitution any such Commission shall have such powers and other functions (if any) as may be prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) The provisions of subsections (1), (2), (3) and (4) of this section shall apply in relation to the Committee on the Prerogative of Mercy as they apply in relation to a Commission established by this Constitution.

(8) The provisions of subsections (1), (2), (3) and (4) of this section shall apply in relation to a tribunal established for the purposes of section 14(4), 16(8), 80(6), 126(3) and 129(5) of this Constitution as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

References to public office, etc.

145. (1) In this Constitution the expression "public office" shall be construed -

(a) as including the office of any judge of the High Court or the Court of Appeal and the office of member of any other court of law in Solomon Islands, unless the context otherwise requires;

(b) as not including -

(i) the office of any Minister, Leader of the Official Opposition, Leader of the Independent Members, Speaker or member of Parliament; or

(ii) the office of member of any Commission established by this Constitution or of the Committee on the Prerogative of Mercy.

(2) For the purposes of this Constitution a person shall not be treated as holding, or acting in, a public office by reason only that he -

(a) is on leave of absence pending relinquishment of a public office, or is on leave of absence without salary from a public office;

(b) is receiving a pension or other like allowance from the Crown;

- (c) is a special constable or a retired or reserve member of Her Majesty's forces;
- (d) is an officer of the government of Honiara city;
- (dd) is a provincial government officer; or
- (e) is the holder of an office in the service or appointment of the Crown, or is performing any functions on behalf of the Crown, if the only payments he receives in respect of that office or those functions are by way of travelling or subsistence allowances or a refund of out-of-pocket expenses.

General Orders

Chapter B – Appointments

SECTION 1

101. THE PUBLIC SERVICE

The Public Service of Solomon Islands is defined in the Constitution of Solomon Islands and shall comprise such offices as may be authorised by the National Parliament from time to time.

104. POWER TO APPOINT

Subject to the provisions of the Solomon Islands Constitution the power to appoint to public offices and to promote, transfer, terminate the appointment of, dismiss and exercise disciplinary control over public officers, is vested in the appropriate Service Commission.

105 CATEGORIES OF THE PUBLIC SERVICE

The public service divides into the following categories-

- (a) Public offices graded Level 3 to Super scale III;
- (b) Other employees of Government -
 - (i) non-established employees or labourers whose emoluments are expressed in daily rates of pay;
 - (ii) employees not covered by (i) above but employed against items of expenditure not included in the salaries and allowances subhead of the Estimates e.g. temporary clerical assistance.

107 APPOINTMENTS

Selection and recommendations to the Public Service Commission will be on the basis of merit and with due regard to the need to be inclusive of men, women, workers from the provinces and people with a disability (Reference: Public Service Commission Regulation 21). Subject to the provisions of the Constitution and the relevant Acts and Regulations, the appointment process will be different for the following levels:

(a) Level 1-2

These posts are non-established posts and are referred to in Chapter S of these General Orders. The recommendations for appointment to a non-established post do not go to the Public Service Commission. Permanent Secretaries will make

recommendation for appointment to the Permanent Secretary for the Public Service who has the power to make appointment.

(b) Level 3-13

Permanent Secretaries have the authority to initiate and manage the selection processes and make recommendations for all appointment to the Public Service Commission.

(c) Level- SSI

Permanent Secretaries have the authority to manage the selection process and make recommendations for the appointment to the Permanent Secretary for the Public Service. The Permanent Secretary for the Public Service will submit the recommendation to the Public Service Commission. The Public Service Commission will consider the submission and appoint or promote suitably qualified candidates to vacant offices at this level. Non-nationals shall only be appointed where the Commission is satisfied that no qualified national is available. Such an appointment can only be on a non-permanent basis for such time as may, in the view of the Commission, be necessary to obtain a qualified Solomon Islands Officer (Refer: Public Service Commission Regulation 21)

109. APPOINTMENT PROCEDURE

The procedure to be followed to fill vacancies in the Public Service shall be as prescribed in the appropriate Commission's Regulations. When a vacancy occurs, a Permanent Secretary should consider whether the vacant post should be filled and if so in what manner.

(a) Permanent Secretaries are to ensure that all job descriptions are up to date and include objective selection criteria that enables panels to rate one candidate against another.

(b) Permanent Secretaries will advertise all establishment vacancies publicly, unless filling with a temporary officer for a period under three (3) months. Within their submission to the Public Service Commission when making recommendation for an appointment, they include the advertising strategy for each vacancy. (Refer: Public Service Commission Regulation 19)

(c) Permanent Secretaries must ensure that the selection processes, for which they are responsible, must be based on merit and be transparent and accountable.

(d) In most cases, a panel will be established in line with the requirements of the relevant Commission Regulations. If selection takes place without a panel process, the Permanent Secretary's submission to the relevant Commission must include the reasons for that approach.

(e) Permanent Secretaries will submit their recommendation to the relevant Commission in line with the requirements of the Regulations and any procedures provided to them by the Permanent Secretary to the Public Service.

(f) A copy of all submissions from Permanent Secretaries to the relevant Commission will be provided to the Permanent Secretary for the Public Service.

121. NOTIFICATIONS ON APPOINTMENTS OF PUBLIC OFFICERS AND OTHER APPOINTEES

1. Details of the following occurrences shall be published in the Public Service Commission monthly Circular Memorandum in respect of all officers. In addition to this, the appointments of officers in the Super Scale 1 and above, including all Statutory appointees shall be gazetted:-

- (a) appointments on probation or on contract to established offices;
- (b) confirmation in appointment;
- (c) acting appointments, indicating the duration of appointment;
- (d) promotions
- (e) retirements, dismissals, including terminations of appointment for any other reason;
- (f) transfers

2. Responsible Officers are responsible for ensuring that the dates upon which officers relinquish acting appointments are promptly notified to the Permanent Secretary for the Public Service.

SECTION 2

201. PROBATION

All first appointments to permanent and non-pensionable office shall be preceded by a six (6) month probationary period which shall count from the date of appointment. The relevant Commission may determine to extend the probationary period on the advice of the relevant authority.

202. ADMISSION TO PERMANENT OFFICE NOT OF RIGHT

Appointment on probation to a permanent and non-pensionable office does not in itself confer any right to admission to that office.

203. NATURE OF PROBATION

It is the responsibility of the relevant Permanent Secretary to ensure the probationary periods are well managed. When an officer is appointed on probation, there is a clear implication and understanding that the officer may count upon being confirmed and admitted to the permanent and non-pensionable office. However, the appointment remains conditional upon that officer adhering to the ethics and values of the Public Service and carrying out all responsibilities during the probationary period in a manner which is acceptable to management.

SECTION 6

602. NOTICE

On resignation, proper notice under Section 7 of Chapter B of these Orders shall be given and an officer may not leave his office until his notice is accepted and he is informed of the date he may vacate his office.

603. EFFECT OF RESIGNATION

Save as is otherwise preserved under the provisions of Section 7 (B) (2) of the Pension Act, Cap. 110, on resignation an officer forfeit all rights and privileges of his office.

604. LIABILITIES AND PRIVILEGES ON RESIGNATION

1. On first appointment. When an officer resigns his appointment within six months of assuming duty on first appointment he shall be liable to repay $x/6$ ths of any passages costs incurred under section 2 of Chapter P of these Orders, where x = the number of completed months by which his service falls short of six.

2. Following annual Leave. Where an officer is granted annual leave and passages under these Orders in anticipation of his completing a fully years' service but resigns before doing so, he shall be liable to repay the Government.

(a) salary for the period of leave taken in excess of his eligibility in terms of GO J202 and J205; and

(b) $x/12$ ths of the leave passage costs for the officer and his family incurred in respect of any leave taken in that calendar year, where x = the number of complete months remaining unserved in that year at the date of resignation.

3. Homeward passages. Where an officer resigns -

(a) within six months of assuming duty on first appointment or of resuming duty following annual leave in respect of which he has been granted passages at Government expense, he will be personally responsible for the repatriation expenses of himself and his family to his home island;

(b) having served not less than six months since first appointment or since resuming duty following annual leave in respect of which he has been granted passages at Government expense, he will receive a passage grant of $x/6$ ths of the costs of passages to his home island for himself, his wife and up to four dependent children, where x = the number of months served in excess of six months since the officer assumed duty on first appointment or last enjoyed passage privileges.

174. Chapter E of the *General Orders* requires that the salary levels for the Public Service shall be as published from time to time by the Permanent Secretary for the Public Service and reflected in the annual Establishment Register.

Public Service Commission (Amendment) Regulations 2006

PART I – GENERAL PROVISION

14. Appeals

A public officer in respect of whom a decision has been taken by the Commission, or by an officer exercising delegated powers, under the provisions of these Regulations may appeal to the Commission if he is aggrieved by that decision.

15. Time limit on appeals

Any appeal must be made within 14 days after the date on which the decision has been communicated to the officer, or in special circumstances such period not exceeding three months as the Commission may allow.

16. Forms of appeal

An appeal must be made in writing, and state the grounds on which it is being made and be supported by any relevant information or evidence which may not have been available when the original decision was taken. At any interview in connection with this appeal an officer may be accompanied by a friend or an official representative of his trade union.

PART II – APPOINTMENT TO THE PUBLIC SERVICE

19. Appointments to be advertised.

Unless the Commission otherwise agrees, all appointments to the Public Service will be publicly advertised

20. No person shall be appointed to any office unless he or she has the appropriate minimum entry qualifications, except that, if there are no suitably qualified candidates, the Commission may, with the concurrence of the Permanent Secretary of the relevant department through the Permanent Secretary for the Public Service, appoint a person with less than the minimum qualifications on non-permanent terms.

22. Selection on merit

Subject to the provisions in paragraphs 20-21, selection of officers for appointment shall be on merit.

23. Appointment of selection panel

To help in the selection of candidates for permanent appointment (and for promotion, under paragraph 34 and 43) selection panel will normally be appointed to interview candidates and make recommendations to the Commission.

24. Composition of Panels

A selection panel shall consist of a Chairman and two or more members who shall be public officers. One officer shall normally be from the Public Service Department and must hold a substantive appointment not less than level 6 or two levels above the level to which the appointment is being made whichever is the higher. The members, at least one of whom shall have relevant professional, technical or specialist qualifications and shall hold a substantive appointment not less than level 5 or one grade above the level of appointment, whichever is the higher.

25. Reference back by Commission

All recommendations shall be made direct to the Commission by the Permanent Secretary of the relevant department for appointments from levels 3-13. A copy shall be provided to the Permanent Secretary for the Public Service for the personnel files. All recommendations must be signed by the Permanent Secretary. If any recommendation is not accepted by the Commission, any alternative appointment shall only be made after consultation with the Permanent Secretary of the relevant department and the Permanent Secretary for the Public Service, who shall seek the views of the panel or recommending officer before submitting another opinion to the Commission

26. Letters of appointment

Letters of appointment will be issued by the Secretary for the Public Service or by any officer exercising delegated powers as appropriate.

27. Probationary period for permanent appointments

Permanent appointments will be subject to a probationary period of six months. In

special circumstances the Commission may, however, on the recommendation of the supervising officer, extend this period.

28. Confirmation, extension or termination of probationary appointment.

The confirmation, extension or termination of probationary appointments will be decided by the Commission based on the officer's general conduct and reports submitted on his performance of duties.

29. Reports during probations

Reports on officers on probation will be made twice in one year. The final report must be submitted to the Commission not later than two months before the end of the probationary period.

30. Renewal, extension or termination of appointment

The renewal, extension or continuation of a non- permanent appointment beyond the term of appointment, or six months where no term has been specified, shall be subject to the approval of the Commission.

PART III - PROMOTIONS

31. Selection to be competitive

The selection of public officers for substantive promotion shall be competitive, the assessment of candidates being based on qualifications and merit, taking into account staff reports (for officer's level 3 and above), the results of examinations conducted under the 1992 PSC Examination Rules, and the recommendations of Senior Officers and any selection panel appointed by the Commission.

32. Seniority

If two or more candidates are judged equal on grounds of qualifications and merit, preference will be given to the most senior.

33. Field for consideration for promotion.

The field of candidates for consideration for substantive promotion shall be determined by the Secretary for the Public Service and may be restricted to officers on certain grade levels, and with more than a specified seniority.

34. Appointment of selection panel.

Where there is more than one qualified candidate to be considered for substantive promotion to Level 3 and above, a selection panel will normally be appointed to make recommendations to the Commission, in accordance with the procedure in paragraphs 23 to 25 of these Regulations. Staff reports and other relevant information concerning the candidates will be made available to the panel by the Secretary for the Public Service.

35. Period of trial

All substantive promotions to level 5 and above shall be subject to 6 months trial, extendable, exceptionally up to two years at the discretion of the Commission. If after due warning an officer on trial does not reach the required standard he/she will, subject to the concurrence of the Commission, be demoted.

PART VII - DISCIPLINE

44. Definition of misconduct

Misconduct for the purpose of these Regulations includes acts of misconduct specified in Chapter VII of the Constitution, or acts contrary to Chapter C of the General Orders, non-compliance with or disobedience of Public Service Act, Public

Finance and Audit Act, any General Order, Financial Instruction, Store Regulations from time to time in force, Minor acts of misconduct such as lateness, idleness or indiscipline after a written warning, acts of insubordination to Responsible Officers directives or Public Service and Cabinet directives, or acts contrary to any rules or regulations applying to public officers, or wilful neglect of duty, and failure of Responsible Officers under delegated power to expedite conclusion of disciplinary and criminal proceedings within a reasonable time, or any act that the Commission considers or decides to be misconduct.

45. Responsibility for reporting misconduct.

It is the responsibility of the public officers to report at once suspected acts of misconduct by the staff for whom they have supervisory responsibility, and to deal with disciplinary cases promptly. Failure to do so shall in itself be treated as an act of misconduct.

46. Contents of report

The report shall give:

- (a) the facts of the case;
- (b) whether or not it is considered that there has been a misconduct;
- (c) the terms of the disciplinary charge, if there has been misconduct; and
- (d) all relevant documents.

47. Action by SPS or officer exercising delegated power

On receipt of this report the Secretary for the Public Service or officer exercising delegated powers may make such further inquiries as may be thought necessary, and if he considered there has been misconduct he will inform the officer concerned in writing of the charge.

48. Right of accused to respond to charge

The officer shall be given not less than seven days to respond to the charge, and if so requests he may be accompanied by a friend or an official representative of his trade union. A report of any such interview shall be placed on record and a copy sent to the officer accused of misconduct.

49. Board of Inquiry in serious cases

The Commission may, in serious cases of misconduct or where it is not satisfied that all the facts of the case have been established, appoint a Board of Inquiry to carry out an investigation. The Board shall consist of not more than three officers, all of whom shall be public officers senior to the accused officer, but none shall be from the department in which that officer works, nor be a relative, or have any personal or other connection with him.

50. Procedure of Board of Inquiry

The board shall take evidence from all parties concerned, including the officer accused of misconduct who may, if he is interviewed, be accompanied by a friend or an official representative of his trade union. The accused officer shall also be given the opportunity to be present and to put questions on his own behalf where witnesses are interviewed by the Board, and shall be allowed to see or have copies of any documents relied on for the purpose of the inquiry.

57. Punishment of officers guilty of crime

An officer convicted of criminal offence (in relation of his official work, or very severe private matter) shall be instantly dismissed.

58. Punishments for misconduct

Where the Commission or officer exercising delegated powers is satisfied that any act of misconduct warrant punishment, it shall be at their discretion to impose the penalties as follows:-

- (a) reprimand;
- (b) severe reprimand;
- (c) reduction in salary or wages;
- (d) demotion by one or more grade levels;
- (e) dismissal.

59. Reduction in salary or wages

Reduction in salary or wages under paragraph 58 (c) shall normally be an amount equal to one or more increments for a specified period, the officer's incremental progression remaining unchanged.

60. Dismissal and probation

An officer should only be dismissed when the Commission, or officer exercising delegated powers, is fully satisfied that the nature of his misconduct together with any other evidence regarding his previous behaviour makes him unfit to continue in office. In any particular case the Commission or officer exercising delegated powers is in doubt, a probationary period of up to two years be imposed, with or without a lesser punishment, which shall expire without further action if the officer is of good behaviour.

61. Unsatisfactory conduct during probation

If during any probationary period imposed under paragraph 58 an officer's conduct is unsatisfactory, the facts shall be reported once to the Commission or officer exercising delegated powers, who shall decide whether the officer should in consequence be dismissed.

General Orders

Chapter E

SECTION 1: SALARY SCALES

101. SALARY LEVELS

The salary levels for the Public Service shall be as published from time to time by the Permanent Secretary for the Public Service and reflected in the annual Establishment Register.

102. SALARIES OF POSTS

The salary scale or the fixed salary attaching to a post shall be that allocated to it in the salaries Sub head of the Ministry concerned in the annual Estimates of Revenue and Expenditure for Solomon Islands, as from time to time amended in accordance with the procedures prescribed in Financial Instructions.

PROVIDED that, exceptionally, the Permanent Secretary for the Public Service may, for the purpose of facilitating re-organisation, approve that any post may be held by an officer at a salary, or in a salary scale, which is higher than that provided for the post in the annual estimates for such period as he shall prescribe and during such

period the officer shall be paid salary at such higher rate

103. SALARY ON PROMOTION

1. Whenever an officer is promoted, his salary on promotion shall be -
 - (a) if the salary of the new office is a fixed salary, that fixed salary;
 - (b) if an officer is promoted from one scale to the next higher scale, the new salary point of the new office shall be the next higher salary point above the maximum of his prepromotion scale;
 - (c) if an officer is promoted TWO scales above his pre-promotion scale, the new salary point of the new office shall be the minimum of the new scale.

SECTION 2: MINIMUM ENTRY POINTS AND INCREMENTAL CREDIT

201. GENERAL RULE

Save as may otherwise be provided in this Chapter of these Orders, an officer on first appointment shall enter the salary scale appropriate to his office at the minimum point of such scale.

202. ENTRY POINTS ON FIRST APPOINTMENT

1. An officer on first appointment will be given incremental credit for approved qualification as follows:

- (a) School Leavers:
 - (i) Form III with SICHE Foundation Certificates – Enter L2.1
 - (ii) Form IV but without SISC or equivalent – Enter at L3.1
 - (iii) Form V and obtained SISC or equivalent – Enter L3.2
 - (iv) Form VI with PSSC or equivalent - Enter L3.3
 - (v) Form VII Foundation Science or Social science– Enter L3.5
- (b) Pre-service course up to 2 years for Certificate – Enter L4.1
- (c) Pre-service courses of 3-4 years for Certificate – Enter L4.5
- (d) Pre-service courses up to 2 years for Diploma – Enter L5.1
- (e) Pre-service courses of 3-5 years for Diploma – Enter L5.5
- (f) Pre-service undergraduate Arts Degree course of 3-4 years – Enter L7.1
- (g) Pre-service undergraduate Science Degree course of 5 years – Enter L8.1
- (h) Pre-service Postgraduate Certificate program – Enter L9.1
- (i) Pre-service Postgraduate Diploma program – Enter L10.1
- (j) Pre-service Master's Degree program – Enter L11.1
- (k) Pre-service Doctorate Degree (PhD) – Enter L12.1

2. The minimum entry points provided in 1(a) to (k) may not be inclusive for all cadres in the Service. Cadres whose minimum standard of qualification for entry

points are not specified above may refer to relevant approved scheme of service. Where no scheme of service has been published, the alternative standards shall be prescribed by the Permanent Secretary for the Public Service with concurrence of the appropriate Commission.

175. In April 2016, Chief Justice Sir Albert Palmer declared the tax free salary and all other entitlements in Regulation 2015, which was amended and awarded to MPs by the Members of Parliamentary Entitlement Commission (PEC), “unconstitutional and null and void”. He also declared regulations that gave tax exemption to MPs null and void and further stated that the Regulations which made provision for the various entitlements for the Chairman of the Government caucus null and void. The case went for appeal in October 2016, and is titled *Members of Parliament (Entitlement) Commission v Tabusasi* [2016] SBCA 17. It can be found here: <http://www.pacii.org/sb/cases/SBCA/2016/17.html>

“The Solomon Island’s Constitution provides for a Members of Parliament (Entitlement) Commission. Its function is to determine the salaries, allowances and other benefits for Parliamentarians each year. Having determined the entitlements, the Commission is empowered to make Regulations relating to these entitlements.

On the 1st April 2015 the Members of Parliament (Entitlement) Commission (Amendment) Regulations came into force.

The respondents issued proceedings seeking declarations by the High Court that a number of the 2015 Regulations were unconstitutional and therefore null and void. The Judge in the High Court concluded that 13 regulations were unconstitutional. Three challenged regulations were found to be unobjectionable. This appeal challenges the Judge’s conclusions with respect to 11 of the 13 regulations he found to be unconstitutional.”

176. The holding of the appeal was the following:

“The Judge’s orders with respect to Regulations 5, 36, 9, 16(a), 10(b), 14, 32, 33 and 34 and the Judge’s declaration that “any payments or tax exemptions made or granted pursuant to the Regulations are null and void” are set aside. Otherwise the Judge’s order dated 19th April 2016 is confirmed except the order for costs (Order (e)).”

177. Chapter N of the General Orders provides for the training of members of the public service. The purpose of training in all its form is to raise officer’s motivation, performance, and productivity for the benefit of their Departments in providing more cost effective services to the public.

General Orders

Chapter N

SECTION 1: GENERAL

101. DEFINITION

In this Chapter of these Orders, ‘training’ means any training undertaken by local officers or other employees following their appointment to the Service on other than temporary terms, irrespective of whether such training is undertaken within Solomon Islands or overseas or on a part-time basis.

102. TRAINING OBJECTIVES

The objectives of training within the Service are to:

- (a) ensure that an officer is capable of performing his existing duties effectively and efficiently
- (b) to prepare an officer for future advancement;

The purpose of training in all its form is to raise officer’s motivation, performance, and productivity for the benefit of their Departments in providing more cost-effective services to the public. To this end the training needs of officers must take precedence over the day to day requirements of the service.

103. RESPONSIBILITY FOR TRAINING DEVELOPMENT

1. It is for Responsible Officers, in consultation with the Permanent Secretary for the Public Service, to assess and regularly review the objectives set within GO N102.
2. The Permanent Secretary for the Public Service shall:
 - (a) find out what staff is required to run Government efficiently and efficiently;
 - (b) be informed of all training programmes;
 - (c) fit approved programmes into scheme of service for all cadres;
 - (d) arrange for officers to attend courses where appropriate ones exist;
 - (e) assist those officers responsible for training in the provision of courses suited to the scheme of service;
 - (f) co-ordinate all Government in-service training.
3. Formally, organised training courses whether undertaken overseas or locally are subordinate to training on the job itself. Training on the job is a continuing responsibility of supervisors at all levels within the Service

178. In 2016, 43 Solomon Islanders undertook a rigorous training programme on conducting investigations into alleged corrupt activities or misconduct for two weeks. The candidates were granted a Certificate IV in Government (Investigations) – an internationally accepted qualification. The training was developed based on the relevant Solomon Islands legislation, and focused on investigations into breaches of the Solomon Islands *Public Financial Management Act*, *Public Service Act*, *Public Service Commission Regulations*, *Leadership Code (Further Provisions) Act* and the *Penal Code*. The programme was a joint initiative of the Ministry of Finance

and Treasury and Association of Internal Auditors (Solomon Islands), funded by the Australian Government.¹⁰

179. All Ombudsman Staff have attended trainings either locally, at the Institute of Public Administration and Management (IPAM) and USP/UPNG, or at overseas institutions.¹¹

(b) Observations on the implementation of the article

180. The Public Service Commission appoints public officials, including their confirmation, removal and disciplinary control. The public sector hiring and recruitment processes are merit based, transparent, inclusive and accountable to the Public Service Commission. Salary scales and entry level of first appointment are based on level of education and are codified. An appeals mechanism exists against all human resources decisions. There are no specific procedures for the selection, rotation and training of individuals considered especially vulnerable to corruption.

181. Permanent Secretaries of government institutions are appointed by the Public Service Commission with the concurrence of the Prime Minister. Tenure of office of the Public Solicitor, the Director of Public Prosecutions, the Commissioner of Police and Auditor General is also regulated in the Constitution.

182. Some training programmes exist for public service employees. In order for an employee to be selected for training that would lead to qualifications for promotion, a proposal must be made to the Public Service Commission, which is then obligated to ensure that the selection is based on merit.

183. Solomon Islands is recommended to endeavour to adopt procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

184. Article 48 of the Constitution provides that a person is qualified to run for a seat in Parliament if he or she is a citizen of Solomon Islands and is 21 or older. A person

¹⁰ <http://theislandsun.com/solomon-islanders-undertake-investigator-training/> [accessed 27 May 2016].

¹¹ Progress Report on Activities and Programs between 2009 and 2011 Highlighting Status and Achievement of each Activity and the Plan for 2012 and beyond [2011] SBOM 1 (1 November 2011).

is not eligible if he or she is under any acknowledgement of allegiance, obedience or adherence to a foreign power or State; holds any public office; is an undischarged bankrupt, has been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth; is certified to be insane or otherwise adjudged to be of unsound; is under sentence of death imposed on him by a court in any part of the world, or is under a sentence of imprisonment for a term of, six months or longer; is disqualified from membership of Parliament or from registration as an elector or from voting at elections under any law; or holds any office whose functions involve any responsibility for the conduct of any election to Parliament or the compilation or revision of any electoral register for that purpose.

Constitution 1978

Qualification for membership

48. Subject to the provisions of the next following section, a person shall be qualified for election as a member of Parliament if, and shall not be so qualified unless -

- (a) he is a citizen of Solomon Islands; and
- (b) he has attained the age of twenty-one years.

Disqualifications from membership

49.(1) No person shall be qualified for election as a member of Parliament who -

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds, or is acting in, any public office;
- (c) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth;
- (d) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Solomon Islands;
- (e) is under sentence of death imposed on him by a court in any part of the world, or is under a sentence of imprisonment (by whatever name called) for a term of, or exceeding, six months, other than a sentence in lieu of a fine, but including a suspended sentence, imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
- (f) is disqualified from membership of Parliament or from registration as an elector or from voting at elections under any law for the time being in force in Solomon Islands relating to offences connected with elections; or
- (g) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any election to Parliament or the compilation or revision of any electoral register for that purpose.

(2) For the purpose of paragraph (e) of the preceding subsection two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms.

Vacation of seats by members

50. A member of Parliament shall vacate his seat -

- (a) on a dissolution of Parliament;
- (b) if he resigns his seat by writing under his hand addressed to the Speaker;
- (c) if he is elected as Speaker;
- (d) if he is appointed as Governor-General;
- (e) if he is absent from two consecutive meetings of Parliament without having obtained from the person presiding, before the termination of either meeting, permission to be or to remain absent therefrom unless, in the opinion of the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker), such absence was due to causes beyond the member's control;
- (f) if any circumstance arises that, if he were not a member of Parliament, would cause him to be disqualified from election thereto by virtue of paragraph (a), (b), (d), (f) or (g) of subsection (1) of the preceding section; or
- (g) in the circumstances mentioned in the next following section.

Vacation of seat on sentence, etc.

51. (1) Subject to the provisions of this section, if a member of Parliament is sentenced by a court in any part of the world to death or to imprisonment (by whatever name called) for a term of, or exceeding, six months, including a suspended sentence, he shall forthwith cease to perform his functions as a member of Parliament, and his seat in Parliament shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence so however that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval of Parliament signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted, his seat in Parliament shall not become vacant under the provisions of this section, and he may again perform his functions as a member of Parliament.

(3) For the purposes of this section -

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Determination of questions as to membership

52.(1) The High Court shall have jurisdiction to hear and determine any question whether

(a) any person has been validly elected as a member of Parliament; or

(b) any member of Parliament has vacated his seat therein or is required by virtue of section 51 of this Constitution to cease to perform his functions as a member.

(2) No appeal shall lie from any decision of the High Court in proceedings under the preceding subsection.

(b) Observations on the implementation of the article

185. The criteria for the qualification and disqualification of those standing for elected public office are outlined in the Constitution, which also includes eligibility criteria to run for Parliament.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

186. Section 59 of the *Political Parties Integrity Act* provides that each political party shall, within 90 days after the close of the polling in an election, provide the Commission a financial statement of donations received, including their sources, and of election expenses.

187. In addition, section 60 provides that a political party shall, in each calendar year, provide the Commission with quarterly returns in the prescribed form, setting out any donations received by or on behalf of the political party from any source, other than monies paid to the political party as an entitlement pursuant to section 58(1). A political party that contravenes section 59 (financial statement of income and election expenses), 60 (quarterly returns) or 61 (annual financial reports) commits an offence and is liable on conviction to a fine of 15,000 penalty units.

188. As for single candidates, during the country visit, Solomon Islands informed that the ceiling for campaigning was \$50,000.

Political Parties Integrity Act 2014

Disclosure of campaign funds

57. Every non-contesting party issued with an election activity license shall, within 14 days after the election day, file with the Commission a return in the prescribed

form, setting out the funds collected and the name of the beneficiary political parties or candidates.

PART 10 — PUBLIC FUNDING AND FINANCIAL REPORTING BY POLITICAL PARTIES

Entitlements of political parties

58. (1) A political party that contests an election is entitled to claim from the Commission, after all its members have taken their oaths on the floor of Parliament, one or both of the following —

(a) a temporary special measures grant of \$10,000 payable annually for every woman elected into Parliament; and

(b) an administration grant of \$20,000 for each Member of Parliament of the political party, payable annually to the political party after submission of its annual financial report under section 61.

(2) A political party making a claim under subsection (1) may apply to the Commission in the prescribed form —

(a) within 90 days after the date of the election of the Prime Minister in accordance with Schedule 2 of the Constitution; and

(b) within 30 days after an independent Member of Parliament joins the political party.

(3) A political party forfeits its right to make a claim under subsection (1)(b) if it does not —

(a) make the claim within the period specified in subsection (2)(a); or

(b) comply with sections 60, 61 and 62.

(4) Where an independent Member of Parliament joins a political party in the circumstances referred to in section 50, the political party is entitled to the administration grant referred to in subsection (1) in respect of that member.

(5) Where an independent Member of Parliament is a woman and joins a political party in the circumstances referred to in section 50, the political party is entitled to the temporary measures grant referred to in subsection (1)(a) in respect of that member.

(6) Funds payable to a political party under this section shall be used for the political party's administrative cost and no portion of it shall be transferrable to another political party in that financial year should a member of Parliament resign and join another political party.

Financial statement of income and election expenses

59. (1) A political party shall, within 90 days after the close of the polling in an election, lodge with the Commission in the prescribed form a financial statement of donations received, including their sources, and election expenses.

(2) For the purpose of subsection (1), the financial statement of the political party must also include the donations received, their sources and election expenses by the political party for each candidate.

Quarterly returns

60. (1) A political party shall, in each calendar year, lodge with the Commission quarterly returns in the prescribed form, setting out any donations received by or on behalf of the political party from any source, other than monies paid to the political party under section 58(1).

(2) Subsection (1) does not apply to membership fees, subscriptions, donations or contributions of less than \$1,000, unless the total fees, subscriptions, donations or contribution collected in a quarter exceeds \$10,000.

Annual financial reports

61. (1) A political party shall lodge with the Commission before 31 March each year, beginning in the year ending 2016, an audited annual financial report.

(2) The Commission may extend the deadline for submitting the financial report by a period not exceeding an aggregate of three months, if the political party makes a written request justifying the need for such an extension.

Appointment of auditor and payment of audit cost

62. (1) A political party must, with the consent of the Auditor General and Commission, appoint an auditor to audit its accounts as required under section 61(1).

(2) The Commission, with the consent of the Auditor General, may also appoint an auditor to undertake a specific audit of a political party's accounts when it considers necessary.

(3) The cost of the annual audit of the political party's accounts shall be the responsibility of the political party. The Commission shall bear the cost of an audit authorised under subsection (2).

(4) When undertaking an audit authorised under this section, the auditor —

(a) may access, inspect and examine any accounting records and other information in the possession or control of the political party;

(b) may require any official or member of the political party to provide an explanation for the purposes of the audit;

(c) must express an opinion on the use of public funds payable to the political party under this Act; and

(d) may exercise such other powers as are necessary to effectively carry out his powers and duties under this section.

(3) On receiving the auditor's report in relation to a political party, the Commission must send a copy to the Auditor General, and may only consider the audited report after the Auditor General has certified acceptance of it.

Contravention of financial reporting requirements

65. A political party that contravenes section 59 (financial statement of income and election expenses), 60 (quarterly returns) or 61 (annual financial reports) commits an offence and is liable on conviction to a fine of 15,000 penalty units.

Failure to disclose funds

67. A political party that contravenes section 57 (disclosure of campaign funds) commits an offence and is liable on conviction to a fine of 15,000 penalty units.

Integrity standards

72. (1) The Commission may issue guidelines establishing integrity standards for political parties.

(2) The standards must be tabled before Parliament and do not take effect until published in the Gazette.

(b) Observations on the implementation of the article

189. The Political Parties Integrity Act 2014 established regulations for political parties, including financial reporting requirements, and a commission to monitor compliance. The Political Parties Commission has issued integrity standards, which apply to all members of political parties.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

190. Solomon Islands legislation contains a number of provisions regarding conflicts of interest. The Leadership Code contained in the Constitution also contains provisions on conflicts of interest.

191. Section 8 of the *Leadership Code (Further Provisions) Act* provides that every Leader shall, within three months of the date of commencement of this Act or of his becoming a Leader, and thereafter at intervals not exceeding two years, give a statement in respect to himself or herself, as well as any spouse and any children under the age of eighteen. The statement must include, to the best of his or her knowledge, all directorships in any company or corporation held by the Leader, spouse, or children; the business occupations of each family member; any shares held; any debentures or other securities charged upon; any company or corporation; the total income received by each family member during the period to which the statement relates; all business transactions involving a sum of five hundred dollars or more; all gifts received by each family member during the period to which the statement relates; and any assets acquired by each of them during the period of which the statement relates. Failure to do so constitutes misconduct in office. Note: §8 of the Act can be found under Article 8, Paragraph 5.

192. Section 12 provides that a Leader is guilty of misconduct if he or she (or any immediate family member) could reasonably be expected to have a conflict of

interest due to undisclosed ownership of the following: shares or any other investment in any company, corporation or unincorporated association; any position or any financial interest (whether as debtor, creditor or guarantor) in any company, corporation or unincorporated association that could reasonably be expected to place him in a position in which he could be faced with a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office. Note: §12 of this Act is located under the section on Article 8, Paragraph 1.

193. Section 21 provides that any Leader who, being a member of a statutory corporation, Government agency or other public body proposes to speak or vote on any matter before such body or before a Committee thereof, and who has a direct or indirect interest in the matter shall before speaking or voting thereon comply with the rules of such body or committee thereof relating to the disclosure of interest, or, if the rules of such body do not specifically make provision in that regard, shall be under a duty to give adequate notice of his interest in the matter under discussion. Note: §21 of this Act is located under the section on Article 8, Paragraph 1.

194. During the country visit, Solomon Islands informed that if the Leadership Commission sees that a conflict is in existence, the Commission can either notify the person, charge the person, or attempt to resolve the conflict in other means. This applies also in the context of government contracts, which requires leaders to get a prior approval for their companies to enter into such contracts.

195. Order 78 of the *Standing Orders of Parliament* provides that every Member of Parliament must submit to the Speaker a written declaration of all shares and interests he or she may have in any company or business undertaking that has any contract with the Government. He or she must also declare any positions held in any Company or Business undertaking (whether or not it has a contract with the Government). This applies thereafter to any subsequent acquisition of any such share, interest, or appointment to such office. Members are required to make the declaration before the next sitting of Parliament he or she attends after an acquisition occurs.

196. During the country visit, Solomon Islands informed that the staff of the Director of Public Prosecution jointly discuss the distribution of cases and identify potential conflicts of interest. If there are relationships to persons involved in the case, that case is de-conflicted to a different prosecutor.

197. The *Penal Code* also contains a provision on conflicts of interest:

[Penal Code \[Cap 26\]](#)

Officers charged with administration of property of a special character or with special duties

94. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or

indirectly a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, shall be guilty of a misdemeanour, and shall be liable to imprisonment for one year.

Constitution

Application of this Chapter

93. The provisions of this Chapter apply to and in relation to -

- (a) the Governor-General;
- (b) the Prime Minister and the other Ministers;
- (c) the Leader of the Official Opposition and the Leader of the Independent Members;
- (d) all other members of Parliament;
- (e) the Speaker;
- (f) members of any Commission established by this Constitution;
- (g) public officers;
- (h) officers of the government of Honiara city, provincial government officers, members of the Honiara city council and provincial assemblies;
- (i) officers of statutory corporations and Government agencies; and
- (j) such other officers as Parliament may prescribe.

Responsibilities of office

94.(1) A person to whom this Chapter applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not -

- (a) to place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) to demean his office or position;
- (c) to allow his integrity to be called into question; or
- (d) to endanger or diminish respect for and confidence in the integrity of the government of Solomon Islands.

(2) In particular, a person to whom this Chapter applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by the preceding subsection.

(3) It is the further duty of a person to whom this Chapter applies -

- (a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible, including nominees, trustees

and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and

(b) if necessary, publicly to dissociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a) of this subsection, that might be expected to give rise to such a doubt.

(4) A person to whom this Chapter applies who -

(a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties;

(b) fails to carry out the obligations imposed by the preceding subsections of this section; or

(c) commits any act or omission prescribed under section 95 of this Constitution as constituting misconduct in office,

is guilty of misconduct in office.

Standing Orders of the National Parliament of the Solomon Islands

78. DECLARATION AND DISCLOSURE OR PERSONAL INTEREST

(1) Every Member shall, not later than the day before he makes his oath of allegiance pursuant to Section 63 of the Constitution, submit to the Speaker a written declaration of all shares and interests he may have in any company or business undertaking that has any contract with the Government and of any Office of Director or Manager he may hold in any Company or Business undertaking (whether or not it has a contract with the Government) and thereafter, upon his acquisition of any such share or interest or appointment to such office, he shall make such a declaration before the next sitting of Parliament he attends following upon the acquisition of that share or interest or appointment to that Office.

(2) The Speaker shall maintain a record of all declarations made under paragraph (1) of this Order and shall not disclose any of the contents of the same except upon a motion to that effect passed by Parliament, a request made pursuant to any Act of Parliament, or where he considers it fit and proper to do so.

(3) A Member shall not move any motion or amendment relating to a matter in which he has a direct personal pecuniary interest or speak or vote on any such matter, whether in Parliament or in any Committee, without disclosing the nature of that interest.

(4) A motion to disallow a Member's vote on the ground of non-disclosure of his personal pecuniary interest may be moved without notice by any Member immediately upon the statement of the numbers voting in a division by the Speaker, but not otherwise.

(5) The Speaker shall have discretion whether or not to propose the question upon such a motion; and in exercising such discretion he shall have regard to the nature of the question upon which the vote was taken and to the consideration whether the interest therein of that Member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of the inhabitants of Solomon Islands or whether his vote was given on a matter of state policy.

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from Parliament or Committee for the duration of the debate and any vote on the question.

(7) If a motion for the disallowance of a Member's vote is carried the Speaker shall direct the Clerk to alter the numbers voting in the original division accordingly.

Central Bank of Solomon Islands Act 2012

65. (1) Members of the Board and of the Central Bank's staff have a fiduciary duty to place the Central Bank's interests and its customers' interests before their own private or personal interest.

(2) Members of the Board and staff shall avoid any situation likely to give rise to a conflict of interest.

(3) A conflict of interest arises where members of the Board or staff have private or personal interests which may influence or appear to influence the impartial and objective performance of their duties.

(4) In this section, "private or personal interests" of members of the Board or staff means any potential advantage for themselves, their families, their other relatives up to the second degree, or their circle of friends and acquaintances.

(5) The Governor and the Deputy Governor –

(a) shall perform their duties on a full-time basis;

(b) shall not engage in any other occupation, whether gainful or not, except –

(i) for ex officio functions provided for by law; or

(ii) in exceptional cases, if approved by the Board.

(6) No member of the Board or of the staff shall receive or accept from any source any benefits, rewards, remuneration or gifts in excess of a customary or negligible amount, whether financial or non-financial, which benefits, rewards, remuneration or gifts are connected in any way whatsoever to their activities within the Central Bank.

(7) A breach of subsection (6) by a member of the Board or of the staff shall, independently of the value given or received, constitute a serious misconduct.

(8) Where it concerns a member of the Board, such misconduct constitutes serious misconduct within the meaning of section 43(2)(d).

(9) Such misconduct, where it concerns a member of the staff, may, at the discretion of the Governor, constitute grounds for disciplinary measures, including dismissal without compensation.

(10) Members of the Board and of the staff shall not use confidential information to which they have access for the purpose of carrying out private financial transactions, whether directly or indirectly through third parties, or whether conducted at their own risk and for their own account, or at the risk and for the account of a third party.

(11) Members of the Board shall before the last day of January each year disclose in full to the Board significant financial interests which the member or any person with whom the member has family, business, or financial connections may directly or indirectly possess and such disclosures shall comply with any internal rules adopted by the Board regarding such matters.

(12) Whenever any matter related to such interest is before the Board, the member concerned shall disclose his or her interest at the beginning of the discussion and shall not participate in the discussion and decision on such matter; however, his or her presence shall be counted for the purpose of constituting a quorum.

(13) The Board may establish internal rules to implement the requirements mentioned under this section.

(b) Observations on the implementation of the article

198. Solomon Islands has multiple laws and regulations requiring the disclosure of conflicts of interest in all areas of government and public service.

Article 8. Codes of conduct for public officials

Paragraph 1, 2 and 3 of article 8

1. *In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*
2. *In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.*
3. *For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*

(a) Summary of information relevant to reviewing the implementation of the article

199. Chapter VIII of the *Constitution* establishes a Leadership Code applicable to the Governor-General; the Prime Minister and the other Ministers; the Leader of the Official Opposition and the Leader of the Independent Members; all other members of Parliament; the Speaker; members of any Commission established by the Constitution; public officers; officers of the government of Honiara city, provincial government officers, members of the Honiara city council and provincial assemblies; officers of statutory corporations and Government agencies; and such other officers as Parliament may prescribe. These officers have a duty to avoid conflicts of interest in both their public and private lives. They are also obliged to avoid any situation in which the fair exercise of public or official duties might be compromised, any conduct that would demean office or position, any conduct that would allow their integrity to be called into question; or conduct that would endanger or diminish confidence in the integrity of the government of Solomon Islands.

200. This is elaborated upon in the *Leadership Code (Further Provisions) Act 1999*.
201. The Public Service has its own Code of Conduct. During the country visit, Solomon Islands reported that the Public Service Commission ensures the practical application of the Code.
202. The *Police Act* also requires the establishment of a Code of Conduct stating the standards of behaviour to apply to all police officers, authorised officers and specialist employees. This Code of Conduct is provided for in Schedule 1 to the *Police Regulations 2013*.
203. Also some other bodies and organizations have their own additional codes. For example, Solomon Islands National University has Staff Code of Conduct which includes a guide to ethical decision making and a guide to dealing with conflicts of interest¹².
204. During the country visit, Solomon Islands informed that the Institute of Public Administration and Management, under the Ministry of Public Service, published a Learning and Development Prospectus in 2011¹³. This document includes instructions on how managers should fairly investigate poor performance and determine an appropriate response.
205. During the country visit, Solomon Islands further reported that there are at present no positive incentives for high standards of conduct.

Constitution 1978

CHAPTER VIII LEADERSHIP CODE

Further provisions

95. Subject to the provisions of this Constitution, for the purposes of this Chapter, Parliament-
- (a) may make provision for the disclosure of the personal and business incomes and financial affairs of persons to whom this Chapter applies, and of their families and associates, and in particular of interests in contracts with governmental bodies and of directorships and similar offices held by them (including powers to nominate directors, trustees or agents, or similar officers);
 - (b) may make provision for the disposal or temporary control of the assets or income of a person to whom this Chapter applies where this seems to be desirable for attaining the objects of this Chapter;
 - (c) may prescribe specific acts or omissions as constituting misconduct in office;
 - (d) may create offences (including offences by persons to whom this Chapter applies and offences by other persons) and prescribe penalties for such offences;

¹² <http://www.sinu.edu.sb/HR/SINU-%20Staff%20Code%20of%20Conduct.pdf>

¹³ <https://sites.google.com/a/mps.gov.sb/ministry-of-public-service-in-solomon-islands/documents/IPAMProspectusJul-Dec2011FinalForPublication.pdf?attredirects=0>

(e) shall provide for the investigation of cases of alleged or suspected misconduct in office;

(f) shall provide for the reference of cases of alleged or suspected misconduct in office to such independent courts or tribunals as may be prescribed, and for the investigation and determination by such courts or tribunals of any such cases that may be referred to them in the manner prescribed;

(g) shall make provision with respect to the powers and procedure of such courts or tribunals as may be prescribed under the preceding paragraph and shall prescribe the penalties or other consequences that may result from a lawful determination by any such court or tribunal that a person to whom this Chapter applies is guilty of misconduct in office; and

(h) may make such other provision as may appear necessary or expedient for attaining the objects of this Chapter.

Leadership Code (Further Provisions) Act 1999

Interpretation

2. In this Act, unless the context otherwise requires—

"assets", in relation to a Leader, include any debt or pecuniary obligation owed to him by any person, company, corporation or unincorporated association;

"associate", in relation to a Leader, includes a member of his family or a relative or other person standing in a close relationship to him according to custom, any co-director of a corporation and any person associated within in unincorporated association;

"business transaction" means any transaction carried out in furtherance of any trade, profession or occupation and any concern or venture in the nature of trade;

"Chairman" means the Chairman of the Commission appointed pursuant to section 5;

"child" means a child under the age of eighteen;

"Commission" means the Leadership Code Commission appointed pursuant to section 5;

"corporation" includes anybody incorporated by statute and any company incorporated outside Solomon Islands;

"Government agency" includes a Provincial or the authority responsible for the administration of the Honiara City;

"Leader" means any person -

(a) whose office or position is specified in sections 93 and 127 (2) of the Constitution; or

(b) who is appointed as a member of any statutory authority or other body established by an Act of Parliament or Provincial Ordinance and includes any person whose emoluments are paid out of the Consolidated Fund;

"Legal Officer" means the Legal Officer appointed pursuant to section 6(1)(b);

"local company" means a company incorporated under the Companies Act;

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"misconduct in office" means any act or conduct which is deemed to be misconduct in office under Chapter VIII of the Constitution or Part III of this Act;

"officer" means a person appointed pursuant to section 6, and includes the Secretary and the Legal Officer;

"Secretary" means the Secretary appointed pursuant to section 6(1)(a);

"unincorporated association" means a partnership or other recognised association of persons intending to trade or carry on a business or profession for profit, but does not include a charitable organisation registered under the Charitable Trusts Act, or which is exempted from the payment of tax under the provisions of section 16 of the Income Tax Act.

Cap. 55.

Cap. 123.

Application of Act

3.(1) This Act shall apply to and in relation to all Leaders.

(2) For the purposes of this Act, a person shall be deemed to be a Leader, notwithstanding that -

- (a) such person has resigned or ceased to hold office or position as a Leader, provided that an investigation under Part IV of this Act relates to any transaction or conduct which took place such person held the aforesaid office; and
- (b) the office or position to which such person is appointed is by virtue of an Act of Parliament or Provincial Ordinance establishing such or not be a public office for the purposes of Chapter XIII of the Constitution.

PART II DISCLOSURE OF FINANCIAL AFFAIRS

Requests for further information

9.-(1) The Commission may, by notice in writing to a Leader require him to give such details or further details in respect of any statement made by such Leader in accordance with section 8 as may be specified in the notice.

(2) In particular, but without affecting the generality of the powers conferred by subsection (1), such notice may relate to -

- (a) assets or income general particulars of which were shown in accordance with section 8 (3);
- (b) omissions or apparent omissions from the statement;
- (c) discrepancies between the statement and any other statement or other information lawfully available to the Commission.

(3) Upon receiving such details or additional details the Commission shall make such amendments to the Register of Leaders' Interests as maybe necessary.

(4) The Commission shall cause to be kept a register, called the Register of Leaders' Interests, for the purposes of registering interests of Leaders.

Offences relating to supply of statement

10. Any Leader who -

- (a) fails without reasonable excuse (the burden of proof of which shall be upon him) to give to the Commission a statement as required under section 8; or
- (b) fails without reasonable excuse (the burden of proof of which shall be upon him) to give to the Commission such details or further details as he may be required to supply in order to comply with any notice issued under section 9; or
- (c) knowingly, recklessly or negligently gives in such statement or details any information that is false, misleading or incomplete in a material particular, is guilty of misconduct in office.

PART III MISCONDUCT IN OFFICE

Use of office for personal benefit.

11. (1) Any leader who directly or indirectly asks or accepts, on behalf of himself or any associate of his, any benefit in relation to any action in the course of his official duties (whether such action has already been taken, is continuing or is to be taken in the future) or by reason of his official position, is guilty of misconduct in office:

Provided that this section shall not be construed so as to apply to any request made by a Leader for the payment of travel or subsistence expenses to which he may be entitled as a result of his carrying out his official duties or for the receipt by him of proper remuneration.

(2) Subsection (1) shall include the case of a Leader, who, except in the course of and for the purpose of his official duties or his official position, uses or allows his name or his official position to be used for the benefit of himself or any other person.

Shareholdings and other interests.

12. (1) Subject to the provisions of this section, a Leader: -

- (a) who holds shares or any other investment in any company, corporation or unincorporated association;
- (b) whose spouse or any of whose children holds any such shares or other investment; or
- (c) who or whose spouse or children holds any position or any financial interest (whether as debtor, creditor or guarantor) in any company, corporation or unincorporated association, that could reasonably be expected to place him in a position in which he could be faced with a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.

(2) Subsection (1) shall not apply to a Leader or to a spouse or child of a Leader who, prior to holding any shares, investment, position or financial interest referred to in subsection (1), has obtained the written approval of the Commission to do so.

(3) Subsection (1) shall not operate to prevent a person who becomes a Leader, or the spouse or child of such person, who -

(a) at the time that he becomes a Leader holds shares or other investment or holds a position or has a financial interest in any company, corporation or unincorporated association; or

(b) unexpectedly receives shares or other investment or financial interest in any unincorporated association, from holding the shares, or maintaining his investment or financial interest therein for such period as is reasonably necessary to divest himself thereof.

Neglect of official business deemed misconduct.

13. A Leader who in furthering his personal business interests neglects or fails to give priority to his official business is guilty of misconduct in office.

Interest in contracts.

14. (1) Subject to the provisions of subsection (2) of this section and section 22, where any Leader or the spouse or child of such Leader has a controlling interest in any corporation or local company (such corporation or Local company being in this section referred to as the "relevant company") and that relevant company seeks, accepts or holds a beneficial interest in any contract concluded with the Government of Solomon Islands (such contract in this section being referred to as a "Government contract") such Leader is guilty of misconduct in office.

(2) Subsection (1) shall not apply in the case of any Leader who, prior to the relevant company seeking, accepting in the case of any or otherwise obtaining a beneficial interest in a Government contract, has obtained written permission of the Commission to such action.

(3) The Commission shall not give its permission under subsection (2) in any case where it is of the opinion that –

(a) the fact that the relevant company has sought, accepted or obtained the beneficial interest in any Government contract might in the future involve the Leader in a conflict of interest; or

(b) the seeking, accepting or obtaining by the relevant company of the beneficial interest in any Government contract involved or may involve the use by the Leader of his official position.

Engaging in other paid employment.

15.(1) A Leader is guilty of misconduct in office if he engages in any paid employment other than his official employment, or accepts any emoluments for services rendered by him outside his official duties, without having first obtained the

written approval of the Commission, which shall have special regard to the needs of the country in any case where the Leader has professional or other special skills.

(2) The Commission shall not give its approval under subsection (1) where it is of the opinion that -

- (a) the engaging in other paid employment or acceptance of any emoluments for his services might in future involve the leader in a conflict of interest; or
- (b) the obtaining of the other paid employment or the acceptance of any emoluments for his services involves or involved the use by the Leader of his official position.

(3) The Commission shall not give its approval under subsection (1) in any case where the Leader is a public officer without having first ensured that the Leader has obtained the consent of the Secretary for the Public Service or, if the officer is employed by a Government agency, the Chief Executive of the agency, to his engaging in paid employment or accepting emoluments for his services.

(4) For the purposes of this section -

"paid employment" shall include the holding of a directorship in any corporation or local company whether or not any fees are paid or payable in respect of such directorship.

(5) The provisions of this section shall not be construed as relieving any Leader from complying with the provisions of section 8 in relation to salary or emoluments received in respect of any paid employment other than his official employment or services rendered by him outside his official duties.

Interpretation of "conflict of interest"

16. In considering whether the conduct of a Leader or his spouse or any of his children has given or may give rise to a conflict of interest, (that is to say a situation where the Leader has to make a choice between his personal interests and his obligations as a Leader) account shall be taken by the Commission of the following matters -

- (a) the amount of influence the Leader may have on the decision-making process of the Ministry, department, Government agency or authority in which he works or for which he is responsible;
- (b) the esteem in which the public hold the office to which the Leader has been appointed and the need to ensure that the good reputation of that office is upheld;
- (c) the possible financial gain or other benefit to the Leader; and
- (d) the value to the development of Solomon Islands as a whole of the investment the Leader has made or may make, or the position the Leader is holding or may hold or the services he has given or may give to the company, corporation or unincorporated association concerned:

Provided that in any case where there is doubt as to whether a conflict of interest has arisen, additional weight shall be given to those matters specified in paragraph (d).

Bribery.

17. (1) Any Leader who asks for, receives or obtains, or agrees or attempts to receive or obtain any property, benefit or favour of any kind for himself or any other person in consideration of his actions in carrying out his duties as a Leader being influenced in any manner, or on account of his having acted as a Leader in any manner (whether generally or in a particular case), is guilty of misconduct in office.

(2) Any person who offers, gives or attempts to give any property, benefit or favour of any kind to any Leader in consideration or as an inducement or reward for his doing or for bearing to do any act in his capacity as a Leader is guilty of an offence.

(3) Any person who contravenes the provisions of subsection (1) or (2) shall be liable to a fine not exceeding ten thousand dollars.

To own or to have owned property deemed under this section to be property acquired by misconduct in office or property to which property acquired by misconduct in office has or had been converted as to be an offence.

18. (1) Where a Leader has or had acquired any property -

(a) being money, cannot be or could not have been -

(i) part of his known income or receipts;

(ii) money to which any part of his known receipts to which receipts has or had been converted;

(b) being property other than money, cannot be or could not have been -

(i) property acquired with any part of his known income; or

(ii) property which is or was part of his known receipts; or

(iii) property to which any part of his known receipts has or had been converted, then, for the purposes of any investigation under this section, it shall be deemed, until the contrary is proved by him, that such property is or was property which has or had acquired by misconduct in office or to which he has or had converted any property acquired by him by misconduct in office.

(2) Any Leader who is or has been the owner of any property which is deemed under subsection (1) to be property which he has or had acquired by misconduct in office or to which he has or had converted any property acquired by him by misconduct in office shall be guilty of misconduct in office and subject to penalties imposed under section 17 or 34.

(3) For the purposes of this section, where a spouse or unmarried child of a person who has or had acquired property movable or immovable on or after such person became a Leader, it shall be presumed until the contrary is proved that such property was acquired by such person aforesaid and not by a spouse or unmarried child, as the case may be.

(4) In any investigation for any misconduct in office under this section, a certificate from the Principle Valuer of the Government with regard to the value of any immovable property or the cost of construction of any building on such property shall be sufficient prove of such value and the cost of construction unless and until the contrary is proved.

Acceptance of loans, etc.

19. (1) A leader who, or whose spouse or child -

- (a) accepts any loan of money; or
- (b) holds any franchise; or
- (c) accepts any gift or other benefit or advantage,

from any person, company, corporation or unincorporated association, is guilty of misconduct in office.

(2) Subsection (1) shall not apply to -

- (a) a gift from his spouse or children;
- (b) a loan or transaction in the nature of a loan which has been obtained or entered, into on the same or similar terms as may be applied to other borrowers; or
- (c) any gift not exceeding one hundred dollars in value, or any other minor benefit or advantage, where such gift, benefit or advantage is clearly intended to be a memento of a ceremony or social occasion attended by the Leader or where such benefit or advantage falls within accepted standards of hospitality:

Provided that the provisions of this subsection shall not be construed as relieving a Leader from complying with the provisions of section 8 in relation to such loan, franchise or gift.

Use of official information.

20. (1) Any Leader who for personal gain or advantage, or for the personal gain or advantage of some other person, discloses or uses any information acquired by him in the course of his official duty, is guilty of misconduct in office.

(2) The provisions of subsection (1) shall not apply to information which has been officially released by the person or body having power to release it for public information.

Disclosure of interest

21. (1) Any Leader who, being a member of a statutory corporation, Government agency or other public body, proposes to speak or vote on any matter before such body or before a committee thereof, and who has a direct or indirect interest in the matter shall before speaking or voting thereon comply with the rules of such body or committee thereof relating to the disclosure of interest, or, if the rules of such body or committee thereof do not specifically make provision in that regard, shall be under a duty to give adequate notice of his interest in the matter under discussion.

(2) The Minister may on the advice of the Commission make regulations relating to the disclosure of interest by Leaders who are members of anybody which has no formal rules relating to disclosure of interest by members thereof.

(3) A Leader who fails to make a disclosure as required by subsection (1) or by regulations made under subsection (2) is guilty of misconduct in office.

Dissociation from activities of associates

22. (1) Any Leader who after being requested so to do by the Commission, fails to publicly dissociate himself from any activity or enterprise of his spouse, any of his children, any other person for whom he is responsible or of any of his associates which might be expected to give rise to doubt in the public mind as to the Leader's compliance with the provisions of this Act or of Chapter VIII of the Constitution, is guilty of misconduct in office.

(2) Where a leader has publicly dissociated himself from an activity or enterprise upon the request of the Commission, he shall not be guilty of misconduct in office or be otherwise liable under this Act for the actions of any of the persons referred to in subsection (1) to which that dissociation relates.

(3) For the purposes of this section -

"publicly" means by inserting a notice in a newspaper, or causing an announcement to be made over the broadcasting network on at least three separate occasions or by circularising to members of the public in such other manner as the Commission may advise.

PART IV COMPLAINTS AND INVESTIGATION

Complaints and investigation

23. (1) Any person may make a complaint to the Commission concerning any alleged or suspected misconduct in office of a Leader.

(2) The Commission shall investigate or may lawfully delegate or authorise any person it deems fit to investigate any complaint received by it or which has come to its knowledge, unless it decides not to do so on the ground that –

(a) the complaint or the allegation is trivial, frivolous, vexatious or has not been made in good faith; or

(b) the complaint or allegation has been too long delayed to justify an investigation; or

(c) the subject-matter of the complaint or allegation does not fall within the provisions of this Act or Chapter VIII of the Constitution.

(3) The Commission may defer or discontinue an investigation on any of the grounds specified in subsection (2).

(4) The decision of the Commission not to investigate a complaint or allegation or to defer or discontinue an investigation shall not be called in question in any court of law.

(5) If at any stage of the investigation, it appears to the Commission that the offence is of such a nature that it may suitably be dealt with by the Court, the Commission may refer the matter to the High Court.

(6) Where the Commission on completion of the investigation proceeds to hold an inquiry under this Part, the same practice and procedure as applicable in the

Magistrates' Courts shall as far as circumstances permit apply mutatis mutandis to the proceedings before the Commission.

Action by Commission on conclusion of investigation.

24. (1) On completion of an investigation, the Commission may -

(a) where the Commission has determined that there is no substance in the allegations made against the Leader whose conduct or affairs have been under investigation, so declare;

(b) where the Commission has determined that there has been misconduct in office on the part of the Leader whose conduct or affairs have been under investigation, but is of the opinion that such misconduct was of a minor or technical nature warn or reprimand the Leader; and

(c) where the Commission has determined that the misconduct warrants a greater penalty than that prescribed under paragraph (b) the Commission may impose a fine not exceeding five thousand dollars on such Leader.

(2) Where the Commission has determined that such misconduct is of a nature that requires to be determined by the High Court, the Commission may refer such case to the High Court for determination.

(3) Any Leader who is aggrieved by the decision of the Commission may appeal to the High Court.

Commission's power to regulate proceedings.

25. The Commission may make rules not inconsistent with the provisions of this Act for the conduct and management of proceedings.

Powers of the Commission.

26. (1) The Commission when carrying out an inquiry under this Part shall have the same powers as those vested in a Magistrate in respect of -

(a) the administration of oaths or affirmations to witnesses and compelling them to give evidence;

(b) compelling the attendance of witnesses and the production of documents; and

(c) punishment for contempt of Court.

(2) No person, other than the person whose conduct is the subject of the inquiry and his legal representative (if any), shall be entitled as of right to be heard by the Commission.

(3) Any person appearing as a witness before the Commission who wilfully gives false evidence is liable to prosecution for perjury under the Penal Code.

Cap. 26

Power to require production of documents, books, etc.

27. For the purposes of obtaining full information in respect of the assets of any leader whose conduct is the subject of an inquiry, the Commission may, by notice in writing require -

- (a) any person, bank, department, office, corporation, or institution to produce for examination by the Commission at such time and place as may be specified in such notice, any accounts, books of accounts, statements or other documents which the Commission may consider necessary for the purpose;
- (b) any person not to destroy, damage or deface on or after such service of notice, any of the accounts, books of accounts or other documents so specified; and
- (c) the leader in respect of whom the Commission is holding an inquiry to furnish on oath a statement in writing enumerating all movable and immovable property belonging to or possessed by such Leader and by the spouse and children of such leader and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise.

Penalty for failure to comply with notice.

28. Where -

- (a) any person, bank, department, office, corporation or institution fails to produce any accounts, books of accounts, statements or other documents for examination by the Commission in accordance with the requirements of any notice served on him under section 27(a); or
- (b) any person destroys, damages or defaces any accounts, books of accounts or other documents in contravention of any notice served on him under section 27(b); and
- (c) any Leader fails or refuses to furnish a full and true statement of assets and liabilities in accordance with the requirements of any notice served on him under section 27(c), such person or body shall be guilty of an offence and liable on conviction to a fine of not less than one thousand dollars.

Failure to attend before Commission.

29. Any person who having been summoned to attend before the Commission fails without reasonable excuse (the burden of proof of which shall be upon him) to attend before it, or who wilfully, interrupts any proceedings conducted by the Commission, is guilty of an offence and shall be liable to a fine not exceeding two thousand dollars.

Action by Commission on conclusion of inquiry.

30. (1) On completion of an inquiry the Commission may -

- (a) where the Commission has determined that there is no substance in the allegations made against the Leader whose conduct or affairs have been the subject of the inquiry, so declare;
- (b) where the Commission has determined that there has been misconduct in office on the part of the Leader whose conduct or affairs have been the subject of

the inquiry, impose as it deems appropriate any of the penalties specified in section 24.

(2) The Commission shall give such publicity as it may consider desirable to its action in any particular case.

Disposal of assets.

31. In any case where the Commission is of the opinion that the continued ownership and control by a Leader of any real or personal property or interest in such property might involve him in a conflict of interest, it may, after giving the Leader adequate opportunity to state his case to the Commission, order that the whole or any part of such real or personal property or interest therein –

(a) be placed in trust with such person (including any member of the Commission) as the Commission may require, for return to the Leader when he has ceased to be a Leader; or

(b) in the case of any shareholding, be transferred by the Leader to such nominee as the Commission may specify, for such nominee to hold until such time as the Leader shall have ceased to be a Leader; or

Inquiry despite absence of person affected.

32. Where a person in respect of whom an inquiry is being held refuses or neglects to attend the inquiry, the Commission may proceed with the inquiry in his absence.

206.Note: See Article 6, Paragraph 2 for §5 and §6 of the *Leadership Code (Further Provisions) Act 1999*. See Article 8, Paragraph 5 for §8 of the Act.

Penal Code Part X: Corruption and the Abuse of Office

Extortion by public officers

92. Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, shall be guilty of a misdemeanour, and shall be liable to imprisonment for three years.

Public officers receiving property to show favour

93. Any person who, being employed in the public service, receives any property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom he is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, shall be guilty of a misdemeanour and shall be liable to imprisonment for six months.

Code of Conduct – Solomon Islands Public Service

Definitions

Responsible officer – means the Permanent Secretary or any officer vested with delegated authority (see General Orders for full definition).

Conflict of interest – means any action taken that is not in the best interests of the organisation and has the potential to involve some personal gain.

Discrimination – occurs when someone makes a preference or excludes another person from equal opportunity in employment because of issues such as race, age, gender or disability.

Harassment – is offensive, humiliating or threatening behaviour directed at an individual worker or group of workers.

Lawful and reasonable directions – occur when the direction does not require any law or policy to be broken or involve potential endangerment or harm to any person.

Misconduct – is defined under Part III of the Leadership Code (Other Provisions) Act 1999.

Natural justice – involves people being afforded a fair hearing prior to any decision being made and ensuring that the decision maker is impartial.

Public officer – means the holder of a public office as defined under the General Interpretation Act including any person appointed to act in a public office and members of essential and disciplined services.

Sexual harassment – means any unwelcome or unwanted behaviour of a sexual nature which makes a person feel offended, humiliated and/or intimidated.

Wantok – means extended family and/or people from the same language group.

These definitions are not intended as legal definitions; they are provided to explain the terminology used in this document.

Who does the Code of Conduct apply to?

- All public officers whether permanent, temporary, full-time, part-time or casual;
- Any person who holds a public office.

When does the Code of Conduct apply?

- At all times in the workplace, including during training, conferences and other events in Solomon Islands or overseas;
- During periods of absence including leave and suspension.

What happens to officers who do not comply with this Code of Conduct?

Possible outcomes or consequences include:

- Verbal warning;
- Written warning;
- Charge of misconduct under Part VII of the Public Service Commission Regulations;
- Reprimand;
- Dismissal.

It is important for all officers to understand that dismissal is a possible consequence of breaching this Code of Conduct.

Key Principles

There are five key ethical principles which form the basis of public sector administration and conduct.

1. Respect for the Law and Government

- Upholding all applicable Solomon Islands laws;
- Complying with any lawful and reasonable directions given by appropriate authorities.

2. Respect for People

- Respecting the dignity, rights and views of others;
- Actively contributing to a harassment free workplace;
- Acting in a manner which does not endanger the health, safety and/or wellbeing of self or others.

3. Integrity

- Maintaining the independence and good reputation of the Solomon Islands public service at all times;
- Acting with honesty, integrity and transparency;
- Maintaining confidentiality;
- Avoiding or disclosing any conflict of interest;
- Disclosing any known fraud, corruption and/or maladministration;
- Declining any inappropriate gifts or benefits.

4. Diligence

- Complying with all relevant policies and procedures;
- Performing in a competent, unbiased, accurate and timely manner;
- Maintaining a high level of work attendance and punctuality.

5. Economy and Efficiency

- Ensuring that public resources are not wasted, abused or used improperly;
- Ensuring that proper records are maintained and kept.

1. Respect for the Law and Government

1.1 We must uphold the laws of the Solomon Islands and carry out official public service decisions and policies faithfully and impartially.

1.2 We must comply with all reasonable and lawful instructions. The only time an officer may refuse to comply with an instruction is if they can demonstrate that:

- the instruction is unlawful and/or breaches public service policy, and/or the national security of Solomon Islands;
- they do not have the resources or competence to comply.

1.3 We are expected to implement the relevant policies and decisions of the elected Government. While we may have personal views that differ from these policies and decisions, our personal views must not interfere with the decision-making and/or performance of our duties.

1.4 We are expected to be familiar with, and contribute towards the goals, targets and objectives of our workplaces.

1.5 If charged with any criminal offence, under the Penal Code or any other law or legislation, we must report the charge immediately to our Permanent Secretary and the Permanent Secretary, Ministry of Public Service before resuming our duties.

2. Respect for People

2.1 We must treat each other, and members of the public, honestly and fairly, and with proper regard for their rights and obligations.

2.2 We must treat each other, and members of the public, with mutual respect and courtesy, even when the other person's views may differ from our own.

2.3 We must ensure that our actions and language are not offensive or discriminatory to others. When confronted by abusive, offensive or threatening behaviour, we must remain calm and not return the abuse.

2.4 We must be cooperative and pleasant in our dealings with one another and work as a team to achieve results.

2.5 We all have a responsibility to ensure that our workplace is free from harassment, including sexual harassment, by ensuring that our own behaviour is not offensive, intimidating, humiliating, threatening or inappropriate.

2.6 We must be mindful that any statement about a public officer or official matter, either verbal or written, must be made in an appropriate forum and manner, and then only if it is verifiable and constructive in nature.

2.7 Violent or aggressive behaviour will not be tolerated in any form. We must be aware that any such behaviour could result in criminal charges.

2.8 Officers who are supervising other staff must:

- ensure staff understand the performance standards expected of them;
- ensure that staff performance is objectively assessed against these standards;
- avoid favouritism, such as when granting permission for annual leave or attendance at professional development activities.

3. Integrity

3.1 To gain public trust and confidence, we must demonstrate integrity in the workplace by:

- properly exercising our official powers or position and not allowing our authority or position to be improperly used, even when pressured by wantoks;
- ensuring that any conflict which may arise between our personal interests and official duties is resolved in favour of the public interest;
- disclosing fraud, misconduct or any other inappropriate behaviour, in a timely manner to the responsible officer, or other appropriate authority such as the Leadership Code Commission.

3.2 There must not be any reprisal or punishment for any officer who honestly discloses fraud, misconduct or other inappropriate behaviour to their responsible officer or other authority.

3.3 We must protect the privacy and confidentiality of information obtained in the course of our duties.

3.4 We must not disclose any information which could jeopardise the national security of Solomon Islands and/or its international relations.

3.5 Outside or secondary employment may adversely affect, or create a conflict of interest, with our official duties. Therefore, we must not engage in any form of outside employment or business venture without first seeking authorisation from the Permanent Secretary for the Public Service and the Leadership Code Commission.

3.6 Public officers, their business associates, their families and/or wantoks must not accept or seek any gifts or other personal benefits in exchange for official duties or work-related favours.

3.7 We must record and keep accurate and proper records of all Government business and transactions.

3.8 To maintain a proper and professional image of the public service, we must ensure that our uniforms and general appearance are clean, neat and tidy at all times.

3.9 We need to ensure that any trade union, professional association or political activity we engage in is not seen to compromise the impartiality and independence of the public service.

4. Diligence

4.1 We must not hinder or obstruct the work of another officer or pressure any other officer to participate in illegal activity, misconduct or any other inappropriate behaviour.

4.2 When providing advice or assistance to a Minister, Permanent Secretary or any other senior official, we must take all reasonable steps to ensure that factual, relevant and accurate information is provided within the required timeframe.

4.3 We must make sure that the principles of workplace equality and occupational health and safety are observed and exercised.

4.4 We must ensure that our attendance at work is punctual and that any absences are reported and appropriately recorded.

4.5 If leaving the workplace due to illness, family or other personal commitments, we must first notify our responsible officer. We all have an obligation to manage our own time efficiently and effectively in the workplace and ensure that a reasonable balance is maintained between work, family and other personal commitments.

4.6 While it is recognised that betel nut is an important part of our culture and village life, we must understand that chewing betel nut in the workplace reflects on our professional image and diligence. Therefore, we must not chew betel nut or smoke in Government buildings, vehicles or while performing official duties.

4.7 We must ensure that the use of alcohol, betel nut, drugs or any other substance does not adversely affect our work performance or adversely affect the safety of others.

4.8 Under no circumstances may any officer, regardless of position or status, drive a Government vehicle while under the influence of alcohol or other drugs.

4.9 Use of alcohol in Government buildings during social events must first be approved by the relevant Permanent Secretary and must not result in any damage to Government property or resources or affect the safety of any person.

5. Economy and Efficiency

5.1 In the performance of our duties, we must ensure that resources, including motor vehicles and laptops, are not abused, wasted or used improperly.

5.2 We must comply with all Government instructions, policies and procedures relating to use of Government resources such as motor vehicles, computers and internet.

5.3 We must comply with all Government instructions, policies and procedures relating to use of financial resources such as allowances and fares. This means we must not falsely or dishonestly claim any allowance or other form of remuneration unless we are entitled to do so.

5.4 Government resources such as telephone, fax and photocopier may be used from time to time for private reasons as long as any such usage is reasonable and kept to a minimum. If there any is any doubt as to what constitutes 'reasonable usage', the responsible officer should be consulted.

5.5 Internet and email usage has increased dramatically in the Solomon Islands in recent years. As a result, we must be aware of and comply with all applicable laws and regulations, including copyright and licensing legislation.

5.6 While it is acceptable to use the internet for research and other work purposes, we must ensure that personal usage of the internet during work hours is kept to a reasonable level and does not adversely affect our work performance.

5.7 Under no circumstances may any officer use the internet to view, download, email or send any material which is offensive, vulgar or pornographic in nature.

5.8 We must not use the internet to download music, games or movies to Government computers or file servers unless it is for work purposes. This is to prevent serious computer problems and viruses which can occur in these circumstances.

5.9 We must not use the internet or email in a way that could reasonably insult, harass, abuse or offend another officer, member of the public or organisation (remember, what is considered threatening or offensive is defined by the receiver, so if unsure, do not send).

5.10 We must not deliberately gain unauthorised access to another person's computer for any inappropriate reason.

5.11 We must not deliberately gain unauthorised access to, or damage, any information or data which is confidential or protected.

5.12 We must not attempt to hide the origin of any message, or download material under any assumed internet address, or otherwise disguise our user identity.

5.13 We must not use the internet or email to endanger the national security and/or international relations of Solomon Islands.

Police Act 2013

Code of Conduct

5 (1) A Code of Conduct shall be prescribed by regulation stating the standards of behaviour to apply to all police officers, authorised officers and specialist employees.

(2) Any breach of the Code of Conduct constitutes a disciplinary offence.

Police Regulations 2013

Code of Conduct

3. All police officers, recruits and specialist employees shall comply with the Code of Conduct set out in Schedule 1 to these Regulations.

SCHEDULE 1

(Regulation 3)

CODE OF CONDUCT FOR ROYAL SOLOMON ISLANDS POLICE OFFICERS AND SPECIALIST STAFF RESPECT FOR ALL HUMAN LIFE

1. Respect for human rights

In the performance of their duties, police officers shall respect and protect human dignity and maintain and uphold all human rights for all persons.

2. No discrimination

Police officers shall treat all persons fairly and equally and avoid any form of discrimination.

3. Use of force

Police officers may only use force when strictly necessary and to the extent required for the performance of their duties adhering to the law of Solomon Islands and Commissioner's Orders.

4. Torture, cruel, inhuman or degrading treatment

No police officer, under any circumstances, shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment to any person.

5. Protection of persons in custody

Police officers shall ensure the protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

6. Victims of crime

All victims of crime shall be treated with compassion and respect. Police officers shall ensure that proper and prompt aid is provided where necessary.

RESPECT FOR THE LAW

7. Respect for the rule of law and code of conduct

Police officers shall respect and uphold the rule of law and the Code of Conduct.

INTEGRITY

8. Trustworthiness

The public demands that the integrity of police officers be above reproach. Police officers shall, therefore, behave in a trustworthy manner and avoid any conduct that might compromise integrity and undermine the public confidence in the RSIPF.

9. Corruption and abuse of power

Police officers shall not commit or attempt to commit any act of corruption or abuse power. They shall rigorously oppose and combat all such acts.

Police officers shall not accept any gifts, presents, subscriptions, favours, gratuities or promises that could be interpreted as seeking to cause the police officer to refrain from performing official responsibilities honestly and within the law.

SERVICE EXCELLENCE

10. Performance of duties

Police officers shall at all times fulfil the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession.

11. Professional conduct

Police officers shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.

12. Confidentiality

Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty and need of justice strictly require otherwise.

RESPECT FOR PROPERTY RIGHTS

13. Property rights

In the performance of their duties police officers shall respect and protect all property rights. This includes the economical use of public resources.

207. During the country visit, Solomon Islands informed that in 2015, with support from the Department of Foreign Affairs and Trade (DFAT) in the Government of Australia, the Institute for Social Science Research at the University of Queensland worked with Solomon Islands' Public Service Commission to prepare a Public Service Satisfaction Survey.

208. The report Shared by Solomon Islands during the country review was released in 2016, including the following:

UPHOLDING AND PRACTICE OF CODE OF CONDUCT IN MINISTRIES/ AGENCIES

A little under two thirds of Public Servants believed that their Ministry/Agency upheld and practiced the Public Service values (63.9%).

The Ministries with the highest proportion of employees who believed this were the Constitutional office (ONP/OGG) (86.7%) and the development sector (MDPAC/MFAET) (81.8%); the Ministries with the highest proportion of employees who disagreed that their Ministry held up these Public Service values were the Ministry of Mines, Energy and Rural Electrification (45.5%); the Ministry of Lands, Housing and Survey (40%); and the social sector (MHA/MNURP/MPGIS) (30.8%) (see Table 45). This shows that there was considerable variation across Ministries as to whether their employees believed they upheld and practiced the Public Service values. Organisational values can help transform organisational structures, by helping to positively increase employee accountability and encourage positive workplace attitudes (Kernaghan, 2000). However, if there are incongruences in the adherence of these values, this will decrease the uptake of these values by staff.

PUBLIC SERVANTS ROLE REGARDING THE CODE OF CONDUCT

The majority of employees agreed that they followed and applied the Public Service values as laid out in the Code of Conduct (86%). A similar trend was noted at the Ministerial level. However, the Ministries that had a statistically higher number of employees who reported that they did not follow and apply the public service values were the Ministry of Lands, Housing and Survey (10%), the Ministry of Mines, Energy and Rural Electrification (9.1%) and the Ministry of Public Service (8.3%) (see Table 46). The vast majority of Public Servants (92.6%) were aware that there were consequences if they did not follow and apply the Public Service Code of Conduct; this was also seen at the Ministerial level, with the exception of the Ministry of Lands, Housing and Survey, where 20% of Public Servants indicated that they were not aware there was consequences for not following the Code of Conduct. - the highest rate of disagreement was for the Ministry of Lands, Housing and Survey (20%), the development sector (MDPAC/MFAET) (9.1%) and the Ministry of Mines, Energy and Rural Electrification (9.1%) (see Table 47). At the aggregate level, a statistically ($X^2(6, N = 709) = 18.0, p = .006$) higher proportion of new employees did not know there were consequences for not following and applying the Code of Conduct (10.1%) compared to experienced employees (2.1%).

COLLEAGUES AND MANAGER'S ROLE REGARDING THE CODE OF CONDUCT

While the majority of employees agreed they followed and applied the Code of Conduct, a smaller proportion of Public Service employees indicated that their colleagues followed and applied the Code of Conduct (62.5%). The Ministries with the highest proportion of employees who agreed that their colleagues upheld the Code were the Ministry of Environment, Conservation, Climate Change, Disaster Management and Meteorology (83.3%), the Constitutional office (ONP/OGG) (80%) and The National Judiciary (80%). The Ministries with the highest proportions of employees who felt that their colleagues did not follow and apply the code were the Ministry of Mines, Energy and Rural Electrification (36.4%), the social

sector (MHA/MNURP/MPGIS) (30.8%) and the Ministry of Lands, Housing and Survey (20%) (see Table 48). Only a little over half (58.5%) of Public Servants felt as though the Senior Managers in their Ministry set a good example of professional behaviour, with a fifth (21%) of employees disagreeing. The Ministries with the highest proportion of employees who believed their Senior Managers displayed professionalism were the Ministry of Environment, Conservation, Climate Change, Disaster Management and Meteorology (91.7%), the social sector (MHA/MNURP/MPGIS) (84.6%), the Ministry of Lands, Housing and Survey (80%) and the Constitutional office (ONP/OGG) (80%) (see Table 49). A significant difference was found between new staff and experienced staff - two thirds (66.1%) of new staff felt as though the Senior Managers set a good example of professional behaviour in the workplace, as compared to 57.4% of experienced staff ($X^2(6, N = 709) = 80.14, p < .001$).

PUBLIC SERVANTS OPINION OF MANAGEMENT ETHICS

The majority of employees (81.7%) felt that they knew where they could go for help in resolving an ethical dilemma in the workplace, with only 8.1% not knowing where they could go for help. The highest proportion of employees who knew where to go for help were from the development sector (MDPAC/MFAET) (100%), the Ministry of Public Service (100%), the Ministry of Justice and Legal Affairs (93.8%) and The National Judiciary (93.3%); with the highest proportion of those who did not know where to go for help working for the following Ministries – the Ministry of Forestry and Research (30%), the productive sector (MCT/MCILI) (19%) and the social sector (MRD/MWYCA/OPMC) (14.8%) (see Table 50).

Moreover, a lower proportion of employees agreed that they could raise issues through a formal process without unfair treatment (65.7%), with 15.2% reporting that they could not raise issues through a formal process without unfair treatment. However, there were differences when examined at the Ministerial level. On the one hand, there were three Ministries where more than three-quarters of staff reported they could raise problems through formal processes without unfair treatment – the Constitutional office (ONP/OGG) (83.3%), the productive sector (MCT/MCILI) (76.2%) and the development sector (MFMR/MID) (75%). On the other hand, there were also three Ministries where the proportion of staff who reported that they could raise these issues without concerns of unfair treatment was below 40% - the Ministry of Environment, Conservation, Climate Change, Disaster Management and Meteorology (33.3%), the Ministry of Mines, Energy and Rural Electrification (36.4%) and the Ministry of Communication and Aviation (38.9%) (See Table 51).

A little over two thirds of employees (65.3%) felt that employees in their Ministry/Agency had the public's best interest at heart, with 17.4% who disagreed with this statement. This trend varied across Ministries, with a lowest proportion of employees reporting that employees in the Ministry had the public's best interest at heart working for the Ministry of Lands and

Housing (40%) and the Ministry of Forestry and Research (30%). A significantly higher number of Public Servants did not think that employees in their Ministry/Agency carried out their duties with the public's best interest in mind from the following Ministries/Agencies: the social sector (MRD/MWYCA/OPMC) (37.6%); the Ministry of mines, energy and rural electrification (36.4%); Ministry of Communication and Aviation (33.3%); and the Ministry of Justice and Legal Affairs (31.3%) (see Table 52).

While the majority of employees knew where to go if they had an ethical dilemma, only a little over two thirds (65.7%) felt as though they could raise an issue through formal channels without subsequent unfair treatment.”

(b) Observations on the implementation of the article

209. A code of conduct exists for all public officers and provides disciplinary measures for noncompliance, including dismissal. Also the penal code contains a provision on conflicts of interest, which applies to all public sector employees. Some bodies and organizations have their own additional codes. During the country visit, Solomon Islands informed that the Government has also published information for managers in public service, such as a guide to the disciplinary process.

210. The mandatory nature of the Leadership Code and the accountability and oversight provided by the Leadership Code Commission were identified by the reviewing team as good practices.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

211. While Commissions with investigatory powers (such as the Leadership Code Commission) can compel witnesses to appear and present evidence, there is no law requiring the reporting acts of corruption by public officials.

212. During the country visit, Solomon Islands reported that a reporting system, taking as a model the award-winning Phones against Corruption project of Papua New Guinea, was proposed in the National Anti-Corruption Strategy. Further, it reported that a draft Whistle Blower Protection Bill was with the Parliament for consideration.

(b) Observations on the implementation of the article

213. While the Code of Conduct calls for the reporting of fraud, misconduct, or any other inappropriate behaviour to the responsible officer and prohibits reprisal against those reporting in good faith, no measures or systems are currently in place to facilitate the reporting by public officials of acts of corruption to appropriate authorities not protection of reporting persons.

214. Solomon Islands is therefore recommended to consider measures or systems, including through legislation, to facilitate the reporting by public officials of acts of corruption to appropriate authorities and the protection of persons reporting suspected corruption (whistle blowers).

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

215. As previously stated, all subject to the Leadership Code are required to make a disclosure of financial assets, including those of family members. This is primarily to prevent conflicts of interest. After the first disclosure, another must be made within two years. This applies for as long as the individual is considered a Leader for purposes of that law.

216. Section 2 of the Leadership Code (Further Provisions) Act 1999 defines a "Leader" as "any person whose office or position is specified in sections 93 and 127 (2) of the Constitution or who is appointed as a member of any statutory authority or other body established by an Act of Parliament or Provincial Ordinance and includes any person whose emoluments are paid out of the Consolidated Fund." Those included under section 93 of the Constitution are the Governor-General, the Prime Minister and other Ministers, the Leader of the Official Opposition and the Leader of the Independent Members, all other members of Parliament, the Speaker, members of any constitutionally established Commission, all public officers, officers of the government of Honiara city, provincial government officers, members of the Honiara city council and provincial assemblies, officers of statutory corporations and Government agencies, and such other officers as Parliament may prescribe.

217. During the country visit, Solomon Islands reported that the Leadership Code Commission was active in disseminating the declaration forms and had authority to summon people and require production of documents to verify disclosures. Disclosures could be sent either electronically or paper using a specific template, and they were not made public. Currently, more than 5,000 public servants were subject to asset disclosure. At the time of the country visit, less than 50% of all government ministries had completed this exercise. The LCC is mandated to take action against public officers who fail to furnish statements, or submit statements

containing misleading or false information. The penalties imposed are either a warning or reprimand. Leaders who did not submit their asset disclosure were subject to \$100 fine. The Leadership Code Commission informed it put in considerable efforts to help leaders fill the forms, where needed.

218.Solomon Islands further reported that the Leadership Code Commission had standards for declarations of gifts, with a threshold. There were general standards allowing for customary gifts. For the Director of Public Prosecution, as well as for the judiciary, there was a zero tolerance for receipt of gifts from victims, witnesses, and other stakeholders.

219.Solomon Islands also informed that the Leadership Code Commission could conduct investigations of asset disclosures. Over 200 investigations were initiated since 2016 on the Commissions own initiative. The Leadership Code Commission could impose reprimands and penalties. The Commission informed that seven of these cases had resulted in working with criminal investigators, while three had resulted in criminal cases being opened on corruption or abuse of office charges.

220.According to the Leadership Code Commission, its resources were not sufficient for effective follow-up on declarations.

221.Finally, the Leadership Code Commission reported that it did outreach to leaders about the requirements of the disclosures.

[Leadership Code \(Further Provisions\) Act 1999](#)

Statement of assets etc. to be supplied by Leader

8. -(1) Every Leader shall, within three months of his becoming a Leader, and thereafter at intervals not exceeding two years, give a separate statement in respect of himself, his spouse and each of his children setting out to the best of his knowledge

- (a) all directorships in any company or corporation held by each of them;
- (b) the business occupations of each of them;
- (c) the holdings of each of them of any shares of, or debentures or other securities charged upon, any company or corporation;
- (d) the total income received by each of them during the period to which the statement relates and the sources of each of those incomes;
- (e) all business transactions involving a sum of one thousand dollars or more entered into by each of them during the period to which the statement relates;
- (f) subject to subsection (4), all gifts received by each of them during the period to which the statement relates, and the value of each of such gifts; and
- (g) the assets acquired by each of them during the period to which the statement relates.

(2) The period to which a statement under sub-section (1) shall relate is -

- (a) in the case of the first statement made by a Leader, the preceding three months;
- (b) in any other case, the period since the last statement was given.

(3) In the case of assets, income or gifts involving amounts less than five hundred dollars, it shall be sufficient if the statement gives general particulars and approximate amounts or values.

(4) It shall not be necessary for a Leader to include in the statement made under subsection (1), details of gifts made to himself, his spouse or any of his children during the course of each year in any case where such gifts -

- (a) were received from his spouse or children;
- (b) were offered at or in connection with a custom ceremony; or
- (c) not being gifts falling within categories (a) or (b) above, were of a total value of one hundred dollars or less.

(5) The statement made in accordance with subsection (1) shall be submitted to the Commission.

(6) Statements and information given to the Commission under the provisions of this section or section 9 shall not be revealed to any person except -

- (a) in the course of the duties of the Commission;
- (b) for the purpose of proceedings or possible proceedings under Part V; or
- (c) under an order of a court of competent jurisdiction.

(7) Where a Leader fails to give a statement to the Commission as required under this section before the due dates as prescribed under this Act a sum of one hundred dollars shall thereupon become payable by way of penalty.

(8) A penalty imposed under this section shall not prevent the Commission from taking any further action under any provision of this Act.

222. Note: For §5-6 of the Act, see Article 6, Paragraph 2. For §2-3 and §9-32, see Article 8, Paragraph 1.

(b) Observations on the implementation of the article

223. All public officials, including Members of Parliament, are governed by the Leadership Code (Further Provisions) Act 1999. The Leadership Code requires asset disclosures, including gifts and any directorships in companies as well as government or corporate contracts. The Leadership Code Commission has the authority to request additional information regarding asset disclosures and investigate allegations of misconduct.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

224. Part IV of the *Leadership (Further Provisions) Act* outlines the enforcement and penalties for breach of the Leadership Code. The enforcement provisions include the power to impose monetary penalties. Also, where a matter is referred to the High Court, they enable the Court to order a person to pay into the Consolidated Fund an amount equivalent to the value of gains wrongly acquired by that person while in office. There is, however, no power to imprison under the Leadership Code.

225. Part 5 of the *Police Act* provides for disciplinary proceeding for members of the Police Force.

226. Section 85 of the *Public Financial Management Act* provides that an accountable, accounting or public officer who is guilty of misconduct in office under section 84 of that Act is deemed to be guilty of an act of misconduct under Part III of the *Leadership Code (Further Provisions) Act 1999* and Parts IV (Complaints and Investigation) and V (Proceedings in the High Court) of that Act apply in respect of such misconduct. Further, a public officer who is guilty of misconduct in office under section 84 of the *Public Financial Management Act* is, in addition to any penalty to which he may be subject by virtue of subsection (1), subject to disciplinary sanctions under the Public Service Regulations 1998.

[Police Act 2013](#)

PART 5 CONDUCT AND DISCIPLINE

Definition of Breach of Discipline

A police officer commits a breach of discipline if the officer –

- (a) contravenes this Act or Regulations;
- (b) fails to comply with the Code of Conduct;
- (c) fails to comply with the Commissioner's Orders;
- (d) is guilty of committing any criminal offence;
- (e) fails to disclose, and take reasonable steps to avoid, any real or apparent conflict of interest in relation to the officer's duties; or
- (f) behaves in a manner which brings or is likely to bring the police force into disrepute or which may affect the confidence that the community has in the police force.

Professional Standards and Internal Investigations Unit

- (1) The Commissioner may appoint police officers to a unit or division set up for the purpose of administering discipline and maintaining ethical behaviour, professional standards and integrity.
- (2) The Commissioner may delegate any power in relation to discipline and punishment, except the power of removal, to the Director of the Professional Standards and Internal Investigations Unit or to any Provincial Police Commander.

Report breach of discipline or offence

(1) Any person may report a breach of discipline by a police officer by making a complaint orally or in writing to –

- (a) the officer in command of a police station or post;
- (b) the Provincial Police Commander; or
- (c) the Commissioner.

(2) Any police officer who reasonably suspects that another police officer has committed an offence against discipline or against any law of Solomon Islands must immediately report the matter to –

- (a) the officer in command of a police station or post;
- (b) the Provincial Police Commander; or
- (c) the Commissioner.

Internal complaints

(1) Any police officer can make any complaint or lodge a grievance in writing to his or her supervisor or officer in command in relation to any matter relating to the police force or a police officer.

(2) If the complainant and the supervisor agree, the complaint may be dealt with by the supervisor using any or all of the following methods –

- (a) mediation;
- (b) reconciliation;
- (c) rectification action;
- (d) apology;
- (e) training, peer support or managerial supervision; or
- (f) reprimand.

(3) Any complaint that cannot be resolved pursuant to subsection (2) must be forwarded to the Commissioner or the person designated by the Commissioner to accept complaints and grievances as soon as practicable.

(4) If the complaint is in relation to a breach of discipline or breach of the Code of Conduct, the complaint shall be forwarded to, and investigated by, the person or unit the Commissioner has delegated the power to conduct and administer disciplinary inquiries and the police officer or officers involved must be disciplined in accordance with the provisions of this Act and regulations.

Public complaints

116. (1) Any member of the public may make a complaint or lodge a grievance about any matter relating to the police force by submitting a complaint in writing to the officer in command of a police station or police post or to the Commissioner.

(2) If the complainant and the officer in command agree, the complaint may be dealt with by the supervisor using any or all of the following methods –

- (a) mediation;

- (b) reconciliation;
- (c) rectification action;
- (d) apology;
- (e) training, peer support or managerial supervision; or
- (f) reprimand.

(3) Any complaint that cannot be resolved pursuant to subsection (2) must be forwarded to the Commissioner or the person designated by the Commissioner to accept complaints and grievances as soon as practicable.

(4) If the complaint is in relation to a breach of discipline or breach of the Code of Conduct, the complaint shall be forwarded to, and investigated by, the person or unit the Commissioner has delegated the power to conduct and administer disciplinary inquiries.

(5) If the complaint is made about a specialist staff member, the complaint must be forwarded to the Commissioner, the Leadership Code Commission and the Public Service Commission.

(6) The complainant shall be provided with information about the process for dealing with the complaint and shall be notified in writing of the results of any investigation or disciplinary action taken under this Act or Regulations.

Power to discipline

117. The Commissioner may make orders in relation to the practices, procedures and responsibilities to be used to conduct disciplinary investigations and inquiries.

Major disciplinary offences

118. In addition to the breach of any duty imposed elsewhere in this or any other Act, subsidiary legislation or law, a police officer shall be guilty of a major disciplinary offence if the officer, without lawful excuse –

- (a) disobeys, omits or fails to carry out any lawful order;
- (b) fails to appear for duty or is late for duty 3 or more times within 3 months;
- (c) sleeps on duty;
- (d) leaves his or her post without authorisation;
- (e) resists arrest or escapes from arrest, custody, confinement or escort;
- (f) disobeys a lawful order to apprehend or assist in the apprehension of any person;
- (g) knowingly or negligently allows a prisoner to escape;
- (h) uses any weapon, instrument of restraint or protective equipment without just cause or contrary to orders;
- (i) assaults, ill-treats, or uses excessive force against any person;
- (j) pawns, sells, damages or negligently loses any police property;

- (k) without lawful authority, divulges, communicates, shows or supplies to any person, any information, document, record or copy of any item obtained in the course of police duties or relating to any matter concerning the police force, an officer, a suspect or any other person;
- (l) incurs a debt beyond his or her means;
- (m) makes a false statement in any document prepared for use by the police force, including job applications, expressions of interest and statements prepared for disciplinary inquiries;
- (n) makes a false, misleading, dishonest or incomplete statement or report, or destroys, intentionally misplaces, erases, or alters any entry in any official document or record;
- (o) engages in secondary employment without prior permission;
- (p) fails to provide a full financial statement when requested by the Commissioner or Provincial Police Commander;
- (q) commits 3 or more minor disciplinary offences within a period of 3 months;
- (r) commits a criminal offence;
- (s) fails to disclose or to take reasonable steps to avoid any real or apparent conflict of interest;
- (t) engages in unwelcome conduct of a sexual nature that could be reasonably anticipated to offend, humiliate, embarrass or intimidate another police officer or any other person;
- (u) behaves in a manner which is likely to bring the police force into disrepute or affect community confidence;
- (v) fails to comply with any suspension order or any penalty or order administered for a breach of discipline;
- (w) aids or abets or is knowingly an accessory to any criminal offence or breach of duty; or
- (x) engages in any other conduct, act or omission that has the potential to compromise the safety, security and good governance of the police force or any police station or post.

Minor disciplinary offences

119. In addition to the breach of any duty imposed elsewhere in this or any other Act, subsidiary legislation or law or Regulations, a police officer shall be guilty of a minor disciplinary offence if the officer, without lawful excuse –

- (a) disobeys, omits or neglects to carry out any lawful order or duty;
- (b) uses disrespectful words or displays disrespectful behaviour;
- (c) is unable to attend for duty or to properly carry out duties due to intoxication;
- (d) fails to appear for duty or is late for duty;
- (e) sleeps on duty;
- (f) leaves his or her post without authorisation;

- (g) pawns, sells, damages or negligently loses any police property;
- (h) is dirty or untidy whilst on duty or whilst in any public place in police uniform;
- (i) falsely reports or feigns an illness or misadventure or wilfully produces an illness or infirmity;
- (j) neglects, fails or refuses to make, provide or send a report;
- (k) behaves in a manner likely to bring the police force into disrepute or affect community confidence;
- (l) bullies or harasses another person;
- (m) possesses or consumes any dangerous drug, alcoholic drink, betel nut or kava in any area of police premises or in a public place whilst on rostered duty;
- (n) possesses or consumes any dangerous drug, alcoholic drink, betel nut or kava whilst on rostered duty or whilst wearing police uniform;
- (o) charges interest on any loan to another police officer;
- (p) requests a loan, gift or item of value from an officer of lower rank;
- (q) treats another officer less favourably on the basis of gender, race, ethnicity, marital status or disability; or
- (r) engages in any other conduct, act or omission that has the potential to compromise the safety, security and good governance of the police force or any police station or post.

Investigation of breach of discipline

120. (1) Any police officer who receives a report of a breach of discipline pursuant to this Part must immediately cause an investigation to be carried out in relation to the alleged breach.

(2) If the police officer investigating the matter suspects, on reasonable grounds that a breach has been committed, the matter must be referred to a disciplinary inquiry.

(3) Nothing in this or any other Act prevents a disciplinary investigation or inquiry from being held and a determination made, prior to, or concurrently with any criminal or civil action that may be commenced or contemplated.

Search of officers

121. Police Officers may be searched by another police officer of the same gender, if the police officer to conduct the search believes on reasonable grounds that the officer has in his or her possession any article that is evidence of the commission of a criminal offence or disciplinary offence.

Suspension pending inquiry

122. (1) The Commissioner may suspend from duty any police officer who is the subject of a disciplinary complaint, investigation or inquiry or who is alleged to have committed a criminal offence.

(2) At any time during the suspension period, the Commissioner may, upon application by the suspended police officer, vary or withdraw the suspension order.

Pay whilst suspended

123. (1) When a police officer is suspended pursuant to this Part, the Commissioner shall determine what portion of pay and entitlements the suspended police officer shall receive or accrue during the suspension period.

(2) If a police officer receives a reduction in pay pursuant to subsection (1), the officer may apply to the Commissioner to review or vary the deduction on the basis of financial hardship or special circumstances.

(3) If the disciplinary or criminal proceedings against a police officer do not result in dismissal, demotion or criminal conviction, the police officer is entitled to be reimbursed for any pay or other entitlement withheld during the suspension period.

(4) If a police officer is demoted, reimbursement of pay and entitlements shall be made at the demoted level.

(5) Reimbursement of pay and entitlements should be withheld until any appeal has been determined or any appeal period has expired.

Act and regulations apply to suspended police officer

124. (1) A suspended police officer remains subject to all the provisions of the Act and regulations pertaining to officers provided that the powers vested in the police officer shall be in abeyance during the period of the suspension, unless the Commissioner orders otherwise.

(2) A suspended officer remains subject to the Code of Conduct, discipline and penalties and to the same authority and discipline as if the officer had not been suspended.

Disciplinary action after leaving the police force

125. If an accused police officer resigns, retires or otherwise ceases employment with the police force before the conclusion of a disciplinary investigation or inquiry, the investigation or inquiry can proceed and a penalty may be imposed as though the police officer had continued to be employed.

Breach of suspension order

126. An officer who breaches the conditions of a suspension order or dismissal order must be brought back before the disciplinary authority that imposed the suspension and is liable to be penalised for both breach of the order and any new breach of discipline.

Inquiry into breach of discipline

127. (1) Subject to section 121 of the Constitution, the Commissioner, Director Professional Standards and Internal Investigations Unit, Provincial Police Commander, Disciplinary Tribunal or a police officer in command may conduct an inquiry into and determine a disciplinary offence committed by an officer of lower rank.

(2) A police officer subject to disciplinary inquiry is not permitted to have a legal representative present during the inquiry but may have another police officer of his or her own choosing present to provide welfare and support to the accused police officer.

(3) A police officer present at the inquiry pursuant to subsection (2) may remain with the accused officer during the inquiry but must take no part in the proceedings.

(4) Nothing in this section prevents an accused police officer from seeking or obtaining legal advice in relation to the matter, at their own expense, either before or after the inquiry.

Dispensing with an inquiry

128. If a police officer conducting an inquiry into a disciplinary offence determines at any stage that the matter can be most effectively resolved by mediation, reconciliation, rectification action, apology, training, peer support, managerial guidance or reprimand, he or she can dispense with the inquiry and resolve the matter using any or all of those methods.

Conciliation

129. Conciliation and mediation may be used to resolve minor breaches of discipline or complaints of a minor or trivial nature provided that both the aggrieved person and the accused police officer agree and the process is conducted in accordance with the Commissioner's Orders.

Summary reprimand

130. Notwithstanding anything in this Act, the Commissioner may summarily administer managerial guidance or a reprimand to any police officer for a minor disciplinary breach.

Burden of proof for inquiry

131. If any police officer or tribunal conducting a disciplinary inquiry determines that a charge against a police officer is proved on the balance of probabilities, a finding of guilt may be made and a penalty imposed.

Penalties

132. (1) The Commander or officer in command conducting a disciplinary inquiry may impose any one or more of the following penalties –

- (a) managerial guidance;
- (b) reprimand;
- (c) a fine not exceeding 10 days' pay; or
- (d) a suspension for a period not exceeding 7 days

(2) Subject to section 121(2) of the Constitution, the Commissioner, Director of Professional Standards and Internal Investigation Unit or a Disciplinary Tribunal may impose any one or more of the following penalties –

- (a) managerial guidance;
- (b) reprimand;
- (c) a fine not exceeding 20 days' pay;
- (d) a suspension for a period not exceeding 14 days;
- (e) reduction in rank; or
- (f) dismissal.

Dismissal or demotion after court conviction

133. The Commissioner or Director of Professional Standards and Internal Investigations Unit may reduce in rank or dismiss any police officer who has been convicted by any court of an offence against any Act or law, unless the officer has successfully appealed against the conviction.

Appeal after dismissal or demotion

134. Any police officer who has been reduced in rank or dismissed as a result of a determination by the Commissioner after conviction by a court may appeal against the penalty to the Police and Prison Services Commission under section 122 of the Constitution.

Penalties for serious offences

135. If any police officer conducting an inquiry makes a finding of guilt and is of the opinion that the maximum penalty that can be imposed is insufficient in the circumstances, the proceedings and any findings or recommendations may be transferred to the Commissioner, the Director Professional Standards and Internal Investigations Unit or the Police and Prison Services Commission for the imposition of the penalty.

Notice of transfer for penalty imposition

136. When a proceeding is transferred to the Commissioner or Director Professional Standards and Internal Investigations Unit for imposition of the penalty, the accused police officer must be notified and must be permitted to make oral or written representations in mitigation of penalty.

Reports of inquiries

137. Each Provincial Police Commander must regularly report to the Commissioner and the Director of Professional Standards and Internal Investigations Unit the details, findings and penalties imposed for all inquiries held in their province.

Disciplinary Tribunal

138. (1) For the purpose of conducting any inquiry, penalty determination or review that Commissioner or the Director of Professional Standards and Internal Investigations Unit are authorised to undertake, the Commissioner or Director

Professional Standards and Internal Investigations Unit may instead convene a Disciplinary Tribunal to hear and determine the proceedings.

(2) A Disciplinary Tribunal shall be chaired by a police officer of a higher rank than the person charged and may also consist of such other members as may be prescribed by regulation.

Notification of charge

139. Every police officer charged with a disciplinary offence must be given a copy of the charge in writing and must be allowed to appear and make representations at any inquiry.

Right of appeal

140. Any police officer who is found guilty of a disciplinary offence and receives a penalty must be informed of any right of review or appeal.

Appeal to Police and Prisons Services Commission.

141. An appeal lodged pursuant to section 122 of the Constitution may be lodged with the Secretary of the Police and Prisons Services Commission within 7 days of the imposition of a penalty or within such further time as the Chairman may allow.

Notice of appeal

142. The notice of appeal to the Police and Prisons Services Commission must –

- (a) be submitted in writing;
- (b) set out the grounds of appeal; and
- (c) state whether the appeal is in relation to the finding, the punishment or both.

Review by Commissioner

143. (1) The Commissioner may review any disciplinary proceedings conducted by an officer in command, Provincial Police Commander, the Director Professional Standards and Internal Investigations Unit or any Disciplinary Tribunal, provided that the Commissioner was not a member of the Tribunal.

(2) A police officer found guilty of a disciplinary offence by a Provincial Police Commander, officer in command, Director Professional Standards and Internal Investigations Unit or Disciplinary Tribunal may, within 7 days of the imposition of the penalty or in such further time as the Commissioner may allow, apply to the Commissioner for a review of the proceedings.

Options upon review

144. (1) If the Commissioner or the Disciplinary Tribunal reviews proceedings and determines that the finding or the penalty is not appropriate they may do one or more of the following –

- (a) quash the finding;
- (b) find the accused guilty of another offence;

- (c) reduce, increase or vary the penalty; or
 - (d) return the proceedings for rehearing by another police officer.
- (2) If the Commissioner or Disciplinary Tribunal reviewing proceedings forms the view that the penalty should be increased, or that the accused is guilty of another offence, they must inform the accused and give the accused the opportunity to make representations in relation to the offence or penalty

Summons to witness

145. (1) Any police officer or tribunal authorised by this Act or regulations to conduct an inquiry or review into a breach of discipline shall have the power to summon witnesses and examine witnesses under oath.
- (2) No witness shall be obliged to answer any question which may tend to incriminate the person or render them liable to any forfeiture or penalty.

Officer must answer questions

146. (1) A police officer accused of a disciplinary offence must answer any questions in relation to the offence put to the officer by any person authorised to inquire into or investigate the circumstances of the offence.
- (2) Notwithstanding subsection (1) a police officer must be informed of the privilege against self-incrimination and may refuse to answer a question if the answer may tend to prove that the police officer has committed a criminal offence.
- (3) Any information, statement or responses made by the accused police officer during the disciplinary inquiry may not be used in court as evidence for any criminal or civil proceedings relating to that alleged offence.

Recovery of fines from pay

147. (1) Any fine or order for compensation to the police force imposed on a police officer may be recovered by withholding money periodically from the police officer's pay provided that the amount withheld from each pay period does not exceed one third of the total owing to the police officer for the period.
- (2) If it is necessary to recover two or more fines or compensation payments from a police officer by withholding pay, the fines or compensation are to be paid consecutively in the order in which they were imposed.
- (3) Any police officer having pay withheld pursuant to this section may apply to the Commissioner on the grounds of hardship or special circumstances, to have the periodic payment suspended or reduced.
- (4) The Commissioner may consider an application under subsection (3) and make an order that the periodic payment amount be reduced or suspended for a period not exceeding 3 months.

Compensation for property loss or damage

148. Any police officer who wilfully, maliciously, negligently or carelessly loses or damages any record, document, equipment or police property issued or entrusted to

the police officer may, in addition to any other penalty imposed, be ordered to pay compensation for the loss or damage.

No pay whilst absent from duty

149. (1) No pay shall accrue to a police officer who is absent from duty without authorised leave for the period of unauthorised leave, whether or not any other disciplinary action is taken in relation to the absence.

(2) Any pay or entitlements received by a police officer for the period of unauthorised leave must be repaid and may be deducted from a later pay period.

(3) The Commissioner may authorise payment of up to two thirds of the pay on the grounds of extenuating circumstances, compassion or hardship.

No pay whilst serving a sentence of imprisonment.

150. (1) No pay shall accrue to a police officer who has been sentenced to a term of imprisonment by a court for the duration of the court imposed sentence.

(2) For the purposes of this section, a sentence of imprisonment includes suspended sentence.

(3) The Commissioner may authorise payment of up to two thirds of the pay on the grounds of extenuating circumstances, compassion or hardship.

Public Financial Management Act 2013

PART 12 — MISCONDUCT IN OFFICE AND SURCHARGES

Misconduct in Office

84. (1) An accountable, accounting or public officer who, in return for any personal material or immaterial gain, or for that of any other person –

(a) fails to collect any monies owing to the Government, the collection of which he is or was responsible;

(b) is responsible for any improper payment of public monies or for any payment of public monies which is not duly vouched;

(c) is negligent in relation to, or responsible for any deficiency in, the destruction, damage or loss of any public monies, stamps, securities, public stores or other public property; or

(d) is responsible for any financial loss to the Government through failure to obey any order or instructions properly given to him,

is guilty of misconduct in office.

(2) An accountable, accounting or public officer who, in return for any personal material or immaterial gain, or for that of any other person –

(a) fails to carry out a duty set out in section 17;

(b) uses a government bank account or uses, keeps or pays public money contrary to section 39, 40 or 41;

(c) conducts a Government procurement activity contrary to section 72 or 73 or fails to comply with the prescribed procedures for Government procurement contrary to section 74; or

(d) fails to carry out his duties in respect of public resources or to comply with the prescribed procedures contrary to section 75 or to pursue recovery of a Government debt under section 79;

is guilty of misconduct in office.

Sanctions for misconduct in office

85. (1) An accountable, accounting or public officer who is guilty of misconduct in office under section 84 is deemed to be guilty of an act of misconduct under Part III of the Leadership Code (Further Provisions) Act 1999 and Parts IV (Complaints and Investigation) and V (Proceedings in the High Court) of that Act apply in respect of such misconduct.

(2) A public officer who is guilty of misconduct in office under section 84 is, in addition to any penalty to which he may be subject by virtue of subsection (1), subject to disciplinary sanctions under the Public Service Regulations 1998.

227. Note: For §2, 5-21, 44-54, 72-75, and 86-88 of the *Public Financial Management Act*, see Article 9.

(b) Observations on the implementation of the article

228. While laws and regulations exist, there is not much evidence of their enforcement. Violations of the Leadership Code may result in monetary penalties.

229. During the country visit Solomon Islands reported that it was in the process of consolidating public service regulations and codifying the code of conduct and disciplinary process under the Public Service Bill.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

230. Government procurement accounts for around 14 percent of the Government of Solomon Islands' expenditure, and five percent of Solomon Islands' gross domestic product.

231. Part 9 of the Public Financial Management Act provides for procurement and use of public resources. The Minister of Finance is required to prepare rules and regulations for procurement that are consistent with the principles of this Act and internationally accepted best practices.

232. Ministries must follow the Chapter 7 Supply Chain Management of the Financial Instructions when buying goods and services.

233. The Ministry of Finance's website contains standard forms for procurement. The website also provides information on current and closed procurements. However, during the country visit Solomon Islands noted that the website was not up-to-date, and there were no regular reports on procurement processes.

234. During the country visit Solomon Islands further informed that most advertisements for tenders happened in the newspapers. There were no specific outreach activities, and the participation of companies in provinces was still minimal.

235. Solomon Islands further reported that a bidding company violated procurement rules of regulations, the Ministry of Finance could blacklist the company which would not be able to bid until cleared by the Ministry of Finance on recommendations by the Internal Audit. At the time of the country visit, there were below 20 companies in the blacklist.

236. The Government has produced a guide, the SIG Procurement and Contract Administration Manual 2013:

Ministries involved in buying goods and services must act in accordance with the five central principles that guide the use of public resources:

- Value for money – buy good quality and at the lowest price;
- Competitive purchasing – let the whole market compete to supply Government;
- Efficient, effective and ethical use of resources – eliminate waste and make only the proper use of Government resources;
- Accountability and transparency – make it clear what has been done and why it has been done;
- Financial sustainability – the underlying fiscal strategy must be sustainable so that it can be continued into the foreseeable future without substantial amendment, particularly without sharp changes in tax rates or spending required to prevent a substantial deterioration in fiscal position.

237. Procurements of more than \$100,000 and up to \$500,000 are required to be approved by a Ministerial Tender Board. Procurements in excess of \$500,000 must be approved by the Central Tender Board. Competitive tendering is required for all procurement exceeding SBD\$100,000. Those below SBD\$100,000 are decided by the Permanent Secretary of the pertinent Ministry. According to the National Anti-Corruption Strategy, the public procurement system of the Solomon Islands is one of the area's most vulnerable to corruption. The NACS notes that in 2015, SBD10 million from the Australian government allocated for Ministry of Health projects was used on fake contracts and companies, paying for material that was either overpriced or never delivered.

238. The NACS also points out that currently, there is no law against fixing prices on public tenders and that sole-source procurements make up 10 percent of total procurement. Additionally, State Owned Enterprises do not have to follow many of the present rules.

239. The Strategy calls for new procurement legislation to be drafted and submitted to Parliament by 2019.

[Public Financial Management Act 2013](#)

PART 9 — PROCUREMENT AND USE OF PUBLIC RESOURCES

Regulation, planning, prioritising and methods of procurement

72. (1) The Minister of Finance shall prepare rules and regulations for procurement that are consistent with the principles of this Act and internationally accepted best practices.

(2) Accountable officers shall plan and prioritise their procurement activities with a view to achieving maximum value for public expenditure so that procurement transactions are carried out within the Appropriation Act and subsidiary legislation, given the scarcity of financial resources, other limitations and at the most favourable time.

(3) Accountable officers shall comply with the prescribed procurement planning,

tendering and contracting processes.

Public procurement responsibilities

73. (1) Every accountable and accounting officer shall conduct Government procurement activities in a way that ensures prudent spending and use of public resources and in accordance with the prescribed procedures.

(2) No accountable or accounting officer shall conduct any Government procurement activity so as to –

- (a) undermine competitive purchasing or do anything else to undermine such purchasing;
- (b) give unfair advantage to any bidder;
- (c) falsify a quotation to bidders; or
- (d) apportion a procurement transaction into parts to avoid the procurement rules.

Compliance with prescribed procedures

74. Every accountable and accounting officer shall comply with the prescribed procedures for Government procurement activities, including procedures respecting

- (a) publication of procurement notices;
- (b) invitations to bid, bid submissions, minimum bidding periods and standard bidding documents;
- (c) bid opening and bid evaluation; and
- (d) publication of the bid award.

Use of public resources

75. Every accountable and accounting officer shall –

- (a) manage, use and account for all public resources under his custody with a high degree of care and in the prescribed manner;
- (b) record all public stores and public property under his custody in proper books of accounts and maintain an Asset Register in the prescribed format; and
- (c) comply with the prescribed procedures related to the handling of public resources in terms of requisition, ordering, accounting, custody and disposal.

240. After the *Public Financial Management Act 2013* became law, Finance Circular 08-2013 was issued with Financial Instructions.¹⁴ Chapter 7 discusses supply chain management and the procurement system.

Chapter 7 Financial Instructions

4. Ministerial Financial Instructions

¹⁴ http://www.mof.gov.sb/ReportsNew/FinancialInstructions/interim_financial_instructions_2014.aspx

M7 1 Observation of Financial Instructions

1.1 All Officers must observe these Financial Instructions and apply them to achieve the central principles whenever they are acting on behalf of SIG. Any instances of failing to observe any instruction will be dealt with in accordance with the “Non-compliance, Misconduct and Penalties” section of Chapter 1.

M7 2 Members of Parliament

2.1 Members of Parliament may not participate in any appraisal of a tender or quotation or the awarding of any procurement contract.

5. Permanent Secretary Financial Instructions - Background

These FIs relate to the management and responsibilities (accountable and accounting matters) of the supply chain management process in terms of the Ministerial instruction. SIG must get the best quality and at the lowest price when it buys goods and services. It is important when spending larger amounts of public money that SIG applies a higher level of control and supervision. These FIs protect public money by making sure that good controls are in place when SIG is spending, especially larger amounts; and that SIG can show the public that it is buying the best quality at the lowest price and promoting the central principles. [Note: reference to “lowest price” is not intended to indicate that the cheapest price should be accepted in every instance, but must be read in conjunction with “best quality”].

For the acquisition of all goods and/or services by tender these FIs must be read in conjunction with the “Procurement Manual” and “Contract Administration Manual.”

P7 2 Types of purchasing/buying

2.1 The estimated cost of the goods and or services will decide what type of purchasing is involved. There are four main types of purchasing. Purchases that:

- (a) Do not need a quotation or tender to support the decision to buy;
- (b) Need a quotation to support the decision to buy;
- (c) Need Ministerial Tender Board approval to support the decision to buy; and
- (d) Need Central Tender Board approval to support the decision to buy.

P7 7 When to call or not call for quotations and tenders

7.1 The following circumstances that do not require a competitive quotation or tender to support the purchase; however, other documentation will be required:

- (a) PRs for up to \$2,000;
- (b) Buying domestic transport and hotel accommodation;
- (c) Buying market goods and perishable food rations;
- (d) There is a Preferred Supplier Arrangement entered into by a Ministry;
- (e) There is a National Preferred Supplier Arrangement entered into by the Ministry responsible for Finance and Treasury; or
- (f) In a declared Emergency, subject to the limits and requirements of the declaration (refer Chapter 1 for the definition of an emergency).

P7 8 Goods and/or services specification

8.1 Differentiation on brand discourages competition and limits attainment of SIG

purchasing principles. A specification must be based on relevant purpose characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications should be avoided. If on a rare occasion it is essential to quote a brand name or catalogue number of a particular manufacturer to clarify a specification, the words “or equivalent” must be added after such reference. The purchase specification must permit the acceptance of offers which have similar characteristics and which provide performance requirements at least equivalent to those specified.

P7 9 Purchasing limits

9.1 The Accountable Officer must comply with these purchasing (or procurement) procedures and limitations. Deliberately dividing goods and/or services into components to avoid monetary limits is misconduct (refer Chapter 1):

Purchasing Limits	Procurement Procedure
1. Up to \$10,000	Accountable Officer must approve the Sole Supplier based on previous experience. Verbal quotation or price confirmation must be obtained prior to completion of a requisition and recorded. Price confirmation for preferred supplier arrangements can be obtained from a current price list provided by the supplier.
2. More than \$10,000 up to \$20,000	Accountable Officer must approve the Supplier based on three Verbal Quotations . Price confirmation for preferred supplier arrangements can be obtained from a current price list provided by the supplier
3. More than \$20,000 up to \$100,000	Accountable Officer must approve the Supplier based on three Written Quotations . Price confirmation for preferred supplier arrangements can be obtained from a current price list provided by the supplier
4. More than \$100,000 up to \$500,000	Ministerial Tender Board must approve the Supplier based on competitive Tender.
5. More than \$500,000	Central Tender Board must approve the Supplier based on competitive Tender.

P7 10 Requisition documentation and other procurement instructions

10.1 The PR must be accompanied by sufficient documentation as proof that quotation and tender procedures have been applied, including copies of written quotations, the tender award and a copy of the Tender Evaluation Committee recommendations.

10.2 The Accountable Officer may authorise any PR for up to \$2,000. Suppliers must be chosen based on previous experience that they will be the likely lowest cost supplier. The reason for selecting the preferred supplier needs to be noted on the PR.

10.3 Where there is a genuine market place limit on the number of suppliers or specialised equipment the Accountable Officer may approve a purchase based on less than three quotations, but there must be at least one quotation.

10.4 Where a purchase is approved based on less than three quotations the Accountable Officer must record the reasons on the PR. The AO must also advise the PSF in writing of the type of good and/or services for which there is a supplier limitation and the PSF will consider including that category within National preferred supplier arrangements or recommending Ministry preferred supplier arrangements.

P7 12 Obtaining Verbal quotations

12.1 Verbal Quotations can be collected in person or by telephone. Verbal Quotations must be recorded on a Verbal Quotation form. This form must show:

- (a) The date the Verbal Quotation was received;
- (b) The name and telephone number of the Supplier employee who provided the Verbal Quotation;
- (c) The description of goods and/or services to be supplied;
- (d) The price of supply; (e) Any discounts offered to SIG;
- (f) Whether the Supplier accepts Local Purchase Orders for the release of goods or the provision of services; and
- (g) The name and signature of the Officer who collected the Verbal Quotations.

12.2 The original Verbal Quotation form must be attached to the original PR before it is submitted to the Accountable Officer for final authorisation.

12.3 The Accountable officer will select the preferred Supplier if available.

12.4 No order is to be communicated in any way to the Preferred Supplier until after the Local Purchase Order or Payment Voucher has been approved.

P7 13 Getting Written quotations

13.1 Written Quotations must show:

- (a) The date the Written Quotation was given;
- (b) A detailed description of the goods and/or services to be supplied;
- (c) The price of supply;
- (d) Any discounts offered to SIG; and
- (e) The signature of the supplier.

13.2 The original Written Quotations must be attached to the original PR before final authorisation.

13.3 The Accountable officer will select the Supplier.

13.4 No order must be made to the selected Supplier until after the Local Purchase Order has been approved.

Tenders

P7 19 Establishing a Tender Board

19.1 The following tender boards must be established:

- (a) A Ministerial Tender Board in each Ministry with a membership as set out in P7 20, for the purpose of managing the tender process of Ministry specific goods and/or services; and
- (b) A Central Tender Board in the Ministry of Finance with a membership as set out in P7 21.

19.2 Tender Board must direct the Board Chairman to formally appoint a Board Secretary. The letter of appointment given to the Board Secretary by the Board Chairman must instruct the Board Secretary to:

- (a) Maintain all documents and records used to support Board decisions; and
- (b) Take detailed minutes of the proceedings of all Tender Board meetings.

19.3 The full Tender Board must be present to open tenders

19.4 The Tender Board may direct any Public Officer to help it to make a decision

19.5 Any Public Officer who is directed to help a Tender Board direction must offer all skills and time needed, within reason and considering SIG needs.

P7 20 Membership and function of Ministerial Tender Boards

20.1 The Ministerial Tender Board will consist of the AO (Chair) and two other senior public officers appointed by the Chair.

20.2 The Ministerial Tender Board must ensure that for all competitive tenders it must: (a) Advertise the tender;

(b) Issue the tender documents, which must specify the weighting to be given to price, quality and equity for tender appraisal;

(c) Ensure all tenders are submitted in a sealed envelope;

(d) Ensure all tenders are placed unopened in a locked tender box

(e) Ensure the Board Secretary open all tenders immediately after tender closing time and reads out the names and amounts of each tender received;

(f) Register all tenders submitted to it; (g) Ensure when a Tender Board instructs that a 2 envelope system be used for a particular tender, all envelopes containing the price submission must remain sealed and retained in the locked tender box until such time as the Tender Evaluation Committee concludes the evaluation of the technical submission. The unopened price submissions of tenders that do not comply with the technical requirements must remain sealed and retained in the tender file.

(h) Consider Tender Evaluation Committee recommendations

(i) Award the tender to the successful supplier

(j) Disclose the details of the successful tender, including name and amount, are advertised and displayed on the SIG website, together with a note stating the locations and times the tender evaluation report can be inspected; and

(k) Provide the PSF with a copy of the tender evaluation report.

20.3 If the Ministerial Tender Board decides there will be a restrictive tender for the purchase, it must also:

(a) Record all reasons for making a restricted tender in the Ministry Tender Board minutes;

(b) Ensure that at least three suppliers are invited to tender;

(c) Identify all suppliers who will be invited to provide tenders;

(d) Open all tenders;

(e) Keep full records of all original tenders submitted to it;

(f) Consider Tender Evaluation Committee recommendations;

(g) Award the purchase to the successful Supplier;

(h) Disclose the details of the successful tender, including name and amount, are advertised and displayed on the SIG website, together with a note stating the

locations and times the tender evaluation report can be inspected; and

(i) Provide the PSF with a copy of the tender evaluation report.

20.4 The Board Secretary will record the details of all tenders immediately after tender closing time.

20.5 No Public Officer will reveal the contents of any unopened tender, or allow it to be seen by anyone else before it is registered and the Board sees it.

20.6 Tender Evaluation Committee recommendations must contain the name and amount of each tender received.

P7 21 Membership and function of Central Tender Board

21.1 The Central Tender Board will consist of the PSF (Chair) and three other senior public officers appointed by the Chair.

21.2 The Central Tender Board is responsible for managing the tender process of goods and/or services used by more than one Ministry.

21.3 If the Central Tender Board decides there will be a competitive tender for the purchase, it must:

- (a) Advertise the tender;
- (b) Issue the tender documents, which must specify the weighting to be given to price, quality and equity for tender appraisal;
- (c) Ensure all tenders are submitted in a sealed envelope;
- (d) Receive the tenders;
- (e) Open all tenders immediately after tender closing time;
- (f) Keep full records of all original tender documents submitted to it
- (g) Ensure that when a Tender Board instructs that a 2 envelope system be used for a particular tender all envelopes containing the price submission must remain sealed and retained in the locked tender box until such time as the Tender Evaluation Committee concludes the evaluation of the technical submission. The unopened price submissions of tenders that do not comply with the technical requirements must remain sealed and retained in the tender file;
- (h) Consider Tender Evaluation Committee recommendations
- (i) Award the tender to the successful Supplier; and
- (j) Disclose the details of the successful tender, including name and amount, are advertised and displayed on the MoFT website.

21.4 When the Central Tender Board decides there will be a restrictive tender for the purchase, it must:

- (a) Record all reasons for making a restricted tender in the Central Tender Board minutes;
- (b) Ensure that at least three Suppliers are invited to bid;
- (c) Identify all Suppliers who will be invited to give written bids under the restricted tender;
- (d) Issue the invitations to bid;
- (e) Open all tender bids received immediately after tender closure;
- (f) Keep full records of all original bids submitted to it;
- (g) Consider Tender Evaluation Committee recommendations;
- (h) Award the purchase to the successful supplier; and

(i) Disclose the details of the successful tender, including name and amount, are advertised and displayed on the MoFT website.

21.5 The Central Tender Board will receive all tenders or bids in a locked box in the Ministry of Finance.

21.6 Tenders will be opened in front of a meeting of all members of the Tender Board immediately after tender closing time.

21.7 Any Central Tender Board Member may inspect the seal on the tender envelopes prior to their being opened.

21.8 The Board Secretary will date and number each tender as it is opened, read the name and amount out to the Board and list the order of opening.

21.9 The tender opening list will show:

- (a) Number of the tender;
- (b) Name of tenderer;
- (c) Amount of tender; and
- (d) Any special conditions of bid.

21.10 The tender opening list will be signed by the Tender Board members.

21.11 The Tender Board list will be recorded in the Board minutes.

21.12 Tender Evaluation Committee recommendations must contain the name and amount of each tender received.

(b) Observations on the implementation of the article

241. In Solomon Islands, the procurement system is decentralised. No national procurement legislation exists, but the Public Financial Management Act 2013 (PFMA) calls for the Minister of Finance to “prepare rules and regulations for procurement,” which were promulgated through Chapter 7 of Finance Circular 08-2013. The Ministry of Finance’s website contains standard forms for procurement. The Government produced a guide in 2013 entitled the SIG Procurement and Contract Administration Manual. At present, there is no law against fixing prices on public tenders and sole-source procurements make up 10 per cent of total procurement. Additionally, State Owned Enterprises do not have to follow many of the present rules. There is also no system of domestic review and appeal of procurement decisions. The NACS calls for new procurement legislation to be drafted and submitted to Parliament by 2019.

242. Procurements of more than SI\$100,000 (approximate equivalent USD12,000) and up to SI\$500,000 are required to be approved by a Ministerial Tender Board. Procurements in excess of SI\$500,000 must be approved by the Central Tender Board. Competitive tendering is required for all procurement exceeding SI\$100,000. Those below SI\$100,000 are decided by the Permanent Secretary of the relevant Ministry.

243. Solomon Islands is recommended to consider revisions to procurement legislation to address price-fixing and strengthen the competitive process, as well as extend its application to state Owned Enterprises. It is further recommended to strengthen the systems of public procurement, including through the public distribution of

information related to procurement procedures, invitations to tender and information on the awards of contracts, such as through e-procurement processes. Finally, Solomon Islands is recommended to establish, within public procurement systems, an effective system of domestic review and appeal, and provide legal recourse and remedies to address disputes over adherence to applicable rules and procedures.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

(a) Summary of information relevant to reviewing the implementation of the article

244. Section 102 of the Solomon Islands Constitution requires the Finance Minister to present estimates of revenue and expenditure each year in the form of an Appropriation Bill to the Parliament for approval. Appropriation bills are available for viewing on the website of the National Parliament.

245. The *Public Financial Management Act* outlines the budgeting process. The Ministry of Finance is responsible for the preparation, management and monitoring of the annual budget. Section 48 provides that subject to section 102(1) of the *Constitution*, the Minister must ensure the national budget for a financial year is brought before the National Parliament at least two months before the commencement of each financial year. The Minister must also provide before the National Parliament a statement for each head of expenditure, regarding the classes of outputs expected to be provided from that head during the year, and the performance criteria to be met in providing those outputs. During the country visit, Solomon Islands reported that there is currently not role for the public to comment on the annual budget before its submission to the Parliament.

246. In 2013, a reform implemented required that all Ministries have a Budget Implementation Committee. The role of each BIC was identifying the priority areas for their respective ministries to address, guided by the fiscal and economic outlook provided in the Budget Strategy.

247. In the 2015 budget adoption process, a Budget Coordination Committee was established to oversee all Ministries' Budgets, including Recurrent, Development and Budget Support. The BCC also met with Ministries to help understand their priorities for 2015. The BCC was responsible for supporting the Government in finalising the Budget, including providing advice on priorities. Additionally, the BCC was given the authority to seek additional information from Ministries on their bids and to interrogate costs of bids in both the Development and Recurrent budget.

248. Reports on the financial performance of the Solomon Islands Government are provided by way of media releases each month, providing information both for the month and year to date. The media release includes comments on how expenditure compares with Budgeted (planned) performance as well as what this means for meeting end of year financial targets. These media releases are available on the Ministry of Finance's website. Annual accounts are also available online.

Constitution

Authorisation of expenditure

102.(1) The Minister of Finance shall cause to be prepared and laid before Parliament before the commencement of each financial year estimates of the revenues and expenditure of the Government for that year, provided that in exceptional circumstances which shall be explained to Parliament the Minister may cause the estimates to be laid before Parliament not later than ninety days after the commencement of the financial year.

(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to supply those heads and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found that the sum appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no sum has been appropriated by that law, a supplementary estimate showing the sums required shall be included in a Supplementary Appropriation Bill for appropriation.

(4) If at the close of account for any financial year it is found that any moneys have been expended on any head in excess of the sum appropriated for that head by an Appropriation Act or for a purpose for which no money has been appropriated, the excess or the sum expended but not appropriated as the case may be shall be included in a statement of heads in excess which, together with the report of the Public Accounts Committee thereon, shall be presented to Parliament.

(5) Statutory expenditure shall not be voted on by Parliament but, without further authority of Parliament, shall be paid out of the Consolidated Fund by warrant under the hand of the Minister of Finance.

Authorisation of expenditure in advance of appropriation

103.(1) If the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, Parliament by resolution may

empower the Minister of Finance to authorise the issue of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the public services at a level not exceeding the level of these services in the previous financial year, until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

(2) Where in respect of any financial year the Minister is satisfied that an urgent and unforeseen need has arisen to authorise for any purpose issues from the Consolidated Fund for expenditure in excess of the sum appropriated for that purpose by an Appropriation Act, or for a purpose for which no sum has been so appropriated, he may, subject to the provisions of any law or regulations for the time being in force in that regard, authorise, with the prior approval of the Cabinet, such issues by warrant and shall include such amount in a Supplementary Appropriation Bill for appropriation at the meeting of Parliament next following the date on which the warrant was issued:

Provided that if there shall be no further meeting in the same financial year, the Bill may be deferred to any meeting held before the end of the following financial year.

(3) No expenditure shall be authorised or incurred under the preceding subsection unless Parliament has specified in advance of the expenditure the maximum amount of expenditure that may be incurred under that subsection.

Delay in Appropriation Act owing to dissolution

104. Where at any time Parliament has been dissolved before any provision or any sufficient provision is made under this Chapter of this Constitution for the carrying on of the government of Solomon Islands, the Minister of Finance may issue a warrant for the payment out of the Consolidated Fund of such sums as he may consider necessary for the continuance of the public services until the expiry of a period of three months commencing with the date on which Parliament first meets after that dissolution, but a statement of the sums so authorised shall, as soon as practicable, be laid before Parliament and the aggregate sums shall be included, under the appropriate heads, in the next Appropriation Bill.

Public Financial Management Act 2013

PART 6 — PREPARATION OF THE ANNUAL BUDGET

DIVISION 1 — THE BUDGETING PROCESS AND THE ESTIMATES

Institutional arrangements

44. (1) The Ministry of Finance shall be responsible for the preparation, management and monitoring of the annual budget.

(2) The Ministry of Finance shall manage the budget process and procedures in accordance with this Act and the subsidiary legislation.

Strategy reports prior to budget

45. (1) The Minister shall, with the approval of Cabinet, table in the National Parliament and officially publish at the following times the following information –

(a) at least five months before the start of the financial year, the prescribed

information outlining the Government's budget strategy; and

(b) at least three months before the start of the financial year, such information relating to its fiscal and debt management strategies, and as may be prescribed for each of these documents.

(2) At least three months before the start of the financial year, the Minister for Development Planning and Aid Coordination shall table in the National Parliament and officially publish the prescribed details with respect to the Government's medium term development plan.

Budget estimates to be prepared by accountable officers

46. (1) Before the start of each financial year, every accountable and accounting officer shall prepare for the Secretary budget estimates of the resources required by their Government agency (including for any special funds and targeted balances if any) and estimates of revenue received by their Ministry, for –

(a) the financial year; and

(b) up to the following three financial years.

(2) The accountable officer shall provide the budget estimates according to the prescribed procedures and time frames, in the prescribed manner and including the prescribed information.

Contents of the Government budget

47. The national budget shall be prepared in the prescribed format and include the following –

(a) the Financial Policy Objectives and Strategies Statement;

(b) estimates (by heads) of expenditure and of revenues for the financial year and up to the following three financial years;

(c) an allocation of the estimates among the sub-heads and programs for each head for the financial year and up to the following three financial years; and

(d) any other prescribed information.

Annual budget presentation

48. (1) Subject to section 102(1) of the Constitution, the Minister shall cause the national budget for a financial year to be laid before the National Parliament at least two months before the commencement of each financial year.

(2) The Minister shall also lay before the National Parliament a statement, for each head of expenditure, of the classes of outputs expected to be provided from that head during the year and the performance criteria to be met in providing those outputs.

(3) The national budget, together with the information referred to in subsection (2) shall be included in the Appropriation Bill for the financial year.

DIVISION 2 —BUDGETARY APPROPRIATIONS

Annual Appropriation Bills

49. (1) In this section, "statutory expenditures" means expenditures charged by an Act on the Consolidated Fund, but does not include monies, the expenditure of which is debated by the National Parliament and appropriated by an Appropriation Act.

(2) The Minister shall introduce the Appropriation Bill for the financial year in the National Parliament, to provide for the issue from the Consolidated Fund of the sums necessary to meet Government expenditures, not including statutory expenditures, and for the appropriation of those sums to the purposes specified in the Bill.

Advance appropriation set off against Appropriation Act

50. Any sum authorised, pursuant to a resolution by the National Parliament under section 103(1) of the Constitution, for carrying on the services of the Government in advance of the Appropriation Act for a financial year shall be set off against the amounts provided for in the Appropriation Act upon its coining into operation.

Supplementary Appropriations

51. Pursuant to Section 102 (3) of the Constitution, the Minister with the prior approval of Cabinet, may seek supplementary appropriations from Parliament (in addition to the Annual Appropriation Act) for –

- (a) expenditures in excess of the sum appropriated for a purpose by an Appropriation Act; or
- (b) a purpose for which no sum has been appropriated, if the Minister is satisfied that an urgent and unforeseen need has arisen and that issues must be authorised from the Consolidated Fund to meet that need.

Budget review reports

52. (1) The Minister shall table in the National Parliament and officially publish the following national budget review reports at the following times –

- (a) not later than seven months after the start of the financial year, a review of the budget's execution for the first six months of the financial year; and
- (b) within four months after the end of the financial year, a report giving an overview of the budget's execution for the whole financial year.

(2) The budget review reports shall be based on the same reporting formats as the annual budget and provide the prescribed details, contents, scope and coverage.

(3) The Minister shall identify and explain in Cabinet and the National Parliament any departure from the standards referred to in subsection (2).

DIVISION 3 —VARIATION OF APPROPRIATED AMOUNTS

Meaning of "virements"

53. In this Division, "virements" means the simultaneous reduction in one subhead of a Government agency's budget and a corresponding increase in another subhead of the same agency's budget.

Virements within sub-heads or programs

54. (1) The Minister may, on application by an accountable officer of a Government agency, approve a virement within a head of expenditure of the agency's budget.

(2) The Minister may, if satisfied that it is in the public interest to do so, determine in writing that an amount allocated to a sub-head or program for a head of expenditure included in an Appropriation Act be reallocated –

(a) to another sub-head or program for that head; or

(b) to a new sub-head or program for that head.

(3) The determination shall not –

(a) Result in a change to the total amount appropriated for the relevant head of expenditure by the Appropriation and any other Supplementary Acts; and

(b) Extend any time limit that applies to appropriations under the Appropriation and any other Supplementary Acts.

(4) The Minister shall not approve virements between personal emoluments, the development budget and other charges within the head of a Government agency's budget.

(5) The Minister shall not approve virements between development expenditure budget provisions within the development budget of any Government agency.

(6) The Minister shall table in the National Parliament every determination made under this section and officially publish it within 30 days after it is made.

249. Part 10 of the *Public Financial Management Act* requires every accountable officer for a Government agency shall submit monthly financial reports to the Accountant-General as soon as practicable but no later than the end of the period specified in, or prescribed by the *Public Financial Management Act*. Section 77 of the Act requires the Accountant-General, within a period of six months after the end of each financial year, to prepare and transmit to the Minister and the Auditor-General annual financial statements. Further, every accountable officer for a Government agency shall, within a period of four months after the end of each financial year, prepare, sign and transmit to the Accountant-General and the Auditor-General in respect of the past financial year and in respect of the heads, revenues and monies for which the accountable officer is responsible, annual financial statements.

[Public Financial Management Act 2013](#)

Interpretation

2. In this Act, unless the context otherwise requires –

"accountable officer" means –

(a) the Permanent Secretary of a Ministry or a person appointed to act for the Permanent Secretary; or

(b) a person in charge of the day to day operations of a Government agency;

"Accountant General" means the officer appointed under section 10;

"accounting officer" means –

(a) a public officer, including a financial controller, who is charged under any Act or by virtue of his appointment with –

- (i) rendering an account for any public monies;
- (ii) collecting, receiving or disbursing public or trust money;
- (iii) the purchase, receipt, custody or disposal of, or accounting for, any public resources;

(b) a person appointed or engaged by a Government agency under contract who is charged with a responsibility referred to in paragraph (a);

"Government agency" means –

- (a) a Government ministry;
- (b) an office or body established by the Constitution, where the holders of the office or members of the body receive their remuneration from the Consolidated Fund; and
- (c) a body or manager authorised to manage a special fund;

PART 10 — PREPARATION OF PUBLIC ACCOUNTS

Monthly financial reports

76. (1) Every accountable officer for a Government agency shall submit monthly financial reports to the Accountant-General as soon as practicable but no later than the end of the period specified in, or prescribed by this Act.

(2) The Accountant-General shall prepare monthly consolidated reports based on the financial reports referred to in subsection (1) and submit them to the Secretary, including such additional information as the Secretary directs.

(3) The Accountant-General shall submit his monthly consolidated expenditure reports in such form as may be specified by the Minister.

Submission of annual Accounts and financial reports

77. (1) The Accountant-General shall, within a period of six months after the end of each financial year, or such longer period as the National Parliament may by resolution appoint, prepare and transmit to the Minister and the Auditor-General annual financial statements according to standards set by the Minister and as may be prescribed, including:

- (a) a balance sheet showing the assets and liabilities of the Government;
- (b) a statement of the source and application of funds for the Consolidated Fund showing the revenues, expenditures and financing of the fund for the financial year;
- (c) a statement of revenue and expenditure, being a summary of all the statements signed by accountable officers under subsection (2)(a) and (2)(c);
- (d) a statement of the amounts outstanding at the end of the financial year in respect of the public debt;

(e) a statement of the amounts guaranteed by the Government at the end of the financial year in respect of bank overdrafts, loans, public loan issues and other contingent liabilities;

(f) a statement of the amount outstanding at the end of the financial year in respect of loans issued by the Government;

(g) a statement of arrears of revenue for each revenue head, being a summary of the statements of arrears of revenue signed by accountable officers under subsection (2)(d);

(h) a statement of commitments outstanding for supply of goods and services for each head at the end of the financial year, being a summary of the amount included for such commitments in the statement signed by accountable officers under subsection (2)(b);

(i) a statement of public stores and other assets for each head, being a summary of the Statement of assets signed by the accountable officers under subsection (2)(e); and

(j) such other statements and in such form as the Minister may from time to time require.

(2) Every accountable officer for a Government agency shall, within a period of four months after the end of each financial year, prepare, sign and transmit to the Accountant-General and the Auditor-General in respect of the past financial year and in respect of the heads, revenues and monies for which the accountable officer is responsible, annual financial statements according to standards set by the Minister and as may be prescribed, including:

(a) an appropriation account, showing the services for which the monies expended were appropriated for each head, the sums actually expended on each service, and the state of each head compared with the amount appropriated for that head by the National Parliament;

(b) a statement, in the prescribed form, containing the amount of commitments outstanding for the supply of goods and services at the end of the financial year and such other information as the Minister may require;

(c) a statement of revenues received, in the prescribed form, showing the amount contained in the estimates of revenue for each source of revenue and the amount actually collected, and containing an explanation, for any variation, between the revenues actually collected and the amount estimated;

(d) a statement of arrears of revenue showing the amount outstanding at the end of the financial year for each source of revenue and containing such information, in the prescribed form, or a nil return if appropriate;

(e) a statement of assets containing details and values of all unallocated public stores under the accountable officer's control at the end of the financial year together with the details and values of such other classes of assets under the accountable officer's control as are prescribed;

(f) a statement of performance in providing each class of outputs provided during the year, being a statement that –

(i) compares that performance with the forecast of the performance

contained in the Estimates laid before the National Parliament under subsection (1)(b); and

(ii) gives particulars of the extent to which the performance criteria specified in that Estimates in relation to the Provision of those outputs were satisfied.

(3) Every accountable and accounting officer administering a fund or balances established or deemed to have been established under Part 5 or under section 100 of the Constitution, and any officer administering any agency, trust or other fund or account not provided for in this section, shall prepare, sign and transmit to the Accountant-General and Auditor-General an account of that agency, fund or account in the prescribed form.

(4) All accounts submitted under this section shall –

(a) be prepared in accordance with standards set by the Minister; and

(b) state the bases of accounting used in their preparation and identify any significant departures from them and the reason for such departures.

250. The *Public Financial Management Act* provides for a system of accounting and audit. The *State Owned Enterprises Act* and *Local Government Act* also provide for a system of accounting and audit.

[Public Financial Management Act 2013](#)

PART 2 — PURPOSE AND PRINCIPLES OF THE ACT

Purpose of the Act

5. The purpose of this Act is to promote sound public financial management, including through the administration of the Consolidated Fund and other public resources, according to budgeted priorities, monitoring and reporting and to ensure Government accountability to Parliament in respect thereof.

Principles of the Act

6. In achieving the purpose in Section 5, the following principles apply -

(a) the Minister shall ensure that the use of public resources contributes to the ongoing economic prosperity and welfare of the people of the Solomon Islands; and

(b) accountable and accounting officers shall –

(i) be prudent in the use of public resources to ensure sustainability and stability for the benefit of future generations;

(ii) be transparent in making decisions about allocating and using public resources; and

(iii) be accountable to the National Parliament and the people of Solomon Islands for their economic, fiscal and financial management decisions and their performance on behalf of the Government.

PART 3 — ROLES AND RESPONSIBILITIES OF THE MINISTER AND ACCOUNTABLE AND ACCOUNTING OFFICERS IN THE MANAGEMENT OF PUBLIC FINANCE

Responsibilities of the Minister

7. The Minister shall –

- (a) promote sound fiscal and macroeconomic policies by developing and implementing policy frameworks, supervising and monitoring Government finances and coordinating inter-governmental financial and fiscal resources;
- (b) ensure appropriate financial management and review of proposals with fiscal and economic implications prior to their consideration by the Cabinet;
- (c) establish standards of good governance and define the roles of key stakeholders;
- (d) establish internal control mechanisms that accord with the principles referred to in section 6(b); and
- (e) provide a full account of the finances of the Government to the Cabinet and the National Parliament.

Exercise of Minister's powers and functions

8. The Minister shall exercise the powers and functions given to him under this Act, including the power to make regulations under section 82, so as to ensure the effective application and enforcement of the Act.

Responsibilities of the Secretary

9. (1) The Secretary is responsible for supervision of the Ministry as provided in section 40 of the Constitution and shall support the Minister in meeting his responsibilities to the Government under section 7.
- (2) The Secretary shall promptly apprise the Minister of any defect in the Act or subsidiary legislation which might result in a diminution of control over the public resources of the Government.
- (3) The Secretary shall exercise his powers and functions under this Act to ensure its effective application and enforcement.

Establishment of Office and Appointment of Accountant General

10. There shall be established within the Ministry of Finance the Establishment Office of the Accountant General, to be directed by the Accountant-General, who shall be a professionally qualified accountant appointed by the Public Service Commission in consultation with the Secretary.

Responsibilities of Accountant General

11. (1) The Accountant-General shall support the Secretary in meeting his responsibilities under section 9 and is responsible for the use, custody and safety of public resources and the compilation and management of the public accounts.

(2) In addition, the Accountant General shall –

- (a) manage, assess and recommend improvements to systems and processes related to public financial management within the Government;
- (b) advise the Minister on the basis of the accounting to be adopted by the Government and the classification system to be used and ensure that –
 - (i) a proper system of accounting is established and operational; and
 - (ii) appropriate systems of control are in place to ensure that all money received by and paid to the Government is promptly and properly brought to account in the prescribed manner; and
- (c) take necessary measures to prevent or reduce the risk of fraud, embezzlement, abuse or mismanagement of the public resources by ensuring that appropriate and prescribed systems of control are in place

Responsibilities of Accountable Officers

12. Accountable officers are responsible for the agency head in respect of which they are appointed, for the proper management and control of expenditures and for all revenues and other public resources received, held or disposed of by that agency, in accordance with the requirements of this Act and the subsidiary legislation.

Responsibilities of Accounting Officers

13. Accounting officers, appointed by the Public Service Commission in consultation with the Accountant-General, are responsible to their accountable officers and the Accountant-General for carrying out the duties assigned to them under this Act and the subsidiary legislation in respect of the custody and handling of, and accounting for public money, stores or property.

Responsibilities of Financial Controllers

14. Financial controllers are –

- (a) accounting officers appointed by the Public Service Commission in consultation with the Accountant-General;
- (b) responsible for a Government agency's financial management operations; and
- (c) accountable to their Permanent Secretaries and the Accountant-General for carrying out the duties assigned to them under this Act and the subsidiary legislation.

Delegation by Minister

15. (1) The Minister may, by signed notice, delegate any of his powers or functions under this Act to an accountable or accounting officer within a Government agency if the Minister is satisfied that the officer and the agency have the financial management capabilities, systems and processes needed to exercise the power or perform the function in accordance with this Act and the subsidiary legislation.

(2) Despite subsection (1), the Minister may not delegate any of the following powers or functions -

- (a) the revocation or amendment of a warrant issued by the Minister under this Act;
 - (b) the investment of public money or the exercise of powers under Part 8 respecting Government borrowing, on-lending or guarantees; or
 - (c) the making of regulations under this Act.
- (3) The Minister may, by signed notice, revoke or vary any delegation made under this section.
- (4) The Minister shall officially publish a notice of any delegation made under this section before the delegation takes effect.
- (5) The delegation of a power or function under this section does not absolve or relieve the Minister from his responsibility to exercise the power or function.

Delegation by accountable accounting or public officers

16. (1) Subject to this section, an accountable or accounting officer may, by signed notice, delegate any of his powers or functions under this Act or the subsidiary legislation to another accountable or accounting officer.
- (2) An accountable or accounting officer may not further delegate a power or function delegated to him by the Minister or by another accountable or accounting officer, unless authorised to do so by the subsidiary legislation.
- (3) Any directions given, or conditions included, in the delegation of a power or function are deemed to be included in any further delegation of that power or function.
- (4) The delegation of a power or function by an accountable or accounting officer under this section does not absolve or relieve that officer from his responsibility to ensure that proper capabilities, controls and oversight are in place to ensure the proper exercise of that power or function.

Duties of accountable and accounting officers

17. In exercising his powers and carrying out his duties under this Act, every accountable and accounting officer shall –
- (a) ensure that he understands, to the best of his ability, the content, intent and applicability of Chapter X of the Constitution, this Act and the subsidiary legislation in respect of all matters for which he is responsible; and
 - (b) enforce and comply with the provisions of this Act in respect of all matters for which he is responsible.

Duty to ensure proper conduct in office

18. (1) Every accountable and accounting officer, shall –
- (a) refrain from committing any offence under Part X of the Penal Code (corruption and the abuse of office) while carrying out his duties under this Act;
 - (b) carry out his duties under the Leadership Code in Chapter VIII of the Constitution;

(c) meet his responsibilities under the Leadership Code (Further Provisions) Act 1999, by –

(i) disclosing his financial affairs as required by Part II of that Act; and

(ii) avoiding any misconduct or conflict of interest under Part III of that Act; and

(d) avoid misconduct under the *Public Service Commission Regulations 1998*, as that term is defined in Regulation 44.

(2) An accountable or accounting officer who contravenes the Penal Code, the Leadership Code, the Leadership Code (Further Provisions) Act 1999 or the Public Service Commission Regulations is guilty of an offence or misconduct as provided in that law and is subject to the penalties imposed under it.

PART 4— INTERNAL AUDIT

Establishment of Internal Audit Office and appointment of Director

19. (1) The Minister may establish an Internal Audit Office with such roles and functions as are prescribed.

(2) The Public Service Commission, in consultation with the Minister, shall appoint a Director of Internal Audit to be the head of the Office and to carry out such duties as are prescribed.

(3) The Director of Internal Audit shall report to the Secretary.

(4) The Director of Internal Audit shall be responsible for assessing and advising accountable officers on proper financial controls that should be in operation and adhered to by all Government agencies.

(5) Upon instruction from the Minister or Secretary, the Director of Internal Audit may investigate and report on allegations of any misconduct, as defined under this Act and the subsidiary legislation.

Powers of Director of Internal Audit

20. (1) The Director of Internal Audit and any officer authorized by him shall in the performance of their duties have the right, at all reasonable times –

(a) to enter any Government premises;

(b) to access all records, documents and correspondence relating to financial and other transactions of the Government;

(c) to obtain such information and explanations as necessary concerning any matter under examination; and

(d) to require any accountable or accounting officer to produce all information concerning cash or other public resources under his control.

(2) If an irregularity arises or material loss of cash or any other public resource occurs, or is reasonably likely, the Director of Internal Audit shall immediately advise the responsible accountable officer and the Secretary, who shall take the necessary steps to avoid or recover the loss or investigate and report on the irregularity to the relevant authorities, as provided under this Act and the subsidiary

legislation.

(3) The Secretary may refer any matter mentioned in subsection (2) to the Auditor-General for audit advice and opinion.

Audit Committee

21. The Minister shall appoint an Audit Committee, which shall be responsible for advice and oversight of the Internal Audit functions for the Government, as may be prescribed.

251. State-Owned Enterprises (SOEs) are important institutions within the country, and currently there are nine SOEs under the schedule to the *State-Owned Enterprises Act (2007)*, including the following : Solomon Island Water Authority (SIWA), Solomon Island Ports Authority (SIPA), Solomon Island Electricity Authority (SIEA), Solomon Islands Broadcasting (SIBC), Solomon Islands Postal Corporation (SIPC), Investment Corporation of Solomon Islands (ICSI), and Solomon Island Printers Limited (SIPL) and Solomon Airlines (SAL).

State Owned Enterprises Act 2007

PART IV ACCOUNTABILITY

Statement of corporate objectives

13. (1) The board of every State Owned Enterprise shall deliver to the accountable Ministers a draft statement of corporate objectives not later than 1 month before the commencement of each financial year of the State Owned Enterprise.

(2) Each statement of corporate objectives shall specify for the group comprising the State Owned Enterprise and its subsidiaries (if any), in respect of that financial year and each of the immediately following 2 financial years, the following information:

- (a) the objectives of the group;
- (b) the nature and scope of the activities to be undertaken;
- (c) the ratio of consolidated shareholders' funds to total assets, and definitions of those terms;
- (d) the accounting policies;
- (e) the performance targets and other measures by which the performance of the group may be judged in relation to its objectives;
- (f) a statement of the principles adopted in determining the annual dividend together with an estimate of the amount or proportion of annual tax paid earnings (from both capital and revenue sources) that is intended to be distributed to the Crown;
- (g) the kind of information to be provided to the Accountable Ministers by the State Owned Enterprise during the course of those financial years, including the information to be included in each half-yearly report;
- (h) the procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation;

- (i) any activities for which the board seeks compensation from the Crown (whether or not the Crown has agreed to provide such compensation), including any direction pursuant to section 8 to provide a Community Service Obligation; and
 - (j) such other matters as are agreed by the Accountable Ministers and the board.
- (3) Each statement of corporate objectives shall also include the board's estimate of the current commercial value of the Crown's investment in the group and a statement of the manner in which that value was assessed.
- (4) An Accountable Minister may require that all or any of the information identified in section 13(2) be provided separately for the State Owned Enterprise and all or any subsidiaries, if any.
- (5) The board shall consider any comments on the draft statement of corporate objectives that are made to the board not later than 14 days before the commencement of the financial year by the Accountable Ministers, and shall deliver the completed statement of corporate objectives to the Accountable Ministers on or before the commencement of the financial year or such later date as the Accountable Ministers may determine.
- (6) A statement of corporate objectives for a State Owned Enterprise may be modified at any time by written notice from the board to the Accountable Ministers, so long as the board has first given written notice to the Accountable Ministers of the proposed modification and considered any comments on the proposed modification made by the Accountable Ministers within 1 month of the date on which that notice was given.

Annual report, accounts, and dividend

14. (1) Within 3 months after the end of each financial year of a State Owned Enterprise, the board of the State Owned Enterprise shall deliver to the Accountable Ministers: -

- (a) a report of the operations of the State Owned Enterprise and a separate report of each of its subsidiaries during that financial year; and
 - (b) audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show separately the financial position of the State Owned Enterprise and each of its subsidiaries and the financial results of their operations during that financial year; and
 - (c) the auditor's report on those financial statements.
- (2) Every report under section (1) (a) of this section shall: -
- (a) contain such information as is necessary to enable an inform assessment of the operations of the State Owned Enterprise and of the operations of each of its subsidiaries, including a comparison of the performance of the State Owned Enterprise and subsidiaries with the relevant statement of corporate objectives; and
 - (b) state the dividend payable to the Crown by the State Owned Enterprise or the financial year to which the report relates.

Half-yearly reports

15. (1) Within 2 months after the end of the first half of each financial year of a State Owned Enterprise, the board of the State Owned Enterprise shall deliver to the Accountable Ministers a report of its operations and the operations of each of its subsidiaries during that half-year.

(2) Each report required by this section shall include the information identified by the statement of corporate objectives.

Government assistance to be disclosed

16. Any report prepared pursuant to section 14 or section 15 shall disclose whether the State Owned Enterprise or any of its subsidiaries have received any government assistance, and if so quantify in financial terms the amount of that assistance. Where the government assistance is not directly quantifiable an estimate must be made.

Information to be laid before the National Parliament

17. (1) Within 5 days of receiving all the following documents in respect of a financial year of a State Owned Enterprise, the responsible Minister of State Owned Enterprise shall table the documents in the National Parliament: -

- (a) the statement of corporate objectives of the State Owned Enterprise relating to that year and the succeeding 2 years; and
- (b) the annual report and audited financial statements of the State Owned Enterprise for the preceding financial year; and
- (c) the auditor's report on those financial statements.

(2) Where a statement of corporate objectives for a State Owned Enterprise has been modified pursuant to section 13(6) of this Act, the Responsible Minister shall table in the National Parliament a copy of the notice making the modification within 5 days after the date on which the Minister receives the notice.

(3) Within 5 days after half-yearly report is given to a Responsible Minister pursuant to section 15 of this Act, the Responsible Minister shall table a copy of the report in the National Parliament.

(4) Where a director has been appointed to, reappointed to or retires from the board of a State Owned Enterprise, or any appointment is terminated, the Responsible Minister shall table in the National Parliament a notice to this effect within 5 days of the appointment, reappointment, retirement or termination.

(5) Where under the Act a report or other document is required to be tabled in Parliament by a Minister by a certain time, and the Parliament is not sitting, such report or document may be lodged with the Clerk. Any report or document lodged with the Clerk is-

- (a) on presentation, and for all purposes, deemed to have been laid before Parliament;
- (b) for all purposes, deemed to be a document published by order or under the authority of the Parliament; and

(c) to be recorded in the Minutes of the Proceedings of the Parliament.

Information to be published

18. Where information has been tabled in the National Parliament under section 17, the State Owned Enterprise shall separately and independently publish that same information within one week of tabling by publishing a summary in the Gazette and in a news-paper circulated in Solomon Islands, and marking full copies available free of charge at the offices of the State Owned Enterprise.

Other information

19. (1) Subject to subsection (3) of this section, the board of a State Owned Enterprise shall supply to the Accountable Ministers or to such other person as either of those Ministers specifies such information relating to the affairs of the State Owned Enterprise, or any of its subsidiaries, as either of those Ministers requests after consultation with the board (whether or not the information is of a kind referred to in the statement of corporate objectives).

(2) An Accountable Minister may request information to be supplied whether or not the supply of the information is required for the purposes of, or is contemplated by, this Act.

(3) The board of a State Owned Enterprise shall not be obliged by subsection (1) of this section to supply to any Minister any information relating to an individual employee or customer of the State Owned Enterprise, or of any subsidiary of it, or any other person, if the information supplied would enable the identification of the person concerned.

(4) Notwithstanding any Act or rule of law, the board of a State Owned Enterprise may direct an officer or employee of the State Owned Enterprise to comply with a request under subsection(1) of this section and the officer or employee shall comply with the request on being directed to do so.

(5) No person who acts in accordance with a request or direction under this section is liable to any person under any Act or rule of law by reason of acting in accordance with that request or direction.

Auditor-General to be auditor of State Owned Enterprises and subsidiaries

20. (1) Every State Owned Enterprise and every subsidiary of every State Owned Enterprise shall have as its auditor the Auditor-General.

(2) Without limiting subsection (1), the board of a State Owned Enterprise may, after consultation with the Auditor-General and if its Responsible Minister so approves, appoint a person or firm that is qualified for appointment as an auditor of a company to be an additional auditor of the State Owned Enterprise or any subsidiary of a State Owned Enterprise.

(3) For the avoidance of doubt, section 20(1) applies notwithstanding section 35(2) of the Public Finance and Audit Act.

Protection from disclosure of sensitive information

21. Nothing in this Act shall be construed as requiring the inclusion in any statement of corporate objectives, annual report, financial statements, or half-yearly report referred to in sections 13 to 15 of this Act of any information if to do so would, having regard to generally accepted standards of disclosure in commercial reporting, lessen the value of the State Owned Enterprise.

Local Government Act [Cap 117]

PART VII FINANCIAL PROVISIONS AND AUDIT

Establishment of Council funds

54.(1) Every Council shall set up a general fund into which shall be paid all revenue and other moneys accruing to the Council and from which shall be paid all expenditure properly and lawfully incurred by such Council.

(2) Notwithstanding anything contained in this section, a Council may with the approval of the Minister establish a special fund for any specific purpose.

Revenues of Councils

55.(1) The revenues or other funds of a Council are hereby declared to be as follows—

(a) all sums of money vested in a Council by virtue of the provisions of paragraph (c) of section 127;

(b) revenue accruing to a Council from the following sources—

(i) moneys derived from any rate imposed by the Council by virtue of the provisions of this Act;

(ii) moneys derived from licences, permits, dues, charges or fees specified by any by-law made by a Council;

(iii) moneys payable to a Council under the provisions of any other Act;

(iv) receipts derived from any public utility concern or any service or undertaking belonging to or maintained by a Council either in whole or in part;

(v) rents derived from the letting or leasing of any building or land belonging to a Council;

(vi) grants-in-aid out of the Consolidated Fund or other public revenue;

(vii) any particular public revenue which may lawfully be assigned to a Council;

(viii) any sums of money which may lawfully be assigned to a Council by any public corporation;

(ix) interest on the invested funds of a Council;

(x) moneys which may accrue from loans received under the provisions of section 57; and

(xi) moneys granted to a Council by way of gift for any public purpose or for the welfare of all or any of the inhabitants of the area of authority of

the Council

(2) Any other moneys lawfully derived by a Council from any other source whatsoever not hereinbefore specifically mentioned shall be and form part of the revenue and funds of such Council.

Expenditure

56. Subject to the provisions of this Act, a Council may incur all expenditure necessary for and incidental to the carrying out of any functions conferred upon it under this or any other Act or by the warrant establishing such Council.

Power to borrow money

57. (1) A Council may from time to time, in accordance with a resolution of the Council in that behalf, raise loans within Solomon Islands of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the Minister may approve.

(2) All such loans, whether raised before or after the commencement of this Act, shall be charged indifferently on all the revenues of the Council and all securities therefor shall rank equally without any priority:

Provided that—

(a) nothing in this subsection shall apply to any money borrowed by way of temporary loan or overdraft without security; or

(b) affect any priority existing at, or any right to priority conferred by a security created before, the commencement of this Act.

(3) Where any interest or any payment of capital on any loan is due and remains unpaid for three months after a demand therefor has been served on the Council in writing by the person entitled thereto, the Minister may—

(a) order the sum due, whether in respect of capital or of interest, to be paid by the Council from the general fund or any other funds of the Council to the person entitled to receive the sum due; or

(b) order the sale of any property of the Council, including land, and the payment of the whole or any part of the proceeds of the sale of such property in satisfaction or partial satisfaction of the sum due; or

(c) order that a rate necessary to produce the sum due shall be levied upon and collected from the ratepayers of the area of authority of the Council, either immediately or at such date as the Minister shall order; and for the purpose of raising such sum the Minister shall in addition have the same power as the Council concerned of making and levying a rate.

(4) The power of the Minister under paragraph (c) of subsection (3) of making and levying a rate may be exercised at any time.

Overdrafts

58. It shall be lawful for a Council with the prior approval of the Minister to borrow from a bank by way of temporary loan or overdraft any sum which it may temporarily

require.

Power to lend money

59. A Council may from time to time, in accordance with a resolution of the Council in that behalf, lend money within Solomon Islands, of such amounts, to such persons, in such manner, for such purposes and upon such conditions as the Minister may approve.

Investment of funds

60. A Council may invest all or any portion of the moneys of the Council in such investments as may from time to time be approved by the Minister:

Provided that no such approval shall be required should a Council wish to place any portion of its moneys on fixed deposit account with the bank holding the general fund of the Council.

Deposit and advance accounts

61. A Council may make advances and operate deposit and suspense accounts within such limits and upon such conditions as shall be approved in writing by the Minister, and such approval may be given either generally or with respect to any particular Council or with respect to the Councils in any particular area.

Accounts to be kept

62. Every Council shall keep proper accounts and other records in relation thereto and immediately after the end of each financial year shall cause its accounts for that year to be brought to a balance and a balance sheet to be prepared with respect thereto, together with a statement or abstract of such accounts.

Financial Instructions

63. The Minister shall issue written instructions (to be called Financial Instructions), not inconsistent with the provisions of this Act, to regulate and control the issuing of receipts, the making of payments and the operation of bank accounts by Councils, and generally for the better control and management of the financial business of Councils; and such instructions may be issued either generally or with respect to any particular Council or with respect to the Councils in any particular area and shall be observed and obeyed by the Council or Councils with respect to which such instructions have been issued.

Estimates of Councils

64.(1) Every Council shall, not later than 30th September each year or such other date as the Minister may in writing prescribe generally or in relation to that Council, pass detailed estimates of revenue and expenditure of the Council for the next financial year.

(2) Such estimates shall be passed by formal resolution at a meeting of the Council specially convened for the purpose and shall be submitted to the Minister for

approval as soon as possible thereafter.

(3) The Minister may either approve or disapprove such estimates as a whole or disapprove, amend or reserve any item or items contained therein and shall notify the Council accordingly;

Provided that, if such notification is not received by the Council before the commencement of the financial year for which such estimate is prepared, the Council may incur expenditure on recurrent heads of expenditure in accordance with the approved estimates for the previous year.

(4) Where it appears to a Council in any financial year that expenditure for any specified purpose is desirable and no or insufficient provision therefor has been made in the estimates for such year, a Council may submit an application for supplementary expenditure to the Minister for approval. The Minister may either approve or disapprove such application as a whole or disapprove, amend or reserve any item or items contained therein and shall notify the Council accordingly.

(5) No Council shall collect revenue or incur expenditure which has not been approved in accordance with the provisions of this Act except with the sanction of the Minister; and any Council member, officer or servant who has applied or connived at or concurred in the collection or application of moneys for purposes which have not been lawfully approved shall be liable to be surcharged and to account for such moneys.

(6) The annual estimates and all supplementary estimates shall be submitted in such form and manner and shall contain such information as may be specified in Financial Instructions issued under the provisions of section 63.

Joint funds

65. A joint committee appointed under the provisions of subsection (2) of section 32 may, with the approval of and subject to any conditions imposed by the Councils appointing the committee, operate a fund in accordance with the provisions of this Part of this Act and to such extent such committee shall be deemed to be a Council to which, subject to the provisions of subsection (2) of section 32, the provisions of this Part shall apply

Access to records of Councils

66. The Minister may authorise any person to have access to the records of any Council; and any person so authorised shall at all reasonable times have access to and be entitled to inspect all books, accounts and records of the Council and may advise the Council thereon and submit reports to the Minister in connection therewith.

Audit of accounts

67.(1) The accounts kept by a Council under section 62, together with all books, vouchers and papers relating thereto and the annual statement or abstract thereof shall be laid before an auditor to be appointed by the Minister.

(2) At least fourteen days before the laying by a Council of its accounts before an auditor as required by subsection (1), notice of intention so to do shall be posted on

a public notice board at the office of the Council.

(3) The auditor shall make a full and complete audit of the accounts of the Council using due care, skill and diligence and—

(a) shall certify whether or not in his opinion—

- (i) the accounts of the Council are in order;
- (ii) the accounts present a true and correct view of the financial position and affairs of the Council;
- (iii) due provision has been made for the repayment of all moneys borrowed by the Council;
- (iv) the value of the assets of the Council have been fairly stated;
- (v) due diligence and care have been shown in the collection and banking of income;
- (vi) the expenditure incurred has been duly authorised, vouched and supervised;
- (vii) proper account has been kept of plant, stores and materials;
- (viii) any of the money or other property of the Council has been misappropriated or improperly or irregularly dealt with;
- (ix) all his requirements and recommendations have been complied with and carried out; and

(b) shall report as to any other matters which in his opinion call for special notice or which are prescribed.

(4) A copy of the auditors' report shall be sent to the Council, and together with a copy of the statement or abstract of accounts of the Council, to the Minister and the Minister responsible for finance.

(5) Every Council shall permit the auditor to check any cash, investments or other assets in its possession and to have access at all times to all its accounts and all books, vouchers and papers relating thereto.

Cost of audit

68. The Minister may fix the amount to be charged in respect of any audit carried out under this Act and may require the Council concerned to pay such amount together with any expenses incurred by an auditor in the performance of his duties under this Act.

Powers and duties of auditor

69. (1) An auditor appointed by the Minister at every audit held by him may—

- (a) disallow any item of expenditure which is contrary to law;
- (b) surcharge the amount of any expenditure disallowed upon the person responsible for incurring or authorising the expenditure;
- (c) surcharge any sum which has not been duly brought into account upon the person by whom that sum ought to have been brought into account;

(d) surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred:

Provided that no item of expenditure incurred by a Council shall be disallowed by the auditor if it has been sanctioned by the Minister.

(2) It shall be the duty of any such auditor—

(a) to certify the amount due from any person upon whom he has made a surcharge; and

(b) to certify at the conclusion of the audit his allowance of the accounts, subject to any disallowances or surcharges which he may have made.

(3) Any person registered as a voter for the area of a Council to the accounts of which the audit relates may be present or may be represented at the audit and may make any objection to the accounts before the auditor.

(4) The auditor shall, on the application of any person who is aggrieved by his decision on any matter with respect to which that person has made an objection, or of any person aggrieved by a disallowance or surcharge made by the auditor, state in writing the reasons for his decision.

Special relief for officers and servants

70. Notwithstanding any of the provisions of section 69, no liability to surcharge shall be incurred by an officer or servant of the Council who can prove to the satisfaction of the auditor that he acted in pursuance of and in accordance with the terms of a resolution of the Council or a committee duly appointed by the Council or on instructions of any officer of the Council to whom he is subordinate.

Auditor may take evidence

71.(1) For the purposes of any examination under the provisions of this Part the auditor may take evidence and examine witnesses upon oath or affirmation (which oath or affirmation the auditor is hereby empowered to administer) and may, by summons under his hand, require all such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers, including the minutes of the proceedings of the Council or of any committee thereof, as he may consider necessary for such examination:

Provided that no person shall be bound to incriminate himself and every witness shall in respect of any evidence given by him before the auditor be entitled to the same privileges to which he would have been entitled if giving evidence before a court.

(2) Any person who, when so required, without reasonable excuse—

(a) neglects or refuses to comply with the terms of such summons; or

(b) having appeared, refuses to be examined on oath or affirmation or to take such oath or affirmation; or

(c) having taken such oath or affirmation, refuses to answer such questions as are put to him, shall be guilty of an offence and shall be liable on conviction by a court, for every such neglect or refusal, to a fine of one hundred dollars, or in

default of payment, to imprisonment for three months.

Payment of sums certified to be due

72. Every sum certified by the auditor to be due from any person shall be paid by that person to the Council concerned within sixty days after it has been so certified or, if an appeal with respect to that sum has been made, within thirty days after the appeal is finally disposed of or abandoned or fails by reason of the non-prosecution thereof.

Recovery of sums certified to be due

73. (1) Any sum which is certified by the auditor to be due and has become payable shall, on complaint made by the Council or action taken by or under the direction of the Minister, be recoverable by the Council as a civil debt.

(2) In any proceedings for the recovery of such a sum a certificate signed by the auditor shall be conclusive evidence of the facts certified and a certificate signed by the President of the Council concerned or other officer whose duty it is to keep the accounts that the sum certified to be due has not been paid to him shall be conclusive evidence of non-payment, unless it is proved that the sum certified to be due has been paid since the date of the certificate.

(3) Unless the contrary is proved, a certificate purporting to be signed by the auditor or the President of the Council or other officer whose duty it is to keep the accounts shall be deemed to have been signed by the case such auditor, President or other officer, as the case may be.

Appeals against decisions of auditor

74.(1) Any person who is aggrieved by a decision of the auditor on any matter with respect to which he made an objection at the audit and any person aggrieved by a disallowance or surcharge made by the auditor may appeal to a Magistrate's Court, unless such decision, disallowance or surcharge relates to an amount exceeding one thousand dollars, in which case an appeal shall be to the High Court:

Provided that no appeal shall be allowed unless, within sixty days of the date of decision or the certificate of disallowance or surcharge of the auditor, as the case may be, the appellant serves upon the auditor a notice of appeal and files such appeal in the Magistrate's Court or the High Court, as the case may be, in conformity with any rules of court relating thereto.

(2) A Magistrate's Court or the High Court on such appeal shall have power to confirm, vary or quash the decision of the auditor and to remit the case to the auditor with such directions as it thinks fit for giving effect to the decision on appeal; and, if the decision of the auditor is quashed or is varied so as to reduce the amount of surcharge to two hundred dollars or less, the appellant shall not be subject to the disqualification by reason of the surcharge imposed by section 10 or section 12.

Publication of statement of accounts and auditor's report

75. Every Council shall, within six months of the receipt of the auditor's report, at its own offices publish—

- (a) the annual balance sheet and statement or abstract of accounts prepared under section 62; and
- (b) any report on such accounts and statement or abstract signed by the auditor under section 67.

252. It is a responsibility of the Minister of Finance under the Public Financial Management Act to establish internal control mechanisms. Mechanisms for internal control are primarily found in the Financial Instructions. These instructions include asset management principles; procedure for revenue and expenditure and outlines the roles and responsibilities of public officers.

253. Sections 86-88 of the *Public Financial Management Act* provide for recovery by surcharge.

Public Financial Management Act 2013

Surcharge and notification

86. (1) If it appears to the Minister that any accountable, accounting or public officer has committed an act or omission that would constitute misconduct in office under section 84, the Minister shall send a written notice to the officer giving particulars respecting the act or omission and requesting an explanation.

(2) If, within 30 days from the date of the notice, the officer has not provided an explanation satisfactory to the Minister with regard to the act or omission referred to in the notice, the Minister shall –

- (a) assess a surcharge against the officer in an amount not exceeding –
 - (i) the amount not collected, improperly paid or not duly vouched;
 - (ii) the amount of deficiency or loss, the value of the property destroyed or lost, the cost of damage or the amount of the financial loss, resulting from the act or omission; and
- (b) notify the officer of the surcharge.

(3) No officer may be surcharged under this section unless the Minister has notified him of the conduct in respect of which the surcharge is intended to be made and requested the officer to furnish an explanation with regard to the conduct.

(4) The Minister may withdraw the surcharge if it appears to him that the surcharge has been made by mistake or that the circumstances do not justify the surcharge.

Appeal against surcharge

87. (1) Any officer aggrieved by a surcharge assessed against him under section 86 may appeal to the High Court within 30 days from the date that he was notified of the surcharge under that section.

(2) On any appeal under subsection (1), the High Court may confirm, vary or quash the surcharge.

Recovery of amount surcharged

88. (1) The amount of any surcharge which has not been withdrawn by the Minister or quashed by the High Court is a debt due to the Crown and, despite any law to the contrary, the Minister may –

(a) if the amount of the surcharge is greater than the annual salary of the accounting, accountable or public officer, direct the Attorney General to sue for and recover the surcharge in a court of competent jurisdiction; or

(b) if the amount of the surcharge is less than the annual salary of the accounting, accountable or public officer, direct that the amount be recovered by the Government from the salary, allowance or pension payable to the officer surcharged.

(2) Where the Minister directs that the amount surcharged be recovered under subsection (1)(b), the recovery shall be made –

(a) by deducting from the officer's salary or allowance in equal monthly instalments an amount not exceeding one-third of his net monthly salary or allowance; and

(b) by withholding an amount from the officer's pension, or deducting such part thereof, as is sufficient to satisfy the amount of the surcharge that remains unrecovered.

(3) Where the officer surcharged ceases to be an accountable, accounting or public officer, the Attorney General may recover the amount surcharged from the officer in any court of competent jurisdiction.

(4) In an action under subsection (1)(a) or (3), the Attorney General need only prove, in the absence of proof to the contrary, that the officer was an accountable, accounting or public officer and that –

(a) in the case of an action in respect of a loss or deficiency in public monies –

(i) the officer was guilty of misconduct in office under section 84, in relation to the loss or deficiency of the monies; and

(ii) the amount of the loss or deficiency; or

(b) in the case of an action in respect of economic loss or of loss or destruction of, or damage to, public property –

(i) the property was at the material time in the charge of the officer;

(ii) the officer was guilty of negligence or misconduct which caused or contributed to the loss, or the loss of, destruction of, or damage to the property; and

(iii) the value of the property or amount of the loss or damage, as the case may be.

(5) Where, in an action referred to in subsection 4(b), the officer proves that his negligence or misconduct was not the sole cause of the loss, destruction or damage, the Government shall be entitled to judgement for so much only of the cost of the loss, destruction or damage as is just and equitable having regard to the contribution made by the officer to that loss, destruction or damage.

254. In 2013, Solomon Islands adopted the Constituency Development Funds Act 2013 which governs the allocations of money to Members of Parliament for them to develop and deliver projects and activities in communities that they represent.

255. During the country visit, Solomon Islands reported that the Constituency Development Funds (CDF) currently amounted annually to above \$7 million per constituency. They informed that CDF were divided into a project portion and a cash portion. Through the project portion (around \$5 million per constituency annually), funds were spent through a pre-determined pool of suppliers, and led by the Ministry of Finance. The management of the cash portion was left at the discretion of the parliamentarians. Solomon Islands informed that the parliamentarians were to report how they distributed these cash resources but there were no verification, auditing or oversight in place.

256. Solomon Islands further reported that there were concerns in Solomon Islands about the lack of adequate administrative and governance mechanisms to enable proper and orderly disbursement of CDF, and transparency and accountability of the distribution of these funds.

Constituency Development Funds Act 2013

AN ACT TO PROVIDE FOR THE PURPOSE OF DEVELOPING, SUPERVISING AND REGULATING THE MANAGEMENT AND DISBURSEMENT OF CONSTITUENCY DEVELOPMENT FUNDS IN A TRANSPARENT AND ACCOUNTABLE MANNER.

ENACTED by the National Parliament of Solomon Islands.

Short title and commencement

1. This Act may be cited as the Constituency Development Funds Act 2013 and shall come into operation on such date as the Minister may appoint, by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires –

"Constituency Development Funds" means the funds allocated to Constituencies under section 4;

"Ministry" means the ministry to which responsibility for the management of Constituency Development has been assigned.

Objects

3. The object and responsibility of this Act is to ensure that the management and disbursement of Constituency Development Funds is carried out with integrity and in a prudent manner with a view to safeguarding the interest of potential recipients of the funds.

Establishment of Constituency Development Offices

4. (1) There shall be Constituency Development Offices established in all fifty (50) constituencies for the management and administration of Constituency Development Funds.

(2) The funds allocated to the Ministry for constituency development purposes shall be administered and managed by the Constituency Development offices and its officers.

(3) A Constituency Development Officer shall be a public officer.

Recipients

5. (1) The funds may be allocated for development purposes to individuals, group income generating projects or community projects.

(2) In allocating funds pursuant to subsection (1), the Constituency Development Office shall have regard to providing gender equality and combating gender discrimination.

Constituency Development Plan

6. (1) Each constituency shall prepare a Constituency Development Plan based on a Constituency Development Office Profile as a basis for the disbursement of Constituency Development Funds.

(2) Each Constituency Development Plan referred to in subsection (1) shall be submitted to the Ministry for approval prior to the allocation of funds as grants.

Constituency Account

7. (1) Each constituency shall set up a Constituency Development Office Account for budgetary support purposes as approved by the Ministry.

(2) The signatories to the Constituency Account shall be the Member of Parliament for the respective constituency and the Constituency Development Officer.

Allocation

8. Allocations from the Constituency Development Funds shall be by way of grants.

Application

9. Applications for funds shall be in the form as set out in the Schedule and bear the endorsement of the Member of Parliament of the particular constituency.

Direct payment of supplies

10. Where a project has been approved as a development project, the Constituency Development Officer will pay the supplier of goods or services the appropriate payment in accordance with the prescribed Financial Instructions issued under the Public Finance and Audit Act. (Cap. 120)

Powers, duties and functions of officers

11. For the purpose of fulfilling its objects and responsibilities the Constituency Development Officer may exercise all or any of the following powers, duties and functions —

- (a) act in accordance with directions issued by the Ministry;
- (b) assist in the implementation of the policies and programmes of the Government with respect to the usage and disbursement of funds;
- (c) enter into agreements with potential recipients of the funds;
- (d) maintain proper registers, accounts and other documentation as required by the Ministry;
- (e) ensure that the accounting procedures as prescribed by the Permanent Secretary, Ministry of Finance are adhered to; and
- (f) do all such other acts as may be necessary for the due exercise, discharge and performance of the functions of Constituency Development Officers.

Powers of inspection

12. Any officer authorized to administer the disbursement of funds may enter and inspect at all reasonable hours any premises or place where the particular development is being carried out.

Audit

13. The Constituency Development Funds shall be subject to audit by the Auditor General under the provisions of the Public Finance and Audit Act.

Power to order investigation

14. The Ministry may cause an investigation to be carried out in respect of any constituency where it has reason to believe —

- (a) that the interest of potential recipients have or are being affected;
- (b) that a complaint made by a potential recipient or group of such recipients needs to be investigated; or
- (c) where there is mismanagement of the funds.

Regulations

15. The Minister may make such regulations as appears to him to be necessary or expedient for carrying the objects and provisions of this Act in to effect.

SCHEDULE

(Section 9)

CDF PROJECT APPLICATION FORM

1.0 PROJECT DETAILS

1.1 Name of Project

1.2 Location

1.2.1 Village

1.2.2 Ward No/Name

1.2.3 Constituency

1.3 Basic Information about Project (state what the project involves)

1.4 Project Management (describe briefly how the project will be managed)

1.5 Name and Address of Applicant or Name and Address of Committee Members (if community project)

1.6 Project Implementation

1.6.1 Project Activities/Timeframe

1.7 Intended Outcome of Project (what will project provide when completed)

1.8 Project Beneficiaries (state approx. number of persons/population)

1.8.1 Direct:

1.8.2 Indirect:

2.0 PROJECT COSTS

2.1 Budget Details (Provide a breakdown of budget. Proforma invoices from Legitimate Suppliers must be attached)

3.0 DECLARATION

I declare that all information provided are true and accurate details of this proposed project

Applicant Name: Signature:

Date:

Project Endorsement

Hon.MP Signature:

Date:

(b) Observations on the implementation of the article

257. The Finance Minister is required to present estimates of revenue and expenditure each year, based on information provided by all Ministries, in the form of an Appropriation Bill to Parliament for approval. The PFMA outlines the budgeting process. The Ministry of Finance and Treasury is responsible for the preparation, management, and monitoring of the annual budget. The Act calls for the national budget for a financial year to be brought before Parliament at least two months before the end of that financial year. A budget review of the first six months' expenditures is to be published no later than seven months into the financial year. A review of the entire previous year is to be published within four months of the new financial year.

258. Beginning in 2013, all Ministries were required to establish a Budget Implementation Committee. The role of each Committee was to identify the priority areas for their respective ministries to address, guided by the fiscal and economic outlook provided in the Budget Strategy.

259. The PFMA also provides for the establishment of the Internal Audit Office. All functions of the Office must be performed in accordance with the International Professional Practices Framework. Although resources distributed pursuant to the Constituency Development Funds Act 2013 are subject to expenditure reporting requirements, there is at present no effective mechanism for audit and oversight of these expenditures.

260. Solomon Islands is recommended to review and take appropriate measures to promote transparency and accountability in the management of public resources distributed pursuant to the Constituency Development Funds Act.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

[National Archives Act \[Cap 147\]](#)

Interpretation

2. In this Act, unless the context otherwise requires—

"archives" means all official records no longer in current use and adjudged by the Committee to be worthy of permanent preservation in the National Archives for reference and historical purposes;

"Archivist" means the Government Archivist appointed pursuant to section 4;

"Committee" means the Archives Advisory Committee established under section 3;

"official records" mean all papers, documents, records, registers, printed material, maps, plans, drawings, photographs, microfilm, cinematograph films and sound recordings of any kind whatever, officially received or produced by any public organisation in the course of its official duties;

"public organisation" means any ministry, department, commission, committee, board, corporation, agency, or other organisation of the Government of Solomon Islands or Provincial Government and includes a local government authority.

Establishment and functions of National Archives Advisory Committee

3. (1) For the purposes of this Act there is hereby established a body to be known as the National Archives Advisory Committee.

(2) The provisions of the Schedule shall have effect with respect to the constitution and operation of the Committee and otherwise in relation thereto.

(3) The committee shall, with a view to the proper carrying out of the provisions and objects of this Act, advise the Minister on any matter within its knowledge or on which the Minister may seek its advice.

Appointment of Government Archivist and functions of Archivist

4. (1) There shall be a Government Archivist for the purposes of this Act, who shall be a public officer.

(2) The Archivist shall be responsible for—

(a) the custody, preservation, arrangement, repair and rehabilitation of the National Archives;

(b) the preparation and publication of inventories, indexes, catalogues and other finding-aides or guides facilitating the use of archives; and

(c) such duplication and reproduction of archives as may be necessary or appropriate.

Examination of official records and transfer of such records to the National Archives

5. (1) Subject to subsection (2), the Archivist, or any officer of the National Archives authorised by him, has the power to examine any official records which are in the custody of any public organisation and to advise such organisation as to the care, custody and control thereof.

(2) Nothing in this section shall authorise the Archivist or any officer referred to in subsection (1) to examine an official record relating to matters which by statute are forbidden to be communicated to him.

(3) Official records in the custody of any public organisation shall be transferred periodically to the National Archives in accordance with regulations made under this Act.

Acquisition of private records by Archivist

6. The Archivist may acquire by gift, purchase or loan all such original records, documents, books and other historical material, of any nature whatsoever, or copies or replicas thereof, as he may think necessary or desirable to secure for the National Archives.

Acquisition of official records by Archivist

7. (1) Every person responsible for the custody of official records of any description which are not in the National Archives shall make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping.

(2) Every person required to make arrangements pursuant to subsection (1) shall do so under the guidance of the Archivist or any officer of the National Archives authorised in that behalf by the Archivist and the Archivist shall be responsible for coordinating and supervising all action taken under this section.

(3) Subject to subsection (4) official records selected for permanent preservation under this section shall be transferred not later than thirty years after their creation to the National Archives.

(4) Official records may be retained in any public organisation after the period stated in subsection (3) if, in the opinion of the person responsible for them, they ought to be retained for any special reason.

Access to official records

8. (1) Official records in the National Archives shall not be available for public examination until they have been in existence for thirty years or such longer or shorter period, as the Committee with the approval of the Minister, may specify as respects any particular class of official records or any individual official record.

(2) Notwithstanding subsection (1), where it appears to the person responsible for any official record which has been selected for permanent preservation that it contains information which was obtained under such conditions that the opening of such record to the public after the period prescribed under subsection (1), might constitute a breach of good faith on the part of the Government or on the part of the person who obtained the information, the person responsible for such record shall inform the Archivist accordingly and such record shall not be available in the National Archives for public inspection even after the expiration of the said period except in such circumstances and subject to such conditions, if any, as the Archivist after consultation with that person, may approve.

(3) Subject to the provisions of this section and of any other enactment which prohibits the disclosure of information obtained from the public, and subject to any regulations made under this Act, the Archivist shall arrange that reasonable facilities are made available to the public for inspecting and obtaining copies of official records in the National Archives.

(4) Notwithstanding anything contained in this section, the Archivist may permit a person to inspect any record if he has obtained special authority in writing in that behalf, given by an officer of a public organisation being an officer accepted by the Archivist as qualified to give such authority.

(5) Any person who fails to comply with any condition imposed pursuant to subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both' such fine and imprisonment.

Return of official records to public organisation

9. Where the person in charge of any public organisation notifies the Archivist in writing that the official record which was transferred from that organisation to the National Archives is required for use in that organisation, the Archivist shall, if he has the custody or control of that official record, make available to that person, who shall return it to the Archivist as soon as it is no longer required by him for use.

261. The *Penal Code* criminalizes the fraudulent destruction of documents, false accounting and forgery. The *National Archives Act* establishes the National Archives of the Solomon Islands.

Penal Code [Cap 26]

False claims by officials

95. Any person who, being employed in the public service, in such a capacity as to require him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular shall be guilty of a misdemeanour.

Frauds and breaches of trust by persons employed in the public service

129. 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.

False information to public servant

130. Whoever gives to any person employed in the public service any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service-

(a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person, shall be guilty of a misdemeanour, and shall

be liable to imprisonment for six months or to a fine of one hundred dollars.

Fraudulent destruction of documents

283. Any person who, for any fraudulent purpose, destroys, cancels or obliterates the whole or any part of any valuable security, other than a document of title to lands, is guilty of a felony, of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest or deposit to which the security so stolen may relate, or with the money due on the security so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned or referred to in or by the security.

Fraudulent destruction of documents of title

284. Any person who, for any fraudulent purpose, destroys, cancels, obliterates or conceals the whole or any part of any document of title to lands, is guilty of a felony, and shall be liable to imprisonment for three years.

PART XXXII FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST AND FALSE ACCOUNTING

Conversion by trustee

304. Any person who, being a trustee of any property for the use or benefit either wholly or partially of some other person, or for any public or charitable purpose, with intent to defraud converts or appropriates the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise disposes of or destroys such property or any part thereof, is guilty of a misdemeanour, and shall be liable to imprisonment for seven years:

Provided that no prosecution for any offence included in this section shall be commenced-

- (a) by any person without the sanction of the Director of Public Prosecutions; or
- (b) by any person who has taken any civil proceedings against such trustee, without the sanction also of the court before whom such civil proceedings have been or are pending.

Director, etc., of anybody corporate or public company wilfully destroying books, etc.

305.-(1) Any person who-

- (a) being a director, manager, public officer or member of anybody corporate or public company, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company, or makes or concurs in the making of any false entry, or omits or concurs in omitting any material particular in any book of account or other document; or
- (b) being a director, manager or public officer of anybody corporate or public

company, as such receives, or possesses himself of, any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company; or

(c) being a director, manager or public officer of any body corporate or public company, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof,

is guilty of a misdemeanour, and shall be liable to imprisonment for seven years.

(2) Nothing contained in this section shall enable or entitle any person to refuse to make a full and complete discovery by answer to any question or interrogatory in any civil proceeding in any court or upon the hearing of any matter in bankruptcy or insolvency.

(3) A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible against that person in any proceedings in respect of any of the misdemeanours referred to in this section.

(4) Nothing contained in this section, nor any proceeding, conviction or judgment to be had or taken thereon against any person under this section, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against this section might have had if this section had not been passed, but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him, and nothing in this section contained shall affect or prejudice any agreement entered into, or security given, by any trustee having for its object the restoration or repayment of any trust property misappropriated.

Fraudulent falsification of accounts

306.(1) Any clerk, officer or servant, or any person employed or acting in the capacity of a clerk, officer or servant, who wilfully and with intent to defraud destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or which has been received by him for or on behalf of his employer, or who wilfully and with intent to defraud makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book or document or account, is guilty of a misdemeanour, and shall be liable to imprisonment for seven years.

(2) It shall be sufficient in any information under this section to allege a general intent to defraud without naming any particular person intended to be defrauded.

Definition of forgery

333.(1) Forgery is the making of a false document in order that it may be used as

genuine, and in the case of the seals and dies mentioned in this Part of this Code the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, shall be punishable as provided in this Part of this Code.

(2) It is immaterial in what language a document is expressed or in what place within or without Her Majesty's dominions it is expressed to take effect.

(3) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law.

(4) The crossing on any cheque, draft on a banker, post office money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, is a material part of such cheque, draft, order, coupon, or document.

False document

334.(1) A document is false if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number of any distinguishing mark identifying the document is falsely stated therein; and in particular a document is false-

(a) if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; or

(b) if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or

(c) if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it.

(2) A document may be a false document for the purposes of this Part of this Code notwithstanding that it is not false in any such manner as is described in subsection (1) of this section.

Intent to defraud

335. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

Forgery of certain documents with intent to defraud

336.(1) Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for life-

(a) any will, codicil, or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without

the will annexed;

(b) any deed or bond, or any assignment at law or in equity of any deed or bond or any attestation of the execution of any deed or bond;

(c) any currency note or bank note, or any endorsement on or assignment of any bank note.

(2) Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for fourteen years-

(a) any valuable security or assignment thereof or endorsement thereon, or, where the valuable security is a bill of exchange, any acceptance thereof;

(b) any document of title to lands or any assignment thereof or endorsement thereon;

(c) any document of title to goods or any assignment thereof or endorsement thereon;

(d) any power of attorney or other authority to transfer any share or interest in any stock, annuity, or public fund of Solomon Islands or any part of Her Majesty's dominions or of any foreign state or country or to transfer any share or interest in the debt of any public body, company or society, Solomon Islands or foreign, or in the capital stock of any such company or society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority;

(e) any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof;

(f) any policy of insurance or any assignment thereof or endorsement thereon;

(g) any charter-party or any assignment thereof;

(h) any certificate of the Chief Accountant or other officer acting in execution of the Income Tax Act.

Forgery of certain documents with intent to defraud or deceive

337. (1) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for life.

Any document whatsoever having thereon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's official seals, or the National Seal of Solomon Islands.

(2) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for fourteen years-

(a) any register or record of births, baptisms, naming's, dedications, marriages, deaths, burials or cremations, which now is, or hereafter may be, by law authorised or required to be kept, relating to any birth, baptism, naming, dedication, marriage, death, burial or cremation, or any part of any such register, or any certified copy of any such register, or of any part thereof;

(b) any copy of any register of baptisms, marriages, burials or cremations,

- directed or required by law to be transmitted to any registrar or other officer;
 - (c) any certified copy of a record purporting to be signed by any officer having charge of any public documents or records;
 - (d) any wrapper or label provided by or under the authority of the Chief Accountant or the Comptroller of Customs and Excise.
- (3) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for seven years-
- (a) any official document whatsoever of or belonging to any court of justice, or made or issued by any Judge, Magistrate, officer or clerk of any such court;
 - (b) any register or book kept under the provisions of any law in or under the authority of any court of Justice;
 - (c) any certificate, office copy or certified copy of any such document, register, or book or of any part thereof;
 - (d) any document which any Magistrate is authorised or required by law to make or issue;
 - (e) any document which any person authorised to administer an oath under any law is authorised or required by law to make or issue;
 - (f) any document made or issued by a head of a Government department or law officer of the Crown, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act;
 - (g) any document or copy of a document used or intended to be used in evidence in any court of record, or any document which is made evidence by law;
 - (h) any certificate or consent required by any Act for the celebration of marriage;
 - (i) any licence for the celebration of marriage which may be given by law;
 - (j) any certificate, declaration or order under any enactment relating to the registration of births or deaths;
 - (k) any register, book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certificate of mortgage or sale, under Part I of the Merchant Shipping Act, 1894, or any entry or endorsement required by the said Part of the said Act to be made in or on any of those documents;
 - (l) any permit, certificate or similar document made or granted by or under the authority of the Comptroller of Customs and Excise or any other officer of Customs and Excise;
 - (m) any certificate not heretofore specified.

Forging copies of certificates of records

338. Any person who, being the clerk of any court or other officer having the custody of the records of any court. or being the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing the same to be false, and any person who delivers, or causes to be delivered, to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree

or order of any court or law or equity, or a copy thereof, knowing the same to be false, or acts or professes to act under any such false process knowing the same to be false, is guilty of a felony, and shall be liable to imprisonment for seven years.

Examples of Implementation:

262. In 2013, eight public servants in the Ministry of Health were fired over a fraud case.

263. In 2011, the Ombudsman issued a report examining allegations of financial mismanagement and maladministration within the Choiseul Provincial Government.

(b) Observations on the implementation of the article

264. The Penal Code criminalizes the fraudulent destruction of documents, false accounting and forgery. The National Archives Act establishes the National Archives of the Solomon Islands. There is no legislation requiring the general maintenance of governmental financial records for a specified period of time.

265. Solomon Islands is recommended to consider measures to establish requirements for the general maintenance of government financial records for a specified period of time.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

266. Solomon Islands does not currently have a freedom of information law. The Government is working towards the enactment of the FOI Law by early 2017.¹⁵

¹⁵ <http://theislandsun.com/solomon-islands-develops-freedom-information-legislation/> [accessed 25 April 2016].

267. The Solomon Islands has an *Official Secrets Act*. Section 5 of the Act states that to wrongfully communicate secret official information is an offence. The Solomon Islands Cabinet Handbook provides that all officials who handle Cabinet documents must make Secrecy declarations. After making the declaration, the official is then bound by the Official Secrets Act. Members of the Cabinet and officials are obligated to notify the Attorney General of any unauthorized disclosure of information regarding proceedings of Cabinet and to assist the AG in any investigations. The Cabinet Handbook also provides for the security of Cabinet documents.

268. Article 70 of the Constitution requires that the proceedings of Parliament are held in public. The Standing Orders of Parliament state that members of the public and the press shall be allowed as spectators to sittings of Parliament. The Speaker may at any time order strangers to withdraw and the doors of the House to be closed.

269. Electronic copies of Hansard are available from the sixth Parliament onwards. Earlier copies of Hansard are available from the National Parliament library.

270. The Parliament library's collection consists of the following:

- The National Coalition and Reform Advancement Policy Statement
- Commission of Inquiry Report into the April 2006 Civil Unrest in Honiara
- Hansard Reports
- Acts of Parliament
- Bills
- Gazettes
- Legal Cases
- Parliamentary Committee Reports
- Annual Reports of Government Ministries
- Audit Reports; and
- Other documents.

[Official Secrets Act /Cap 25/](#)

Wrongful communication, etc., of information

5.(1) If any person having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Her Majesty, or which he has obtained, or to which he has had access, owing to his position as a person who holds or has held office under Her Majesty, or as a person who holds, or has held, a contract made on behalf of Her Majesty, or as a person who is or has been employed under a person who holds, or has held, such an office or contract—

(a) communicates the code word, pass word, sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or

in any other manner prejudicial to the safety or interests of the State; or

(c) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information; that person shall be guilty of a misdemeanour.

(2) If any person having in his possession or control any sketch, plan, model, article, note, document or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour.

(3) If any person receives any secret official code word, or pass word, or sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act he shall be guilty of a misdemeanour, unless he proves that the communication to him of the code word, pass word, sketch plan, model, article, note, document, or information was contrary to his desire.

Solomon Islands Cabinet Handbook 2005

Departmental officers and political staff have a responsibility to act in support of ministers' obligations to abide by Cabinet conventions, and a responsibility to advise ministers in any case where they may perceive a breach, or likely breach, of these conventions. All officials who handle Cabinet documents will have made Secrecy declarations and are bound by the Official Secrets Act. Members of the Cabinet and officials are obliged to notify the Attorney General of any unauthorized disclosure of information about proceedings of Cabinet that come to their notice, and to assist him or her in any investigations. The Prime Minister has asked the Attorney General to assume a general responsibility for investigating any such disclosure. The Secretary to Cabinet will notify the Attorney General of any breach of security, which comes to his notice.

7. SECURITY AND HANDLING OF CABINET DOCUMENTS

Definition of Cabinet documents

7.1 Cabinet documents are to be held separately from the other working documents of government administration and must be destroyed when no longer in day-to-day use (see paragraph 7.33). Subject to the 30-year rule, Cabinet documents are not available to governments other than those that created them. Any unauthorised disclosure of them damages the openness and frankness of discussions in the Cabinet Room.

7.2 For the purpose of this Handbook, Cabinet documents include:

- (a) agendas for meetings of Cabinet and Cabinet committees;
- (b) Cabinet programmes and notices of meetings;

- (c) Cabinet submissions and memoranda, including copies lodged with the Cabinet Office and copies held elsewhere;
- (d) corrigenda to submissions and memoranda;
- (e) reports and attachments to submissions and memoranda (whether or not actually attached) which have been brought into existence for the purpose of being considered by Cabinet;
- (f) schedules circulated for ministers' information, for example schedules of appointments, endorsements or of other matters without submission;
- (g) any papers circulated by ministers in the Cabinet room related to matters under discussion by the Cabinet;
- (h) legislation proposal forms and papers required for the legislation approval process, which clears bills prior to their introduction in Parliament, including the Legislative Draftsman's Counsel's memoranda, legislation profiles and draft bills and explanatory memoranda;
- (i) correspondence between ministers and the Prime Minister which is submitted to Cabinet or proposes matters (including appointments) to be raised in Cabinet without submission;
- (j) Cabinet and Cabinet committee minutes and draft minutes and/or conclusions prepared for consideration and endorsement under the ten-day ministerial consideration process;
- (k) Documents of the Cabinet Office including Cabinet notebooks or other material that in any way records the deliberations of Cabinet; and
- (l) copies of, or extracts from, documents referred to in (a) to (k) above.

7.3 While the definition of Cabinet documents does not include documents such as drafts of submissions and memoranda, briefing materials and correspondence related to these, and correspondence and notes disclosing the outcome of Cabinet deliberations, special care is also to be taken in the handling of these documents (see paragraphs 7.15 and 7.16).

[Constitution 1978](#)

Proceedings of Parliament to be held in public

70. The proceedings of Parliament shall be held in public except in so far as its rules of procedure otherwise provide.

[Standing Orders of the National Parliament of the Solomon Islands](#)

79. ADMISSION OF PRESS AND PUBLIC

Subject to such Rules as may be made from time to time by the Speaker, members of the public and of the press shall be admitted as spectators of sittings of Parliament. The Sergeant-at-Arms shall ensure that any such Rules are complied with.

80. WITHDRAWAL OF STRANGERS

(1) A Member may without notice at any time during a sitting of Parliament or a

Committee rise and move that strangers do withdraw, specifying whether the withdrawal is to be for the remainder of that day's sitting or during the consideration of certain business. The Speaker shall forthwith put the question on such motion and Parliament or the Committee shall dispose of it before proceeding further with the business which was before it when the motion was moved.

(2) The Speaker may at any time order strangers to withdraw and the doors of the House to be closed.

(3) When an order has been made by Parliament or Committee, or by the Speaker for the withdrawal of strangers, members of the public and of the press shall forthwith withdraw from the House and the Clerk and the Sergeant-at-Arms shall ensure that the order is complied with.

(b) Observations on the implementation of the article

271. Currently, Solomon Islands does not yet have a specific access / right to information legislation in place but it remains a general principle. The National Anti-Corruption Strategy foresees the adoption of a policy and enactment of a law on access to information. In Solomon Islands, the general approach to records is that they are available to the public unless they fall under the jurisdiction of legislation governing secrecy or confidentiality of specified records. Solomon Islands has an Official Secrets Act, which makes it an offence to wrongfully communicate secret official information. Cabinet documents are considered strictly confidential and a security clearance is needed to have access to. According to the National Archives Act, official records submitted for permanent preservation are not to be publicly available for thirty years, unless the Archives Advisory Committee decides otherwise with the approval of the Prime Minister.

272. Some divisions of government, such as Parliament and the Ministry of Finance and Treasury, have published information regarding their operations and functions online. However, most ministries do not maintain an official website.

273. Solomon Islands is recommended to continue to consider comprehensive legislation and administrative measures to strengthen access to information, further to implementation of the National Anti-Corruption Strategy.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

274. One of the goals of the National Anti-Corruption Strategy is a “review of agency procedures to reduce decision time and red tape.”

275. Information regarding the judicial process is currently available through the Office of the Public Solicitor. Judgments by the Courts are published on the Pacific Islands Legal Information Institute (PacLII) website. PacLII publishes laws, cases and legal material from around the region and is maintained by the University of the South Pacific. The Solomon Islands Judiciary does not maintain its own website.

(b) Observations on the implementation of the article

276. So far, Solomon Islands has not taken any steps to conduct the review of administrative procedures, but it is foreseen as part of the National Anti-Corruption Strategy.

277. Solomon Islands is recommended to continue to consider the establishment of guidelines and tools to enable public institutions to ensure effective and timely access to information.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

278. The Ombudsman has published a number of reports available on PacLII, though there are no reports after 2011.

279. A Report on Diagnostic Study of Law of Solomon Islands for Anti-Corruption Purposes was produced in July 2008 by Primo Afeau and Victoria Aitken.

280. The disbanded Anti-Corruption Taskforce of the Solomon Islands produced a report in 2010 on priority measures and other aspects of anti-corruption systems in the Solomon Islands.

281. Under the National Anti-Corruption Strategy, the Government is supposed to publish semi-annual updates on the implementation of the Strategy. The NACS also calls for a study on the costs of corruption in Solomon Islands to be published, as well as reports on risks of corruption in public administration.

(b) Observations on the implementation of the article

282. Currently, not many reports are available on the risks of corruption in the public administration.

283. Solomon Islands is recommended to consider measures to enable and strengthen public reporting of activities of government institutions engaged in the prevention of corruption, including the Ombudsman's Office, the Leadership Code Commission and the Ministry of Finance.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

284. The judiciary is a separate and independent branch of Government. The Constitution established a High Court and a Court of Appeal. The High Court has unlimited jurisdiction and can hear appeals from all subordinate courts. Constitutional questions are referred to the High Court for interpretation. The Court of Appeal hears appeals from the High Court in civil and criminal matters. The Chief Justice of the High Court also sits *ex officio* on the Court of Appeal. There are three subordinate courts: the Magistrates' Court, the Local Court and the Customary Land Appeal Court. Magistrates' Courts have jurisdiction over civil and criminal cases. Local Courts, whose members are appointed by the Chief Justice, preside over minor offenses, customary law issues and customary land matters. Customary Land Appeal Courts hear appeals from Local Courts on points of custom in relation to customary land.

285. The Magistrates Courts Bench Book contains a Code of Judicial Conduct.

Constitution 1978

Part II - The Judiciary

(a) The High Court

Establishment of High Court

77.(1) There shall be a High Court for Solomon Islands which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or by Parliament.

(2) The judges of the High Court shall be the Chief Justice and such number of puisne judges, if any, as may be prescribed by Parliament:

Provided that the office of a judge shall not be abolished while any person is holding that office unless he consents to its abolition.

Appointment of judges of High Court

78. (1) The Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) The puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person shall not be qualified for appointment as a judge of the High Court unless -

(a) he holds, or has held, high judicial office in any country in the Commonwealth or in any country outside the Commonwealth that may be prescribed by Parliament; or

(b) he is qualified to practise as a barrister or solicitor in such a country and he has been so qualified for not less than five years.

(4) In computing, for the purposes of the preceding subsection, the period during which any person has been qualified to practise as a barrister or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

Acting judges and Commissioners of High Court

79.(1) If the office of Chief Justice is vacant or if the person holding that office is for any reason unable to perform the functions of his office, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a puisne judge or some other person qualified for appointment as a judge of the High Court to act as Chief Justice.

(2) If the office of a puisne judge is vacant or if a person holding the office of puisne judge is acting as Chief Justice or is for any reason unable to perform the functions of his office, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge.

(3) Any person appointed under the provisions of this section to act as a judge of the High Court shall, unless he earlier resigns his acting office or is removed therefrom under the next following section, continue so to act until the end of the period for which he was appointed or, if he was not appointed for a specified period, until his appointment is revoked by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission:

Provided that a person whose appointment has expired or whose appointment has been revoked may continue to act as such for so long thereafter as may be necessary

to enable him to deliver judgment or to do any other thing in relation to any proceedings that were commenced before him previously thereto.

(4) Whenever he is satisfied that no judge of the High Court is available to attend to the business of the Court, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint some person to perform

(a) all or any of the functions of a judge, either generally or in respect of any particular case or class of cases;

(b) such functions of a judge as it shall appear to that person require to be performed without delay, subject to such limitations and conditions, if any, as may be specified in the instrument of appointment.

(5) Any person appointed under the provisions of the preceding subsection shall be styled a Commissioner of the High Court; all things done by him in accordance with the terms of his appointment shall have the same validity and effect as if they had been done by a judge of the High Court; in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a judge of the High Court; and, notwithstanding that the period of his appointment has expired or his appointment has been revoked, he may sit as a Commissioner of the High Court for the purpose of delivering judgment or doing any other thing in relation to any proceedings that were commenced before him whilst his appointment was subsisting.

Tenure of office of Judges of High Court

80. (1) Subject to the provisions of this section, a judge of the High Court shall hold office until he attains the age of sixty years.

(2) Notwithstanding the preceding subsection, a person who is not a citizen of Solomon Islands and is over the age of sixty years may be appointed as a judge of the High Court for a term of years and shall cease to hold office at the expiration of that term, and shall not otherwise cease to hold office except in accordance with this section.

(3) Nothing done by a judge of the High Court shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

(4) A judge of the High Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(5) A judge of the High Court shall be removed from office by the Governor-General if the question of the removal of that judge from office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(6) If the Governor-General considers that the question of removing a judge of the High Court from office for inability as aforesaid or for misbehaviour ought to be investigated, then-

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Governor-General

from among persons who hold or have held high judicial office in some part of the Commonwealth; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether that judge should be removed under this section.

(7) If the question of removing a judge of the High Court from office has been referred to a tribunal under the preceding subsection, the Governor-General may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal advises the Governor-General that that judge should not be removed from office.

(8) Except as provided in subsection (5) of this section, the functions of the Governor-General under this section shall be exercised by him in his own deliberate judgment.

Judge may sit after appointment has terminated

81. A judge of the High Court whose appointment has terminated otherwise than by reason of his removal from office may sit as a judge of that Court for the purpose of delivering judgment or doing any other thing in relation to any proceedings that were commenced before him while his appointment was subsisting.

Seal of High Court

82. The High Court shall have a seal bearing on it the words "The High Court of Solomon Islands" and such device as Parliament shall approve by resolution.

Jurisdiction of High Court in constitutional questions

83.(1) Subject to the provisions of section 31(3) and 98(1) of, and paragraph 10 of Schedule 2 to, this Constitution, if any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction, in any application made by any person in pursuance of the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the High Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the person by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(3) Where the High Court makes a declaration in pursuance of the preceding subsection that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the High Court may grant to

that person such remedy, being a remedy available against any person in any proceedings in the High Court under any law for the time being in force in Solomon Islands, as the Court considers appropriate.

(4) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 52 of this Constitution otherwise than upon an application made in accordance with the provisions of that section.

High Court and subordinate courts

84.(1) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) Where any question as to the interpretation of any provision of this Constitution other than Chapter II arises in any subordinate court and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the High Court.

(3) Where any question is referred to the High Court in pursuance of the preceding subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal, in accordance with the decision of the Court of Appeal.

(b) The Court of Appeal

Establishment of Court of Appeal

85. (1) There shall be a Court of Appeal for Solomon Islands which shall have such jurisdiction and powers to hear and determine appeals in civil and criminal matters as may be conferred on it by this Constitution or by Parliament.

(2) The judges of the Court of Appeal shall be -

(a) a President and such number of other Justices of Appeal, if any, as may be prescribed by Parliament; and

(b) the Chief Justice and the puisne judges of the High Court, who shall be judges of the Court ex officio.

Appointment of judges of Court of Appeal

86. (1) The President of the Court of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) The other Justices of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person shall not be qualified to be appointed under subsection (1) or (2) of this section unless he is qualified for appointment as a judge of the High Court.

(4) A judge of the Court of Appeal shall not sit as a judge of the Court on the hearing of an appeal -

(a) from any decision given by himself or any decision given by any court of which he was sitting as a member; or

(b) against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

(5) If the office of President of the Court of Appeal is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the holder thereof has resumed those functions, as the case may be, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint one of the other judges of the Court of Appeal or some other person qualified for appointment to that office to act as President of the Court of Appeal:

Provided that a person appointed under this subsection who is not a judge of the Court of Appeal may, notwithstanding the assumption or resumption of the functions of the office of President of the Court of Appeal by the holder of that office, continue to act as a judge of the Court of Appeal for so long thereafter as may be necessary to enable him to deliver judgment or do any other thing in relation to any proceedings that were commenced before him previously thereto.

(6) Nothing in this section or the preceding section shall preclude the offices of Chief Justice and President of the Court of Appeal from being held by the same person.

Tenure of office of judges of Court of Appeal

87. (1) Subject to the provisions of this section, a judge of the Court of Appeal shall hold office until he attains the age of sixty years.

(2) Notwithstanding the preceding subsection, a person who is not a citizen of Solomon Islands and is over the age of sixty years may be appointed as a judge of the Court of Appeal for a term of years and shall cease to hold office at the expiration of that term, and shall not otherwise cease to hold office except in accordance with this section.

(3) Nothing done by a judge of the Court of Appeal shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

(4) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(5) A judge of the Court of Appeal shall be removed from office by the Governor-General if the question of the removal of that judge from office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Governor-General that he ought to be removed from office for an inability as aforesaid or for misbehaviour.

(6) If the Governor-General considers that the question of removing a judge of the Court of Appeal from office for inability as aforesaid or for misbehaviour ought to be investigated, then -

(a) the Governor-General shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the Governor-General from among persons who hold or have held high judicial office in some part of the Commonwealth; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether that judge should be removed under this section.

(7) If the question of removing a judge of the Court of Appeal from office has been referred to a tribunal under the preceding subsection, the Governor-General may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal advises the Governor-General that that judge should not be removed from office.

(8) Except as provided in subsection (5) of this section, the functions of the Governor-General under this section shall be exercised by him in his own deliberate judgment.

Judge may sit after appointment has terminated

88. A judge of the Court of Appeal whose appointment has terminated otherwise than by reason of his removal from office may sit as a judge of that Court for the purpose of delivering judgment or doing any other thing in relation to any proceedings that were commenced before him while his appointment was subsisting.

Seal of Court of Appeal

89. The Court of Appeal shall have a seal bearing on it the words "The Court of Appeal of Solomon Islands" and such device as Parliament shall approve by resolution.

(c) Rules of Court

Rules of court

90. There shall be a Rules Committee, consisting of the Chief Justice, the President of the Court of Appeal and the Attorney-General (who shall constitute a quorum) and such other persons as the Governor-General, acting after consultation with the Chief Justice, may appoint, which may make rules of court regulating the practice and procedure of the High Court and the Court of Appeal, prescribing the fees to be paid in respect of any proceeding and generally for making provision for the proper and effectual exercise of the jurisdiction of the High Court and the Court of Appeal, including the procedure for the making and hearing of appeals to the High Court from subordinate courts and for the making and hearing of appeals to the Court of Appeal from the High Court:

Provided that rules regulating the admission of legal practitioners to practise as barristers and solicitors or in either of these capacities, or prescribing or affecting the amount of any fees or the recovery thereof, shall not come into operation unless approved, either before or after being made, by Parliament.

Judicial and Legal Service Commission

117.(1) There shall be a Judicial and Legal Service Commission for Solomon Islands.

(2) The members of the Commission shall be -

- (a) the Chief Justice, who shall be Chairman of the Commission;
- (b) the Attorney-General;
- (c) the Chairman of the Public Service Commission;
- (d) the President of the Bar Association; and
- (e) two other members.

(3) The two members referred to in paragraph (e) of subsection (2) shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister."

(4) The office of the member of the Commission appointed under the preceding subsection shall become vacant -

- (a) at the expiration of three years from the date of his appointment;
- (b) if he becomes a member of Parliament or a public officer other than a judge of the High Court or the Court of Appeal; or
- (c) if he is removed from office in accordance with section 126 of this Constitution.

Appointments etc. of judicial and legal officers

118.(1) Power to make appointments to the offices to which this section applies (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the Judicial and Legal Service Commission.

(2) This section applies to -

- (a) all public offices for which a legal qualification is required, except those of Attorney-General, judge of the High Court or the Court of Appeal, Director of Public Prosecutions and Public Solicitor;
- (b) magistrates engaged in full time judicial and related duties; and
- (c) such other officers, including registrars of the High Court and the Court of Appeal, as may be prescribed.

Magistrates Courts Bench Book 2004

1. Ethical Principles

As a Magistrate, you must swear the following oath on appointment:

"I _____ do swear [or solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of _____ and will do right to all manner of people after the laws and usages of Solomon Islands, without fear or favour, affection or ill will. [So help me God]."

The judicial role is a public one and your conduct will be under public scrutiny. The respect and confidence of the public in the justice system requires that Judges and

Magistrates respect and comply with the law, and conduct themselves in a manner which will not bring themselves or their office into disrepute.

The Oath can be divided into parts to illustrate a number of well-established ethical principles of judicial conduct.

1.1 “Well and Truly Serve”

Diligence

You should be diligent in the performance of your judicial duties.

This means you should:

- devote your professional activity to your judicial duties, which include not only presiding and sitting in Court and making decisions, but other judicial tasks essential to the Court’s operation;
- bring to each case a high level of competence and be sufficiently informed to provide adequate reasons for each decision;
- take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for your role;
- not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

Decisions should be delivered as quickly as circumstances permit. Always try to do this immediately. This means you must:

- be familiar with common offences, jurisdiction and procedure; and
- prepare before sitting in Court.

1.2 “Do Right”

Integrity

You should strive to conduct yourself with integrity so as to sustain and enhance public confidence in the Judiciary.

This means you should:

- make every effort to ensure that your conduct is above reproach in the view of reasonable, fair minded and informed persons; and
- encourage and support your judicial colleagues to observe this high standard.

1.3 “All Manner of People”

Equality

You should conduct yourself and proceedings before you so as to ensure equality according to the law.

This means you should:

- carry out your duties with appropriate consideration for all persons (for example, parties, witnesses, Court personnel and judicial colleagues) without discrimination;
- strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnical background;

- avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;
- in the course of proceedings before you, disassociate yourself from and disapprove of clearly irrelevant comments or conduct by Court staff, counsel, or any other person subject to your direction. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

1.4 “After the Laws and Usages of Solomon Islands”

Lawfulness

You should act within the authority of the law.

This means you should:

- not take into account irrelevant considerations when making your decisions - the exercise of judicial discretion should only be influenced by legally relevant considerations;
- not abdicate your discretionary powers to another person – it is for **you** to decide;
- defend the constitutionally guaranteed rights of the Solomon Island people.

1.5 “Without Fear or Favour, Affection or Ill Will”

Judicial Independence

An independent Judiciary is indispensable to impartial justice under the law. You should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

This means you must:

- exercise your judicial functions independently and free of irrelevant influence;
- firmly reject any attempt to influence your decisions in any matter before the Court outside the proper process of the Court;
- encourage and uphold arrangements and safeguards to maintain and enhance the independence of the Judiciary;
- exhibit and promote high standards of judicial conduct so as to reinforce public confidence, which is the cornerstone of judicial independence.

Impartiality

You must be, and should appear to be, impartial with respect to your decisions and decision making.

This means you should:

- strive to ensure that your conduct, both in and out of Court, maintains and enhances confidence in your impartiality and that of the Judiciary;
- not allow your decisions to be affected by:
 - bias or prejudice;
 - personal or business relationships; or
 - personal or financial interests;

- as much as reasonably possible, conduct your personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases;
- review all commercial, social and political groups you are a member of, or have an interest in, and ask yourself, “could this involvement compromise my position as Magistrate?”

You must not only be impartial, but you must be seen to be impartial. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair-minded and informed person.

This principle touches several different areas of your conduct.

a) Judicial demeanour

While acting decisively, maintaining firm control of the process and ensuring cases are dealt with quickly, you should treat everyone before the Court with appropriate courtesy.

b) Civic and charitable activity

You are free to participate in civic, charitable and religious activities, subject to the following considerations:

- Avoid any activity or association that could reflect adversely on your impartiality or interfere with the performance of your judicial duties.
- Do not solicit funds (except from judicial colleagues or for appropriate purposes) or lend the prestige of the judicial office to such solicitations.
- Avoid involvement in causes and organisations that are likely to be engaged in litigation.
- Do not give legal or investment advice.

c) Political activity

You should refrain from conduct which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in your impartiality with respect to issues that could come before the Courts.

All partisan political activity must cease upon appointment. You should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that you are engaged in political activity.

You should refrain from:

- membership in political parties and political fundraising;
- attendance at political gatherings and political fundraising events;
- contributing to political parties or campaigns;
- taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the Judiciary or fundamental aspects of the administration of justice;
- signing petitions to influence a political decision.

Members of your family have every right to be politically active. Sometimes this may adversely affect the public perception of your impartiality. In any case before the Court where there could reasonably be such a perception, you should not sit.

d) Conflict of interest

You must disqualify yourself in any case in which you believe that you will be unable to judge impartially. You should also disqualify yourself if a reasonable, fair minded and informed person would have a personal suspicion of conflict between your personal interest (or that of your immediate family or close friends or associates) and your duty.

Never preside over a case where the accused or witness:

- is a near relative;
- is a close friend;
- is an employer or employee; or
- has a close business relationship with you.

Do not preside over a case where you may have or appear to have preconceived or pronounced views relating to:

- issues;
- witnesses; or
- parties.

For example, if you witness an accident, do not preside over any case arising out of that accident. It is possible that you might prefer your recollection to the evidence produced in Court. Given that individual islands are so small, you should also be careful not to let person or local knowledge affect your judgment.

Disqualification is not appropriate if:

- the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification;
- no other Magistrates are available to constitute a Court to deal with the case; or
- because of urgent circumstances, failure to act could lead to a miscarriage of justice.

(b) Observations on the implementation of the article

286. The reviewing experts concluded that Solomon Islands was in compliance with this provision of the Convention.

287. During the Country Visit, it was reported that members of the judiciary and the Director of Public Prosecutions fall under the purview of the Leadership Code. In addition, documents such as the Magistrates Courts Bench Book 2004 provide ethical principles for the judiciary. Judges can be removed for misconduct, and investigations of complaints are conducted internally by the Registrar with the guidance of the Chief Justice, who makes the final decision on corrective measures.

288. In addition it was reported that the Constitution sets forth the judicial framework, as well as the Code of Judicial Conduct, which was adopted in 2008. This is similar to the Magistrate's Bench Book. Minimum standards that are expected of members of the judiciary are contained therein. A Judicial and Legal Services Commission is in place. Concerns of conduct are raised in writing with the Registrar or sometimes with the Chief Justice. The Registrar does the further investigation and provides recommendations. A few cases have actually been referred to the police

when criminal action is implicated, and some have been prosecuted and also convicted.

289. It was reported that nothing is set in writing with regard to the clear process of internal investigation and dealing with complaints. But the Registrar usually gets them first. Then the Chief Justice (CJ) makes the decision about what needs to happen, and decides the next steps. Health of judicial officers can sometimes interfere with the work, and that is an example of something that needs to be addressed. If it is a magistrate who is at issue, the Chief Justice gives instruction to the Chief Magistrate to take the corrective action. There is currently an intention to develop written guidelines on this subject.
290. Regarding conflicts of interest, it is very common to encounter in a small jurisdiction. The CJ has advised judges not to excuse themselves easily, but to take time to see whether conflicts can be managed. In the case where there are no other judges who can hear it, the CJ or Chief Magistrate will hear it. The Code of Judicial Conduct provides some strict guidelines (cannot hear cases involving close relatives etc.), but the rest is discretion of the judge.
291. In Superior Courts, the distribution of cases is assigned to the Registrar. More or less a random distribution, with a chance for the assigned judge to screen the case after assignment. Big or complex cases would be consulted with the CJ who decides who should handle the case. Procedures should be similar at the Magistrates level.
292. Every court hearing is open unless a good reason to close it, such as for security reasons or applications are made on intimidation. Some matters can be done in chambers. The media is allowed in court hearings.
293. Membership of the Judicial Legal Service Commission has been fair and balanced, and the process is open seeking to protect appointments to the bench. It is chaired by the CJ, and includes the Attorney General, Chair of Public Service Commission, and the head of the Bar, plus two members nominated by the Prime Minister. It is an independent body. The retirement age of high court judges is 60 years and possible extension up to 70. Magistrates retire at 55 years of age.
294. On judicial independence, there are two aspects – independence of the judiciary and independence of the judicial officer personally. In Solomon Islands, the individual officers are independent and strong. They are aware that everyone is watching. The pressures on independence are greater naturally in this smaller jurisdiction. Institutional independence is the separate aspect – The Constitution recognizes that, but Solomon Islands is still working hard to ensure that funding and resources are provided adequately, in terms of per diems, DSA, etc. such as for court hearings.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it

does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

295. The Constitution provides for the Director of Public Prosecutions who is to be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission. As a public officer, the provisions of the Leadership Code apply to the Director of Public Prosecutions.

Constitution 1978

91. Provided however, where any person may be liable for criminal prosecution in respect of any acts done in connection with the armed conflict on Guadalcanal from the 1st day of January 1998 to the 15th day of October 2000; or the 7th day of February 2001, as the case may be, such person shall not be prosecuted for such offence but shall be granted amnesty or immunity from prosecution in the manner and to the extent provided for by the Amnesty Act 2000 or by any other Act of Parliament providing for the grant of such amnesty in connection with the Marau conflict

(5) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(6) The powers conferred on the Director of Public prosecutions by paragraphs (b) and (c) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(7) In the exercise of the powers conferred on him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that, where any case in any way concerns the defence, security or international relations of Solomon Islands, the Director of Public Prosecutions shall bring the matter to the attention of the Minister responsible for justice and shall, in the exercise of his powers in relation to that case, act in accordance with any directions that Minister may give to him.

(8) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by paragraph (c) of subsection (4) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(9) During any period when the office of Director of Public Prosecutions is vacant or the holder of that office is for any reason unable to perform the functions of his office, those functions shall be performed by the Attorney-General.

296. In Solomon Islands, certain criminal offences and all traffic offences are prosecuted by the Police Prosecution Directorate, which is a division within the Police Force.

297. As described on the SIRPF website:¹⁶

The Police Prosecution Directorate (PPD) is a Division within the Royal Solomon Islands Police Force responsible for the prosecution of police cases, from Honiara City and Guadalcanal Province, in the Magistrates Courts. The PPD prosecutes all criminal and traffic cases, except for the more serious ones like Murder and others, which were prosecuted by Lawyers in the Office of the Director of Public Prosecutions. The PPD's other responsibilities includes; assisting other provincial police prosecutors in the prosecution of their cases – on request, providing advice to police investigators, and conducting prosecution trainings organized by the Learning & Development Directorate or other commands.

RSIPF police prosecutors present cases against offenders in the Magistrates Courts around the Solomon Islands. The police prosecutors act on behalf of the RSIPF investigator who charged the offender with the offences before the Magistrate courts. Prosecutors are also available to provide legal advice to police during an investigation. Each year the police prosecutions department presents more than 1800 cases before the Magistrates Court.

(b) Observations on the implementation of the article

298. The reviewing experts concluded that Solomon Islands is in compliance with this provision of the Convention.

299. During the Country Visit, it was reported that public prosecutors are subject to the requirements of the Leadership Code and the general code of conduct for public servants. In addition, prosecutors are governed by a practice manual, and the Director of Public Prosecution oversees matters pertaining to training, discipline and the exercise of prosecutorial discretion.

300. It was further reported that the Prosecution has guidelines (Procedural manual) on how decisions are made on whether and how prosecutions are made; how prosecutors and admin deal with the elements and issues that come before the office; timelines; matters regarding receiving of the file through the front desk and how files are then entered into the system, and intake review by an assigned prosecutor who makes a reference for allocation. The DPP then endorses the allocation. After DPP endorses, this is returned the same way to the officer who is assigned the matter. Conflicts of interest are raised and discussed in a group meeting with the DPP, and de-conflicted as necessary.

¹⁶ <http://www.rsipf.gov.sb/?q=prosecutions>

301. All matters on governing the case – especially in media relations – have to be referred through the DPP. All matters of discretion must be cleared by the Director before the prosecutor takes it forward. Withdrawal of the case, for example, or reduction of the charge, must be approved by the DPP. Prosecutors are also required to adhere to the public service code of conduct and are regulated by the Legal Practice Act. Any breach of internal policies that touch on these issues are subject to those consequences. If they do not rise to expected level, then there can be reprimands or requests for resignations – or the issue is otherwise dealt with internally.

302. The Advertisement, interviews and a panel decides all recruitment, which includes someone from HR or the public service office. Training of new prosecutors is fairly ad hoc, but the DPP tries to be consistent. First there is an induction process with a senior lawyer and the office manager, as well as immediate supervisor. Plus the DPP makes presentations on respective areas of the office. After induction, the new prosecutor reads all applicable policies, then in an ideal world, the prosecutor is sent to observe processes in courts, then started on their own little by little.

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) *Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

(f) *Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

(a) Summary of information relevant to reviewing the implementation of the article

303. *The Companies Act* requires companies to keep certain company records at its registered office. Section 119 of the *Companies Act* requires the directors of a company to ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return in the prescribed form; containing the prescribed information; and accompanied by the prescribed annual return fee.

304. Section 124 of the *Companies Act* requires the directors of a company to ensure accounting records are kept that correctly record and explain the transactions of the company; will at any time enable the financial position of the company to be determined with reasonable accuracy; will enable the directors to ensure that the financial statements of the company comply with section 125 and with any regulations made under this Act; and will enable the financial statements of the company to be readily and properly audited.

305. Section 125 of the *Companies Act* requires the directors of any public or community company to ensure that within four months after the balance date of the company, financial statements are completed in relation to the company and that balance date; and within 20 working days of the date on which the financial statements must be completed, those financial statements are sent to all shareholders. The financial statements of a company must give a true and fair view of the matters to which the statements relate; comply with any applicable regulations made under this Act; and be dated and signed on behalf of the directors by two directors of the company or, if the company has only one director, by that director. Section 127 provides for the appointment of an auditor.

306. Under the National Anti-Corruption Strategy, cooperation with the private sector is essential. Two members of the Steering Committee are representatives from the private sector. The NACS would require for private sector investors to implement anti-corruption compliance programmes. Failure to comply would lead to sanctions. Also, any company or person awarded a government tender would also be required to comply with legal and administrative regulations. The NACS also calls for the organisation of anti-corruption compliance programme training for private sector firms. Under the Anti-Corruption Bill 2016, bribery and embezzlement in the private sector would also be criminalised. This was a recommendation from the previous review cycle.

307. Regarding law enforcement cooperating with the private sector to prevent corruption, the FIU works closely with banks and financial institutions to identify suspicious transactions that may indicate money-laundering, terrorist financing or other offences. The unit also provides regular training to financial institutions, cash dealers and legal practitioners on proper record-keeping and reporting practices.¹⁷

Companies Act 2009

Division 10—Share Register

39. (1) A company must maintain a share register that records the shares issued by the company and states—

- (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and
- (b) the number of shares of each class held by each shareholder within the last 7 years; and
- (c) the date of any issue of shares to, repurchase or redemption of shares from, or transfer of shares by or to, each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) The share register must be kept—

- (a) in a form permitted under section 114; and
- (b) at the registered office of the company.

(3) The share register of the company may be maintained by an agent on behalf of the company.

(4) If a company fails to comply with the requirements of this section the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

41. (1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court for rectification of the share register, or compensation for loss sustained, or both.

(2) The Court may, on an application under this section, order—

- (a) rectification of the register;
- (b) payment of compensation by the company for any loss sustained;
- (c) rectification and payment of compensation.

(3) The Court may, on an application under this section, decide—

- (a) a question relating to the entitlement of a person who is a party to the application to have his or her name entered in, or omitted from, the register; and
- (b) a question necessary or expedient to be decided for rectification of the register.

42. No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

Division 2—Company Records

Company records

113. (1) A company must keep the following documents at its registered office—

- (a) the rules of the company;

¹⁷ Chapter III report p 7.

- (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
 - (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
 - (d) a consent by each person named as a director to act as a director of the company in the prescribed form as well as the full names and residential and postal addresses of the current directors;
 - (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;
 - (f) the accounting records required by section 124 for the current accounting period and for the last 7 completed accounting periods of the company;
 - (g) copies of all financial statements required to be completed under section 125 for the last 7 completed accounting periods of the company;
 - (h) the share register.
- (2) The references in subsection (1)(b), (c), and (e) to 7 years and the references in subsection (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company.
- (3) The company records referred to in this section may be kept at a place in Solomon Islands other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (4).
- (4) If any company records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the places where the records are kept.
- (5) If a company fails to comply with subsection (1) or (4), the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Form of records

114. (1) The records of a company must be kept—
- (a) in written form; or
 - (b) in a form or in a manner that allows the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to—
- (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

Inspection of records by directors

115. (1) Subject to subsection (2), every director of a company is entitled to inspect the records of the company—
- (a) in written form; and
 - (b) without charge; and
 - (c) at a reasonable time specified by the director.
- (2) The Court may, on application by the company, direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit if it is satisfied that—
- (a) it would not be in the company's interests for a director to inspect the records; or
 - (b) the proposed inspection is for a purpose that is not properly connected with the director's duties.

Inspection of records by shareholders

116. (1) A company must keep the following records available for inspection in the manner prescribed in section 118 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company—

- (a) minutes of all meetings and resolutions of shareholders;
 - (b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;
 - (c) the records that must be available for public inspection under section 117.
- (2) If a company fails to comply with subsection (1) —
- (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Inspection of records by public

117. (1) A company must keep the following records available for inspection in the manner prescribed in section 118 by any person who serves written notice of intention to inspect on the company—

- (a) the certificate of incorporation or registration of the company;
 - (b) the rules of the company, if they differ from the model rules;
 - (c) the share register;
 - (d) the full names and residential addresses of the directors;
 - (e) details of the registered office of the company and of its postal address, if different from the registered office.
- (2) If a company fails to comply with subsection (1), the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Manner of inspection

118. (1) Documents that may be inspected under section 116 or 117 must be available for inspection at the place at which the company's records are kept between the hours of 8.00 am and 4.00 pm on each working day during the inspection period.

(2) In this section, "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

(3) A person may require a copy of, or extract from, a document that is available for inspection by him or her under section 116 or 117 to be sent to the person—

- (a) within 5 working days after he or she has made a request in writing for the copy or extract; and
 - (b) if he or she has paid a reasonable copying and administration fee specified by the company.
- (4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3), the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Division 3—Documents to be sent to Registrar and Shareholders

Annual returns

119. (1) The directors of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return—

- (a) in the prescribed form; and
- (b) containing the prescribed information; and
- (c) accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.

(3) The annual return must be signed by a director of the company or by a legal practitioner or chartered accountant authorised for that purpose.

(4) On registration of a company under Part 2, the Registrar must allocate a month to the company for the purposes of this section.

(5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4).

(6) Despite subsection (1)—

- (a) a company need not make an annual return in the calendar year of its incorporation; and
- (b) a subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.

(7) Different forms of annual return may be prescribed by the Registrar in respect of different classes of companies.

Registrar may send annual return form to company

120. (1) The Registrar may send to a company an annual return form that sets out the prescribed information as it appears on the Solomon Islands register—

- (a) for approval in accordance with section 119(3) if the information set out in the form is current as at a date in the month in which the return is required to be made; or
- (b) for such correction as may be required, and approval of the corrected information in accordance with section 119(3).

(2) If the annual return contains—

- (a) an address of the registered office of the company; or
 - (b) a postal address of the company,
- that is different from the address of the registered office or the postal address of the company entered on the Solomon Islands register, the Registrar may alter the Solomon Islands register accordingly.

(3) For the purposes of this section the Registrar may make provision for electronic submission of the annual return.

Special Annual Return

121. (1) The directors of a company must ensure that there is delivered to the Registrar a special annual return—

- (a) in the prescribed form or in a form approved by the Registrar by public notice; and
- (b) containing the prescribed information.

(2) The special annual return must be filed within 10 days of the occurrence of any of the following specified events—

- (a) the adoption of new rules by a company, or the alteration of the rules of a company, under section 14;
- (b) a change in the registered office or postal address of the company under section 18;
- (c) the issue of shares by the company, under section 25;
- (d) the acquisition by the company of its own shares under section 30;
- (e) the redemption of a share under section 34;
- (f) a change in the directors of the company, or of a change in the name or residential address of a director, under section 85;
- (g) the making of an order under section 99 altering or adding to the rules of a company;
- (h) any documents requested by the Registrar under section 176.

Annual report to shareholders

122. An annual report must be sent to shareholders in accordance with section 55.

Other documents to be sent to shareholders

123. In addition to any annual report required under section 55, a company must send the following documents to shareholders—

- (a) notice of any repurchase of shares to which section 30(4) applies;
- (b) notice of a written resolution approved under section 51;
- (c) financial statements required to be sent under section 125;
- (d) a written statement by an auditor under section 131;
- (e) a report by an auditor under section 133.

Division 4—Accounting and Audit

Accounting records to be kept

124. (1) The directors of a company must ensure accounting records are kept that—

- (a) correctly record and explain the transactions of the company; and
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) will enable the directors to ensure that the financial statements of the company comply with section 125 and with any regulations made under this Act; and
- (d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subsection (1), the accounting records must contain—

- (a) entries of money received and spent each day and the matters to which it relates; and
- (b) a record of the assets and liabilities of the company; and
- (c) if the company's business involves dealing in goods —
 - (i) a record of goods bought and sold, and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and
- (d) if the company's business involves providing services, a record of services provided and relevant invoices.

(3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business—

- (a) invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and

- (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.
- (4) The accounting records must be kept in a form permitted under section 114.
- (5) If the directors of a company fail to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Financial statements to be prepared

125. (1) The directors of any public or community company must ensure that—
- (a) within 4 months after the balance date of the company, or within any extended period applicable under subsection (3), financial statements that comply with subsection (2) are completed in relation to the company and that balance date; and
 - (b) within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders (this requirement may be satisfied by sending the financial statements to shareholders in an annual report in accordance with section 55).
- (2) The financial statements of a company must—
- (a) give a true and fair view of the matters to which the statements relate; and
 - (b) comply with any applicable regulations made under this Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.
- (3) The following periods must not exceed 15 months—
- (a) the period between the date of incorporation of a company and its first balance date;
 - (b) the period between any 2 balance dates of a company.

Application

126. (1) This section and sections 127 to 129 apply to a company in respect of an accounting period if—
- (a) it is registered as a public company at any time during that accounting period; or
 - (b) the company's rules require it to appoint an auditor in respect of that accounting period; or
 - (c) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of the accounting period requiring the financial statements of the company for that period to be audited.
- (2) If this section and sections 127 to 129 apply to a company in respect of an accounting period, but do not apply in respect of a subsequent accounting period—
- (a) the financial statements of the company for the accounting period in respect of which this section applies must be audited; and
 - (b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that this section and sections 127 to 129 no longer apply to the company, and that the auditor will cease to hold office unless a notice is given by shareholders under subsection (1)(c) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

(c) if a notice has been given under paragraph (b), and no notice under subsection (1)(c) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of—

- (i) the date specified in the notice; or
- (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

Appointment of auditor

127. (1) A company to which this section applies must appoint an auditor—

- (a) to hold office as auditor until the auditor ceases to hold office under section 128; and
- (b) to audit the financial statements of the company.

(2) A company must appoint an auditor—

- (a) within 30 working days of the date on which this section first applies to the company;
- (b) within 30 working days of any vacancy arising in the office of auditor.

When auditor ceases to hold office

128. An auditor ceases to hold office if he or she—

- (a) ceases to hold office under section 126(2); or
- (b) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
- (c) becomes disqualified from being the auditor of the company under section 130; or
- (d) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 131(2); or
- (e) dies; or
- (f) a person in respect of whom an order of custody is in force under section 18 or 41 of the Mental Treatment Act (Cap 103).

Court may appoint auditor on request of shareholder

129. (1) The Court may, at the request of any shareholder, appoint an auditor if—

- (a) this section applies to a company; and
- (b) the company has neglected or failed to appoint an auditor.

(2) If the Court appoints an auditor, the Court may determine the fees to be paid by the company to the auditor.

(3) Any fees determined by the Court may be recovered as if the fees were provided for in a contract between the company and the auditor.

Qualifications of auditor

130. (1) A person must not be appointed or act as an auditor of a company unless—

- (a) the person is entitled to practise and certified by an association of accountants constituted in Solomon Islands, as an accountant in Solomon Islands, and meets any further requirements in respect of practice as an auditor in Solomon Islands that may be prescribed by regulations made under this Act; or

- (b) if the audit is to be carried out outside Solomon Islands for an overseas company, the person is eligible to act as an auditor in the country, state, or territory in which the audit is to be carried out.
- (2) The following persons must not be appointed or act as auditor of a company—
- (a) a director or secretary or employee of the company, or any other person responsible for keeping the accounting records of the company;
 - (b) a person who is a partner, or in the employment, of a person referred to in paragraph (a);
 - (c) a liquidator or a person who is a receiver in respect of the property of the company;
 - (d) a corporation;
 - (e) a person who, by virtue of any of paragraphs (a) to (c), may not be appointed or act as auditor of a related company.
- (3) For the purpose of this Act, the Auditor General is deemed qualified auditor of a company.

Statement by auditor in relation to resignation or removal

131. (1) If an auditor resigns from office, the directors must, if requested to do so by that auditor—
- (a) distribute to all shareholders, at the expense of the company, a written statement of the auditor's reasons for resigning; or
 - (b) permit the auditor or his or her representative to explain at a shareholders' meeting the reasons for the resignation.
- (2) A company must not appoint a new auditor in the place of an auditor who is qualified to hold that office, unless—
- (a) at least 20 working days' written notice of a proposal to do so has been given to the auditor; and
 - (b) the auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either in writing or by the auditor or his or her representative speaking at a shareholders' meeting (whichever the auditor may choose).
- (3) An auditor is entitled to be paid reasonable fees and expenses by the company for making the representations to shareholders referred to in subsection (1) or (2).

Auditor to avoid conflict of interest

132. An auditor of a company must ensure, in carrying out the duties of an auditor under this Part, that his or her judgment is not impaired by reason of any relationship with, or interest in, the company or any related company.

Auditor's report

133. (1) The auditor of a company to which sections 126 to 129 apply must make a report to the shareholders on the financial statements audited by him or her that states—
- (a) the work done by the auditor; and
 - (b) the scope and limitations of the audit; and
 - (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the company or any related company; and

- (d) whether the auditor has obtained all information and explanations that he or she has required; and
 - (e) whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the company; and
 - (f) whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements—
 - (i) give a true and fair view of the matters to which they relate; and
 - (ii) comply with any applicable regulations made under this Act, and, if such statements do not, the respects in which they fail to give such a view or comply with such requirements, as the case may be; and
 - (g) any other matter prescribed for the purposes of this section by regulations made under this Act.
- (2) Any audit report made by a person not qualified under section 130 is deemed not to be a report required under this Act.

Access to information

134. (1) The directors of a company must ensure that an auditor of the company has access at all reasonable times to the accounting records and other documents of the company.
- (2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations that he or she thinks necessary for the performance of his or her duties as auditor.
- (3) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.
- (4) A director or employee who fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.
- (5) It is a defence to an employee charged with an offence against subsection (4) if the employee proves that—
- (a) he or she did not have the information required in his or her possession or under his or her control; or
 - (b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required.

Auditor's attendance at shareholders' meeting

135. (1) The directors of a company must ensure that the auditor of the company—
- (a) is permitted to attend a meeting of shareholders of the company; and
 - (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
 - (c) may be heard at a meeting of shareholders that the auditor attends on any part of the business of the meeting that concerns him or her as auditor.
- (2) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Further information to be provided by overseas company

160. (1) An overseas company that carries on business in Solomon Islands must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of—

- (a) a change in the directors or in the names or residential addresses or postal addresses of the directors of the overseas company; or
- (b) a change in the address of the place of business or principal place of business of the overseas company; or
- (c) a change in the postal address in Solomon Islands of the overseas company; or
- (d) a change in any person or in the postal address or residential or business address of any person authorised to accept service in Solomon Islands of documents on behalf of the overseas company.

(2) If an overseas company fails to comply with subsection (1), the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Annual return of overseas company

161. (1) Any overseas company that carries on business in Solomon Islands must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the Solomon Islands register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Despite subsection (1), an overseas company that is deemed to be registered under this Part need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsection (1) or (2) within 6 months, the overseas company must be removed from the register.

(7) The Registrar must, on the application of a director or shareholder, restore an overseas company that has been removed from the Solomon Islands register under subsection (6).

(8) The application under subsection (7) must be received within 7 years and be accompanied by all outstanding annual returns and associated filing fees, and a late filing fee for each outstanding annual return.

Companies Regulations 2010

PART 3 – ANNUAL REPORT AND FINANCIAL STATEMENTS

Division 1 - Annual report

Contents of annual report for public companies

7. (1) Every annual report for a public company must be in writing and be dated and, subject to sub regulation (3), must—

- (a) state, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the accounting period; and
 - (b) state the total amount of donations made by the company during the accounting period; and
 - (c) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm.
- (2) A company that is required to include group financial statements in its annual report must include, in relation to its subsidiaries, the information specified in sub regulation (1).
- (3) The annual report of a company need not comply with sub regulation (1)(a) to (c) if, and to the extent that, all shareholders agree that the report need not do so.

Division 2 - Financial statements

Form of financial statements

8. (1) Subject to sub regulation (2), financial statements of a company prepared for the purposes of the Act—

- (a) must be in the form set out in Schedule 3; and
 - (b) must contain the information required by that form; and
 - (c) may contain any other information that the board of the company considers to be appropriate for inclusion in the financial statements.
- (2) If, in the financial statements of a company, the amount of an item for an accounting period is not material and the amount of that item for the preceding accounting period is also not material, neither of those items need be separately disclosed.

Directions for preparation of financial statements

9. (1) Financial statements of a company prepared for the purposes of the Act must comply with the following accounting policies –

- (a) **Accrual accounting:** Accrual accounting must be used to record the effects of transactions and events when they occur;
- (b) **Accounts receivable:** Accounts receivable must be stated at their estimated net realisable value;
- (c) **Depreciation:** Depreciation must be calculated either—
 - (i) using the rates permitted under the *Income Tax Act (Cap 123)*; or
 - (ii) on a systematic basis over the economic life of the asset;
- (d) **Inventories:** Inventories must be valued at the lower of cost and net realisable value;
- (e) **Non-current assets:** Non-current assets must be stated at cost or valuation less aggregate depreciation or amortisation.

Financial statements of public companies

10. In addition to the requirements of regulations 10 and 11, the financial statements of a public company must either—

- (a) comply with international accounting standards; or
- (b) if the financial statements of a public company do not comply with international accounting standards, state how, and why, the financial statements do not comply with those accounting standards.

48. Section 31 of the Co-operative Societies Act provides that the Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing the accounts of every registered society once at least in every year. Section 51 creates an offence to obtain property of a society by false pretences.

Co-operative Societies Act [Cap 164]

PART VI AUDIT, INSPECTION AND INQUIRY

Audit

31.(1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing the accounts of every registered society once at least in every year.

(2) The audit under subsection (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and every other person appointed to audit the accounts of a society shall have power when necessary-

(a) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give material information in regard to any transactions of the society or the management of its affairs; or

(b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

Power to Registrar to inspect societies' books, etc.

32. The Registrar, or any person authorised by general or special order in writing by the Registrar, shall at all times have access to all the books, accounts, papers and securities of a registered society, and shall be entitled to inspect the cash in hand; and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

Inquiry and inspection

33.(1) The Registrar may of his own motion, and shall on the application of a majority of the committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working, and financial condition of a registered society; and all officers and members of the society shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him may require.

(2) The Registrar shall, on the application of a creditor of the registered society, inspect or direct some person authorised by him in writing in this behalf to inspect the books of the society, if the applicant-

(a) proves that an ascertained sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inspection to the creditor and to the society into whose affairs inquiry has been made.

(4) Where an inquiry is held under subsection (1) or an inspection is made under subsection (2), the Registrar may apportion the costs or such part of the costs, as he may think right, between the registered society, the members demanding an inquiry, the officers or former officers of the society, and the creditor, if any, on whose application the inquiry was made.

(5) Any sum awarded by way of costs against any society or person under this section may be recovered, on application to the Court in the place where the registered office of the society is situated or the person resides or carries on business for the time being, in like manner as a fine imposed by the Court.

Punishment of fraud or misappropriation

51. If any person obtains possession by false representation or imposition of any property of a society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society, and authorised by this Act, he shall on the complaint of the society, or of any member authorised by the society, or the committee thereof, or of the Registrar or any Assistant Registrar by his authority, be liable on summary conviction to a fine of forty dollars with costs, and to be ordered to deliver up all such property or to repay all moneys applied improperly, and, in default of such delivery or repayment, or of the payment of such fine to be imprisoned for three months.

Insurance Act [Cap 82]

PART V ACCOUNTS, RECORDS, RETURNS AND REPORTS

Separation of accounts and assets

33.(1) An insurer transacting or carrying on more than one of the following classes of insurance business—

- (a) employers' liability insurance business;
- (b) fire insurance business;
- (c) long term insurance business;
- (d) marine insurance business;
- (e) miscellaneous insurance business; or
- (f) motor insurance business,

shall keep separate accounts of all receipts and payments in respect of each such class of insurance business.

(2) The Controller may require an insurer transacting or carrying on any of the classes of insurance business specified in subsection (1) to keep separate accounts of all receipts and payments in respect of each subclass of such insurance business.

(3) Where an insurer transacts or carries on long term insurance business, all moneys received in respect of each subclass thereof shall be paid into an appropriately named sub fund, the sub funds to be collectively called the long term insurance fund, and the assets of each sub fund shall after the expiry of six months from the appointed date be kept separate from all other assets of the insurer and of the other sub funds. A deposit made by an insurer under section 25 in respect of long term insurance business shall for the purpose of this Act be deemed to form part of the assets of the long term insurance fund. Every insurer shall within six months after the end of every

calendar year, furnish to the Controller a detailed statement of the assets and liabilities comprising the long term insurance fund as at the end of that year, including any deduction on account of general reserves and other liabilities relating to its long term insurance business duly certified by an auditor:

Provided that—

- (a) a statement furnished under this subsection shall, in the case of an insurer to whom section 34 applies, be incorporated in the balance sheet mentioned in paragraph (a) of that section;
 - (b) the Controller may require production of a statement, duly certified by an auditor, of such assets of an insurer as at any other date specified by the Controller in writing to be furnished within a period of three months from the date of such requirement;
 - (c) except in the case of long term insurance business, nothing in this subsection shall require moneys belonging to one class of insurance business to be invested separately from moneys belonging to any other class of insurance business.
- (4) The long term insurance fund shall not be liable or chargeable for or in respect of any contract or transaction of the insurer other than that of long term insurance business and shall not be applied directly or indirectly for any other purpose whatsoever.

Accounts and balance sheet

34. An insurer incorporated in Solomon Islands in respect of all insurance business whosoever commenced, transacted or carried on, and in the case of any other insurer in respect of insurance business whosoever commenced, transacted or carried on which constitute or constituted a liability on its insurance business in Solomon Islands, shall at the expiration of each calendar year prepare with reference to that year—

- (a) a balance sheet;
- (b) a profit and loss account; and
- (c) in respect of each class or subclass of insurance business for which the insurer is required by section 33 to keep a separate account of receipts and payments, a revenue account.

Audit

35. (1) The balance sheet, profit and loss account, and revenue account prepared under section 34 shall be audited by an auditor.

(2) For the purposes of an audit under this section, an auditor shall have the same functions and rights as an auditor of a company under section 156 of the Companies Act.

Actuarial report and certificate of solvency

36.(1) An insurer shall in respect of long term insurance business commenced, transacted or carried on in Solomon Islands cause an investigation to be made by an actuary at least once in every three years into the financial affairs of such business (including a valuation of liabilities in respect of that business) and shall cause a report and a certificate of solvency to be issued signed by the actuary:

Provided that, where the Controller is not satisfied that such an investigation has been made within two years prior to the appointed date, he may direct that an investigation

be made not later than one year after the appointed date.

(2) There shall be appended to the certificate required by subsection (1) a certificate signed by a principal officer of the insurer that full and accurate particulars of every policy under which there is a liability (either existing or contingent) have been furnished to the actuary for the purpose of the investigation.

(3) Where an insurer transacting or carrying on insurance business (whether long term insurance business or otherwise) in Solomon Islands is incorporated by or under the law of another country and the insurer is required by the law of that country to prepare and furnish to a public authority documents which in the opinion of the Controller are of substantially the same nature as the documents required to be furnished under this section, the insurer shall, within the time specified in section 37, and in addition to the requirements of this section, furnish to the Controller two certified copies of every extract, statement, account and return supplied to such public authority.

(4) The provisions of this section relating to long term insurance business shall also apply to any class or subclass of insurance business referred to in subsection (1) of section 33 and the Controller may authorise such modifications and variations of the requirements as may be necessary to facilitate their application to any such class or subclass:

Provided that, if the Controller is satisfied that the number and amount of the transactions carried out by an insurer in any such class or subclass is so small as to render periodic investigation and valuation unnecessary, he may exempt that insurer from the operation of this subsection in respect of that class or subclass.

Submission of returns to Controller

37. (1) Two copies of every account, balance sheet, report or statement required to be made by the foregoing provisions of this Act, signed by two directors and a principal officer of the insurer, and by the auditor who made the audit or the actuary who made the valuation (as the case may be), shall be deposited with the Controller within four months after the end of the period to which they relate; so however, the Controller may extend the period allowed for depositing such documents by a period not exceeding two months.

(2) Where an insurer transacting or carrying on insurance business in Solomon Islands is incorporated by or under the law of another country and subsection (3) of section 36 does not apply it shall forward to the Controller in addition to the documents mentioned in section 34, a statement certified by a principal officer showing the total assets and liabilities both in and outside Solomon Islands at the close of the period covered by the balance sheet, profit and loss account, revenue account and the valuation report and statement.

Further returns to Controller

38. Every insurer shall furnish to the Controller such further returns or abstracts, or amended or substituted returns or abstracts, as may be required by the Controller.

Examination of returns by Controller

39. If it appears to the Controller that any return or report furnished to him under the provisions of this Act is inaccurate or incomplete in any respect he may—

- (a) require further information, which shall be certified if he so directs, from the insurer or from such auditor or actuary or other person as he may consider necessary;
- (b) require the insurer to submit any document for his examination at its registered office, or its principal place of business in Solomon Islands or to supply any statement;
- (c) examine any officer of the insurer on oath in relation to the return or report and may administer an oath accordingly; or
- (d) decline to accept such return or report unless such further information as may be required by him is furnished within two months or within such further period as he may specify and if he declines under this paragraph to accept any return or report, the insurer shall be deemed to have failed to comply with section 37.

Reports

40. Every insurer shall furnish forthwith to the Controller a certified copy of every report on its affairs made to its shareholders or policy holders.

Publication of summary returns

44. The Minister may cause to be published in each year in such manner as he may direct, a summary of the accounts, balance sheets, statements, and other returns furnished or purporting to be furnished under this Act to the Controller, and may append to such summary any note made by the Controller thereon.

Publication of returns

45. No insurer shall publish in Solomon Islands any return in a form other than that in which it has been furnished to the Controller; so however, nothing in this section shall prevent an insurer from publishing a true and accurate abstract from such return for the purpose of publicity.

Credit Unions

Section 48 of the Credit Union Act requires the accounts of every credit union to be audited once in every year. The Registrar may prescribe the books and records that should be kept by credit unions. Section 82 of the Credit Union Act creates an offence of fraud or misappropriation.

[Credit Union Act \[Cap 165\]](#)

PART VII AUDIT AND INVESTIGATION

Audit

48. (1) The accounts of every credit union shall be audited once in every year by an auditor authorised by the Registrar and approved by the supervisory committee.
- (2) For the purpose of subsection (1), an auditor shall have the same functions and rights as an auditor of a company under section 156 of the Companies Act.
- (3) On completion of the audit the auditor shall forward a report to the Registrar who shall cause such report to be forwarded to the supervisory committee and the credit union league.

Books of accounts

49. The Registrar may prescribe the books and records that should be kept by credit unions.

Power of Registrar to inspect books

50. The Registrar or any person authorised by the Registrar shall have access to all the documents, cash and securities of a credit union, and every officer of a credit union shall provide such information relating to the business of the credit union as the person making the inspection may require.

Investigation

51. (1) Where the Registrar-

(a) has reason to believe-

(i) that a credit union is unable to meet its obligations or has made default in complying with any provisions of this Act; or

(ii) that an offence under this Act, the regulations or the by-laws of a credit union has been or is likely to be committed by a credit union or any member; or

(iii) that the interests of the members of a credit union are otherwise in danger; or

(b) receives a requisition signed and supported by an affidavit by not less than one-quarter of the members of a credit union, that an investigation be held into the affairs of a credit union.; or

(c) receives a requisition signed and supported by an affidavit by a majority of the members of the board of directors or by the supervisory committee; or

(d) receives a petition from the league of credit unions in accordance with the provisions of section 70(e) recommending dissolution, or an investigation, he may, after consultation with the Minister and after giving the credit union a reasonable opportunity of making representations, investigate or order an investigation by any person.

(2) Where the Registrar receives a written direction from the Minister to investigate the affairs of a credit union he shall carry out such investigation, and shall make a report thereon in writing to the Minister.

(3) The Registrar may, before ordering an investigation upon a requisition made under paragraphs (b) and (c) of subsection (1), require the persons making the requisition to furnish security in such amount as he considers sufficient to meet the expenses that may be incurred by the credit union and the Registrar in respect of the investigation.

(4) A report of the investigation made under subsection (1), shall be made in writing and copies sent to the board of directors, the supervisory committee, and in the case of an investigation conducted pursuant to a requisition made under paragraph (b) of subsection (1) to such members.

(5) Where, after considering a report made under this section, the Registrar is of the opinion that a requisition under paragraphs (b) or (c) of subsection (1) has been without reasonable cause, he may order that the whole or any part of the amount furnished as security under subsection (3) be forfeited and paid to the credit union

and the Registrar in order to defray the respective costs incurred by them.

(6) When an investigation is made under subsections (1) or (2) of this section, section 161 of the *Companies Act* shall apply as they apply to an investigation made under section 160 of the *Companies Act*.

(7) If, as a result of a report of an investigation made under subsection 5(1) or (2), the Registrar considers that it is necessary in the interests of the members that the registration of the credit union be cancelled, the Registrar may, after giving the credit union a reasonable opportunity of making representations with the approval of the Minister wind up the credit union, in which case the provisions of Part X of this Act shall apply.

(8) Any officer or person who obstructs any investigation that is being conducted under this Part shall be guilty of an offence and be liable to a fine of two hundred dollars or to a term of imprisonment of six months or to both such fine and imprisonment.

Fraud or misappropriation

82. Any person who obtains possession by false representation of any property or funds of a credit union, or who has any property of a credit union in his possession and withholds it or misappropriates any part of it, for purposes other than those expressed or directed in the by-laws of the credit union, this Act or the regulations, shall commit an offence and be liable on summary conviction to deliver the property or to repay all the money misappropriated, and in default of such delivery or repayment to be imprisoned for a period of one year.

Financial Institutions

Part III of the Financial Institutions Act provides for prudential supervision of licensed financial institutions. Section 20 creates the offence of misleading and obstructive conduct.

[*Financial Institutions Act 1998*](#)

PART III PRUDENTIAL SUPERVISION

Prudential supervision

8. (1) In the prudential supervision of licensed financial institutions and in determining whether or not a licensed financial institution carries on its business in a prudent manner, the Central Bank shall have regard to the following-

- (a) capital adequacy in relation to the size and nature of the business;
- (b) asset concentration and risk exposure;
- (c) separation of banking business from other business and from other interests of any person owning or controlling the licensed financial institution;
- (d) adequacy of liquidity in relation to liabilities;
- (e) asset quality and adequacy of provisions for losses;
- (f) internal controls, risk management accounting systems; and
- (g) such other matters as the Central Bank considers relevant.

(2) The Central Bank may require a licensed financial institution to submit within a prescribed time and in a prescribed form such periodic returns and other information as it considers necessary for the purposes of this Act.

(3) The Central Bank may require any licensed financial institution to submit a certificate from its external auditor verifying the accuracy or any return or information furnished under subsection (2).

(4) The Central Bank may in its absolute discretion impose upon any licensed financial institution and upon any director or officer of the institution administrative fines for-

(a) failure to submit or for wilfully delaying the submission of any required return or information, or for wilfully submitting any false or inaccurate return or information required under subsection (2);

(b) failure to submit the certificate of the external auditor, if required in accordance with subsection (3); or

(c) failure to comply with a directive issued under section 16.

(5) (a) The administrative fines shall be in amounts as may be determined by the Central Bank to be appropriate but in no case may exceed ten thousand dollars for each violation or where the violation is a continuing one, may not exceed three thousand dollars for every day during which the violation continues, and shall take into consideration the surrounding circumstances, such as the nature and gravity of the violation. An administrative fine imposed shall be a civil debt and if not paid may be enforced by action in the Court.

(b) A licensed financial institution or any director or officer of that institution on whom an administrative fine is imposed may within fourteen days of the date of the notification of such fine, submit reasons to the Central Bank why such fine should not be imposed. After consideration of such submission the Central Bank may confirm, vary or rescind the fine.

External auditor and annual accounts.

9. (1) Every licensed financial institution shall, subject to the approval of the Central Bank, appoint, annually one or more persons (whether as individuals or as members from time to time of any firm or firms) to be external auditors of the licensed financial institution.

(2) The duties of the external auditor shall include making a report upon the annual balance sheet and profit and loss account of the licensed financial institution and its subsidiaries in relation to the following matters-

(a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit;

(b) whether, in their opinion, proper books of account have been kept by the licensed financial institution, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them;

(c) whether the licensed financial institution's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns;

(d) whether, in their opinion and to the best of their information and according to the explanations given to them, they said accounts give a true and fair view-

- (i) in the case of the balance sheet, of the state of the licensed financial institution's affairs as at the end of its financial year; and
 - (ii) in the case of the profit and loss accounts, of the profit or loss for its financial year;
 - (e) in the case of a licensed financial institution submitting group accounts as required by the Central Bank, whether in their opinion, the group accounts have been properly prepared as to give a true and fair view of the state of affairs and profit or loss of the licensed financial institution and its subsidiaries dealt with thereby; and
 - (f) in any case in which the external auditor has called for explanation or information from the officers or agents of the licensed financial institution and its subsidiaries whether it is satisfactory.
- (3) Every licensed financial institution shall, within three months after the close of its financial year or such further period as the Central Bank may approve, submit to the Bank a copy of its audited annual balance sheet and profit and loss statement together with any notes thereon and a copy of the report of the external auditor made pursuant to subsection (2).
- (4) In the case of a licensed financial institution incorporated in Solomon Islands, the report of the external auditor under subsection (2) shall be tabled together with the report of the directors of the licensed financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Central Bank.
- (5) Every director and every manager of a licensed financial institution which contravenes the provisions of subsection (4) shall be liable to an administrative fine imposed by the Central Bank in accordance with section 8 (5).
- (6) If a licensed financial institution fails to appoint an external auditor under subsection (1), or, at any time, fails to fill a vacancy for such external auditor, the Central Bank may appoint an external auditor and shall fix the remuneration to be paid by that institution to that external auditor.
- (7) No person having an interest in any financial institution otherwise than as a depositor, and no director, employee or agent of any licensed financial institution shall be eligible for appointment as an external auditor for that institution; and any person appointed as external auditor to any licensed financial institution who subsequently acquires such interest or becomes a director, employee or agent of that institution shall cease to be external auditor thereof.
- (8) (a) It shall be the duty of the external auditor to report immediately to the Central Bank information relating to the affairs of a licensed financial institution obtained in the course of an audit, if he is of the opinion that-
- (i) the financial institution is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties;
 - (ii) a criminal offence involving fraud or dishonesty has been committed;
 - (iii) serious irregularities have occurred, including irregularities that jeopardise the interest of depositors and creditors;

- (iv) losses have been incurred which substantially reduce the capital funds of the financial institution; or
- (v) he* is unable to confirm that the claims of creditors are still covered by the financial institution's assets.

(b) The external auditor may be required to discuss the audit directly with the Central Bank or be requested to provide additional information regarding the audit.

(9) The external auditor shall, before disclosing any information to the Central Bank under subsection (8), take reasonable steps to inform the licensed financial institution of the intention to disclose the information and the nature of such information, and of the intention to discuss the audit with the Central Bank.

(10) The Central Bank may, by notice in writing to a licensed financial institution, require it to supply the Central Bank with a report, prepared by its external auditor or other person nominated by the Central Bank, on such matters as the Central Bank may determine which may include an opinion on asset quality, adequacy of provisions for losses, and the adequacy of the accounting and control systems.

(11) No civil, criminal or disciplinary proceedings shall lie against any external auditor arising from the disclosure in good faith of information to the Central Bank pursuant to this section.

(12) In the case of a licensed financial institution incorporated outside Solomon Islands, the provisions of subsections (1), (2), (3), (6), (7), (8), (9), (10), and (11) shall be applicable in respect to its operations in Solomon Islands; and a copy of the audited accounts shall be sent to the Central Bank.

*Amended by Financial Institutions (Amendment) Act 1999

Publication of financial statements.

10. (1) Not later than four months after the close of each financial year of each licensed financial institution, or such longer period as the Central Bank may in any particular case permit, the financial institution shall publish in a national publication specified by the Central Bank, and exhibit thereafter in a conspicuous position in each of its offices and branches in Solomon Islands copies of its audited balance sheet, and profit and loss account and the full and correct names of the directors of the financial institution.

(2) Any licensed financial institution which contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars.

On-site examination.

11. (1) The Central Bank may, under conditions of confidentiality, initiate on-site examinations of the accounts and affairs of any licensed financial institution and any of its branches, agencies or offices. Such examinations may be conducted by Central Bank officers or by other persons designated as examiners by the Central Bank, (hereinafter referred to as "examiners".)

(2) A licensed financial institution under examination shall make available for the inspection of the examiners all cash and securities of the institution and all accounts,

books, vouchers, minutes and any documents or records that are relevant to its business as may be required, within the time specified by the examiners.

(3) The examiners may make copies of and take away for further scrutiny, any papers or electronically stored data they require.

(4) An on-site examination may extend to any of the subsidiaries and affiliates of a licensed financial institution. Accordingly, the provisions of subsections (2) and (3) shall apply in the conduct of any examination of that institution's subsidiary or affiliate.

Misleading or obstructive conduct an offence.

20. Any director, officer, employee, former officer or former employee of a licensed financial institution or of the EDP Servicer of that licensed financial institution, who-

(a) with intent to deceive -

- (i) makes or provides any false or misleading statement, report, return, document or information;
- (ii) makes or provides any false or misleading entry in any book or record;
- (iii) omits an entry or alters or conceals an entry in any book or record;
- (iv) conceals or destroys any information, book, voucher, record, report, return, minutes or document, relating to the accounts, transactions, affairs or business of the financial institution; or

(b) obstructs or endeavours to obstruct-

- (i) the proper performance by an external auditor of his duties;
 - (ii) an on-site examination of the licensed financial institution (or any branch, agency, office, subsidiary or affiliate of that institution) by an examiner appointed by the Central Bank; or
 - (iii) the proper performance by an advisor or Court Appointed Manager of his duties,
- commits an offence and shall be liable, on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Accountants Act 2010

PART 2 – REGULATION OF THE PRACTICE OF ACCOUNTANCY

Right to practise

4. No person shall undertake the practice in accountancy in Solomon Islands unless that person is registered under this Act under the relevant category of registered persons.

Rules

5. All registered persons shall practise accountancy in accordance with the rules made under section 14.

Illegal practice

6. (1) A person, other than a registered practicing accountant, commits an offence if the person –

- (a) falsely represents him or herself as a registered practicing accountant;
 - (b) assumes or uses the name or title of a registered practicing accountant, or any other name, title, addition or description implying that he or she is a registered practicing accountant;
 - (c) practises as a registered practicing accountant or charges or receives a fee for work done as a registered practicing accountant; or
 - (d) undertakes, pretends to undertake, or holds him or herself out as being qualified to undertake, at a fee, any work relating to the making up of accounts or relating to compiling or maintaining books of accounts or relating to the management of a liquidation.
- (2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding two years.

Firms

7. (1) No firm may undertake, pretend to undertake or hold itself out to be competent to undertake, any audit or accounting work in relation to the preparation of financial statements or financial accounts or the compilation or maintaining of books of accounts unless all partners of the firm are registered practicing accountants.
- (2) If a firm contravenes subsection (1), the partners of the firm each commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding twelve months.

PART 3 – INSTITUTE OF SOLOMON ISLANDS ACCOUNTANTS

Division 1 – The Institute

Establishment of the Institute

9. (1) The body known as the Institute of Solomon Islands Accountants existing immediately before the commencement of this Act is re-established and continues by this section as a body corporate and professional institute known as the Institute of Solomon Islands Accountants.
- (2) The Institute shall, on the commencement of this Act, operate in accordance with the provisions of this Act, notwithstanding any written laws or rules made prior to such commencement.
- (3) The Institute is not subject to the control or direction of any person or authority except as provided for in this Act or under any control, direction or order of a court.

Objects of the Institute

10. (1) The objects of the Institute are –
- (a) to regulate the practice of accountancy, including the registration, discipline and membership of persons eligible under this Act to practise in accountancy and auditing;
 - (b) to regulate qualifications, requirements and other conditions for registration of persons and membership of the Institute;
 - (c) to regulate accounting, auditing and other standards of audited financial statements that comply with national, regional and international standards, including scale of fees and charges;

- (d) to undertake research on matters under this Act for the benefit of its members and registered persons and the profession of accountancy and auditing, including obtaining and disseminating information relating to national and international developments in the profession of accountancy and auditing;
 - (e) to develop and provide training and continuing professional education to its members and registered persons;
 - (f) to facilitate and assist in the teaching of the discipline of accountancy and auditing at university level and other higher educational institute or college, including offering scholarships, prizes and undertaking career expositions and other career or professional exhibitions;
 - (g) to regulate professional and ethical conduct and other professional standards for its members and registered persons;
 - (h) to regulate management and control of trust funds kept by registered persons for their clients;
 - (i) to represent its members and registered persons on matters relating to the profession of accountancy and auditing to the Government and to any national, regional or international body or organisation;
 - (j) to do any other thing that promotes the interest of its members and registered persons in accordance with the objects of the Institute under this subsection or to give effect to the provisions of this Act.
- (2) For the purpose of carrying out its objects under subsection (1), the Institute may
- (a) charge fees for membership, or renewal of, membership of the Institute, registration, and any other fees as the Institute considers necessary;
 - (b) receive monies or other assets donated to the Institute by any foreign government, international body, regional body or any other person whether corporate or unincorporated from another country;
 - (c) borrow money, by way of bank overdraft or otherwise, within the limits set by the Council, for the attainment of any of the objects, functions and powers of the Institute;
 - (d) receive donations, grants, subsidies, bequests, gifts, subscriptions, rents, interest or royalties, from the Government or other persons;
 - (e) sell publications and any other relevant documents;
 - (f) do any other thing that is incidental or conducive to the attainment of the objects and functions of the Institute.
- (3) Without limiting any of its objects, powers and functions under this Act, the Institute also has the power to work in conjunction with any university or any other higher educational institution approved by the Council –
- (a) to provide training, education and examination of persons who may wish to be registered under this Act;
 - (b) to prepare the syllabus of work for examination of such persons; and
 - (c) to advise as to the course of instruction, study and training for such persons.

PART 4 – REGISTERED PRACTICING ACCOUNTANTS DISCIPLINARY BOARD

Establishment of the Disciplinary Board

40. (1) This section establishes a Registered Practicing Accountants Disciplinary Board consisting of the following members –

- (a) a member of the Council, or his or her nominee member of the Council;
- (b) the Chairperson of the sub-committee of the Council responsible for disciplinary matters, or his or her nominee member of the sub-committee;
- (c) the Auditor-General, or his or her nominee senior auditing officer of the Office of the Auditor-General;
- (d) a registered practicing accountant;
- (e) a professor of or lecturer in accountancy or related discipline of study employed by a university or other institute of or college of higher education; and
- (f) a legal practitioner who holds a practising certificate under the Legal Practitioners Act (Cap. 16).

(2) The Minister has the power to appoint members of the Disciplinary Board under subsection (1)(a), (d), (e) and (f) in accordance with Schedule 4.

(3) Schedule 4 sets out other provisions on members of the Disciplinary Board, including its meeting procedures.

Functions of the Board

42. (1) The primary function of the Disciplinary Board is to inquire into complaints against a registered practicing accountant for unethical, dishonest or unprofessional conduct in the practice of accountancy.

(2) Any person may, in writing, make a complaint on any matter relating to unethical, dishonest or unprofessional conduct of a registered person to the Board and request it to inquire into the complaint.

(3) On receiving a complaint made under subsection (2), the Board shall first consider the complaint and determine whether or not further inquiry is necessary, and the Board may –

- (a) initiate a further inquiry in accordance with section 44 if such is considered necessary; or
- (b) reject the complaint and inform the complainant of that decision.

Inquiry into complaints

44. (1) If the Disciplinary Board determines that a further inquiry is necessary in respect of a complaint under section 42(3)(a), the Board shall –

- (a) give fourteen days' notice to the registered practicing accountant concerned ("in this section referred to as the accountant concerned") of the complaint, date, time and venue of the proposed inquiry; and
- (b) conduct the inquiry within thirty days from the date of expiration of fourteen days given in paragraph (a).

(2) The Board may, if it sees fit, request the Registration Committee to suspend the registration of the accountant concerned for a period not exceeding twenty-eight days while the inquiry is in progress; and the Registration Committee shall give effect to that request.

(3) At an inquiry, the accountant concerned, whether in person or by a legal or other representative, is entitled to examine witnesses called by the Board.

(4) In conducting the inquiry, the Board is not bound by evidentiary rules or legal procedures as applied by the courts, but may inform itself of such rules in such manner as it thinks fit.

(5) In an inquiry, the Chairperson of the Board may summon witnesses to give evidence or to produce documents in accordance with section 45, and the provisions of sections 46 to 51 apply to the inquiry.

(6) If, at the conclusion of an inquiry and after taking into account all relevant evidence and circumstances, the Board is satisfied that the accountant concerned had, in his or her practice, acted in a manner that amounts to unethical, dishonest or unprofessional conduct, the Board may take one or more of the following actions in respect of the accountant concerned –

- (a) admonish him or her;
- (b) order him or her to pay to the Institute within a specified period the costs of and incidental to the inquiry (such costs to be collected by the Registrar);
- (c) order him or her to make a written undertaking to abstain from specified conduct;
- (d) impose an administrative penalty not exceeding 10,000 penalty units which shall be collected by the Registrar and paid within a specified period to the Institute;
- (e) order the suspension of his or her registration for a term not exceeding one year;
- (f) order the cancellation of his or her registration and the removal of his or her name from the relevant register; or
- (g) if the accountant concerned is currently applying for fresh registration, order that his or her application be refused.

(7) When the Disciplinary Board takes an action against the accountant concerned under subsection (6), the Board shall –

- (a) record the findings on which the action is based and its reasons;
- (b) provide a copy of the findings and reasons to the accountant concerned and the Council;
- (c) forward to the Registration Committee any order made under subsection (6)(e), (f) or (g) for the Committee to effect the order pursuant to this Act.

(8) If any cost ordered or penalty imposed under subsection (6)(b) or (d) is not paid to the Institute within the specified period, the cost or penalty may be recovered in court, as a debt owed to the Institute.

PART 5 – APPEALS AND REVIEWS

Appeals against Board's action

52. Any person who is aggrieved by an action taken against him or her by the Board pursuant to section 44(6)(b) to (g) may, within thirty days from the date on which the action was taken, appeal against that action to the High Court only on question of law, in accordance with the court rules.

(b) Observations on the implementation of the article

308. The reviewing experts observed that Solomon Islands was generally in compliance with this provision of the Convention. However, it was recommended that Solomon Islands consider taking additional measures to prevent the misuse of procedures regulating private entities regarding licenses and permits granted by public authorities for commercial activities, and promote transparency and accountability in royalty payments, in particular in the natural resource extractive industries (art. 12(2)(d)). In addition, it was recommended that Solomon Islands consider taking

additional measures to prevent conflicts of interest in the private sector (art. 12(2)(e)).

309. The Companies Act requires companies to keep certain documentation at its registered office, including all minutes of meetings and resolutions from within the past seven years. Directors of a company are required to ensure that correct accounting records are kept. The implementation of Companies Act is overseen by the Company Registrar.

310. The recording of non-existent expenditures, the use of false documents, the intentional destruction of bookkeeping documents, and the entry of liabilities with incorrectly identified objects are all prohibited under the Penal Code, if these acts are committed with the intent to deceive or defraud.

311. Regulations promulgated under the Companies Act guide the preparation of financial statements. Financial statements of public companies must comply with international standards or state how and why they do not comply.

312. Under the National Anti-Corruption Strategy, cooperation with the private sector is essential. Two members of the Steering Committee are representatives from the private sector. The NACS would require for private sector investors to implement anti-corruption compliance programmes. Failure to comply would lead to sanctions. Also, any company or person awarded a government tender would also be required to comply with legal and administrative regulations. The NACS also calls for the organisation of anti-corruption compliance programme training for private sector firms.

313. During the Country Visit, Solomon Islands reported that accountants have a code of conduct. Regulations are pending for how private attorneys operate. Regarding conflicts of interest, there is some cooling-off period for persons in national security positions who cannot use their information in the private sector. In general, however, 2(e) is not addressed in legislation or any regulations. For attorneys, they would have to comply with the prevention of conflicts of interest regulations for members of the bar.

Regarding cooperation with law enforcement, beyond the cooperation with the FIU, there is a task force for counter-human trafficking that involves both government immigration department and the private sector, especially in the logging and mining sectors. It was also reported that regulations are in place that govern the issuance of licenses and permits to use land and natural resources, run by the Commission of Forests or the Commission of Natural Resources, in consultation with the provincial government. Provincial governments have the initial rights to determine who has ownership and work with the commercial logger. 80% of cases are logging and 20% are to do with mining for these types of cases.

It was also reported that the process of acquiring licences to extract natural resources creates opportunities for corruption. This is evident specifically in the forestry and mining sectors. One of the reasons for this is that potential investors,

especially in the forestry industry, often deal directly with landowners, many of whom do not have the knowledge and skills to negotiate a fair deal. They are vulnerable to being bribed in order to sign timber rights agreements. Furthermore, the process for acquiring timber rights in the forestry sector and surface access agreements in mining sector are sponsored by potential investors. They therefore have the power to influence the process to ensure they acquire licence to operate. This is due to the lack of resources in the Government to sponsor timber rights hearings and surface access agreement hearings.

As an example of corruption in the mining sector, Solomon Islands reported the Gold Ridge scandal, which include cases of improper payments to public servants and anomalies in disbursement of landowner royalties by the Ministry of Mining. Furthermore, a few individuals benefit the most from these industries because they act as “middle men” between potential investors and landowners.”

During the Country Visit, the legal profession was represented by the head of the Bar Association. New law on bar membership standards and conduct is under consideration now and will be passed later this year or early next year. New bill will have no difference between government and private lawyer in terms of ability to practice and membership to the bar. Separate rules might be coming on private lawyers. Two lawyers have already been convicted for mismanagement of funds, and convicted. Although there are currently differences in admission, Rules of professional conduct for lawyers still apply to both. Conviction can lead to disbarment. AG is the Chairman of the Disciplinary Committee of the Bar. CJ also has discretion to refuse to permit a person from practicing in court. Someone can also apply for reinstatement subject to the decision of the Disciplinary Committee. Complaints usually arrive at the Bar Association and are referred to the Disciplinary Committee after review.

Legal profession is a self-regulating profession in SI, and it makes it hard in a small jurisdiction. Total active members of the Bar is about 126 lawyers total, government and non-government.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*

- (d) *The entry of liabilities with incorrect identification of their objects;*
- (e) *The use of false documents;*
- (f) *The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

314. Section 196 of the *Companies Act* prohibits the making of a false or misleading statement in a document required for purposes of the *Companies Act*. A person who contravenes this section is liable on conviction to a fine not exceeding 1000 penalty units and/or to imprisonment for a term not exceeding seven years.

315. Section 197 provides that a director, employee, or shareholder of a company who fraudulently takes or applies company property for his or her own use or benefit, for a use or purpose other than the use or purpose of the company, or fraudulently conceals or destroys property of the company commits an offence. Anyone convicted is subject to a fine not exceeding 1000 penalty units and/or to imprisonment for a term not exceeding seven years.

316. Section 198 provides that a director, employee, or shareholder of a company commits an offence who, with intent to defraud or deceive a person destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company. It is also an offence for such a person to make, or participate in the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company. A person who commits such an offence is liable to a fine not exceeding 1000 penalty units and/or to imprisonment for a term not exceeding seven years.

317. The *Penal Code* contains provisions against the fraudulent destruction of documents; fraudulent falsification of accounts; forgery and other related offences.

[Companies Act 2009](#)

PART 14—MISCELLANEOUS

Division 1—Offences

Proceedings for offences

195. (1) Despite anything to the contrary in the *Penal Code* (Cap 26), any information for an offence under this Act may be laid at any time within 3 years after the date of the offence.

(2) Nothing in this Act affects the liability of any person under any other Act, but no person may be convicted of an offence against this Act and any other Act in respect of the same conduct.

False statements on documents

196. (1) A person commits an offence who, with respect to a document required by

or for the purposes of this Act—

(a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or

(b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular.

(2) A director or employee of a company commits an offence who makes or provides, or authorises or permits the making or providing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to—

(a) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or

(b) a liquidator, liquidation committee, or receiver or manager of property of the company; or

(c) if the company is a subsidiary, a director, employee, or auditor of its holding company,

knowing it to be false or misleading.

(3) A person who commits an offence against subsection (1) or (2) is liable on conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 7 years, or both.

(4) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

Fraudulent use or destruction of company property

197. A director, employee, or shareholder of a company who—

(a) fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company; or

(b) fraudulently conceals or destroys property of the company,

commits an offence and is liable on conviction to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 7 years, or both.

Falsification of records

198. (1) A director, employee, or shareholder of a company commits an offence who, with intent to defraud or deceive a person—

(a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company.

(2) A person commits an offence who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting

or other records, index, book, paper, or other document for the purposes of a company or this Act—

(a) records or stores in the device, or makes available to another person from the device, matter that the person knows to be false or misleading in a material particular; or

(b) with intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store any matter in the device.

(3) A person who is convicted of an offence against subsection (1) or (2) is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 7 years, or both.

Carrying on business fraudulently

199. (1) A person commits an offence who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose.

(2) A director of a company commits an offence who—

(a) by false pretences or other fraud induces a person to give credit to the company; or

(b) with intent to defraud creditors of the company—

(i) gives, transfers, or causes a charge to be given on, property of the company to any person; or

(ii) causes property to be given or transferred to any person; or

(iii) caused or was a party to execution being levied against property of the company.

(3) A person who is convicted of an offence against subsection (1) or (2) is liable to a fine not exceeding 1000 penalty units or to imprisonment for a term not exceeding 7 years, or both.

Penal Code

318. Note: For §283 (*Fraudulent destruction of documents*) and §284 (*Fraudulent destruction of documents of title*), see Article 9, Paragraph 3.

Fraudulent destruction of record, writ etc.

286. Any person who, for any fraudulent purpose, takes from its place of deposit for the time being, or from any person having the lawful custody thereof, or unlawfully and maliciously cancels, obliterates, injures or destroys the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant or power of attorney, or of any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending or terminated in any such court, or of any original document in any wise relating to the

business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in Government House, or in any Government or public office, is guilty of a felony, and shall be liable to imprisonment for three years.

319. Note: For §304 (Conversion by Trustee), §305 (*Director, etc., of anybody corporate or public company wilfully destroying books, etc.*), and §306 (*Fraudulent falsification of accounts*) see Article 9, Paragraph 3.

Definition of false pretence

307. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true, is a false pretence.

False pretences

308. 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

(b) with intent to defraud or injure any other person fraudulently causes or induces any other person-

(i) to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security; or

(ii) to write, impress, or affix his name or the name of any other person or the seal of anybody 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,

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

Obtaining credit by false pretences

309. Any person who -

(a) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud; or

(b) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or

(c) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property, after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of a misdemeanour, and shall be liable to imprisonment for one year.

Obtaining registration, etc., by false pretence

311. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any Act by any false pretence, is guilty of a misdemeanour.

Definition of forgery

333.- (1) Forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Part of this Code the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, shall be punishable as provided in this Part of this Code.

(2) It is immaterial in what language a document is expressed or in what place within or without Her Majesty's dominions it is expressed to take effect.

(3) Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law.

(4) The crossing on any cheque, draft on a banker, post office money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, is a material part of such cheque, draft, order, coupon, or document.

320. Note: See §334 (False document) of the Penal Code under Article 9, Paragraph 3.

Intent to defraud

335. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

Forgery of certain documents with intent to defraud

336.(1) Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for life-

(a) any will, codicil, or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without the will annexed;

(b) any deed or bond, or any assignment at law or in equity of any deed or bond or any attestation of the execution of any deed or bond;

(c) any currency note or bank note, or any endorsement on or assignment of any bank note.

(2) Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for fourteen years-

(a) any valuable security or assignment thereof or endorsement thereon, or, where

the valuable security is a bill of exchange, any acceptance thereof;

(b) any document of title to lands or any assignment thereof or endorsement thereon;

(c) any document of title to goods or any assignment thereof or endorsement thereon;

(d) any power of attorney or other authority to transfer any share or interest in any stock, annuity, or public fund of Solomon Islands or any part of Her Majesty's dominions or of any foreign state or country or to transfer any share or interest in the debt of any public body, company or society, Solomon Islands or foreign, or in the capital stock of any such company or society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority;

(e) any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof;

(f) any policy of insurance or any assignment thereof or endorsement thereon;

(g) any charter-party or any assignment thereof;

(h) any certificate of the Chief Accountant or other officer acting in execution of the Income Tax Act.

Forgery of certain documents with intent to defraud or deceive

337.(1) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for life.

Any document whatsoever having thereon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's official seals, or the National Seal of Solomon Islands.

(2) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for fourteen years-

(a) any register or record of births, baptisms, naming's, dedications, marriages, deaths, burials or cremations, which now is, or hereafter may be, by law authorised or required to be kept, relating to any birth, baptism, naming, dedication, marriage, death, burial or cremation, or any part of any such register, or any certified copy of any such register, or of any part thereof;

(b) any copy of any register of baptisms, marriages, burials or cremations, directed or required by law to be transmitted to any registrar or other officer;

(c) any certified copy of a record purporting to be signed by any officer having charge of any public documents or records;

(d) any wrapper or label provided by or under the authority of the Chief Accountant or the Comptroller of Customs and Excise.

(3) Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for seven years-

- (a) any official document whatsoever of or belonging to any court of justice, or made or issued by any Judge, Magistrate, officer or clerk of any such court;
- (b) any register or book kept under the provisions of any law in or under the authority of any court of Justice;
- (c) any certificate, office copy or certified copy of any such document, register, or book or of any part thereof;
- (d) any document which any Magistrate is authorised or required by law to make or issue;
- (e) any document which any person authorised to administer an oath under any law is authorised or required by law to make or issue;
- (f) any document made or issued by a head of a Government department or law officer of the Crown, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act;
- (g) any document or copy of a document used or intended to be used in evidence in any court of record, or any document which is made evidence by law;
- (h) any certificate or consent required by any Act for the celebration of marriage;
- (i) any licence for the celebration of marriage which may be given by law;
- (j) any certificate, declaration or order under any enactment relating to the registration of births or deaths;
- (k) any register, book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certificate of mortgage or sale, under Part I of the Merchant Shipping Act, 1894, or any entry or endorsement required by the said Part of the said Act to be made in or on any of those documents;
- (l) any permit, certificate or similar document made or granted by or under the authority of the Comptroller of Customs and Excise or any other officer of Customs and Excise;
- (m) any certificate not heretofore specified.

Forging copies of certificates of records

338. Any person who, being the clerk of any court or other officer having the custody of the records of any court. or being the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing the same to be false, and any person who delivers, or causes to be delivered, to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree or order of any court or law or equity, or a copy thereof, knowing the same to be false, or acts or professes to act under any such false process knowing the same to be false, is guilty of a felony, and shall be liable to imprisonment for seven years.

Forgery of other documents with intent to defraud or deceive a misdemeanour

341.(1) Forgery of any document, which is not made felony under this or any other Act for the time being in force, if committed with intent to defraud, is a misdemeanour.

(2) Forgery of any public document which is not made felony under this or any other Act for the time being in force, if committed with intent to defraud or deceive, is a misdemeanour.

(3) Forgery of any passport is a misdemeanour.

Falsifying warrants for money payable under public authority

349. Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any public person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony, and shall be liable to imprisonment for seven years.

Procuring execution of documents by false pretences

350. Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and shall be liable to the same punishment, as if he had forged the document

(b) Observations on the implementation of the article

321. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

322. The Solomon Islands does not expressly disallow the tax deductibility of expenses that constitute bribes.

(b) Observations on the implementation of the article

323. The reviewing experts took note of the report of Solomon Islands that it does not expressly disallow the tax deductibility of expenses that constitute bribes. As a result, it was recommended that Solomon Islands take measures to ensure the disallowance of the tax deductibility of expenses that constitute bribes (art. 12(4)). It was reported that the Ministry of Finance is currently reviewing the tax system.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

324. For the drafting and implementation of the National Anti-Corruption Strategy, representatives from civil society are members of the Steering Committee. The Strategy also seeks to maximize citizen input into “the policy process.”

325. Additionally, the NACS aims to implement anti-corruption curricula at all levels of education. During the country visit Solomon Islands reported that while there was currently no official curricula, there were civic education opportunities and religious educational programmes to promote integrity, accountability and other important values.

326. The Solomon Islands does not currently have a freedom of information law, but drafting and enacting such legislation is called for by the NACS. In 2009, a Freedom of Information workshop was held. The three-day workshop was organised at the request of the Solomon Islands Government, with support from the UNDP Pacific Centre, in collaboration with the Pacific Islands Forum Secretariat (PIFS) and Commonwealth Human Rights Initiative (CHRI). The workshop was a follow up to the 2008 Regional Freedom of Information workshop held in the Solomon Islands and sought to bring together national stakeholders, from across government, civil society and the media to discuss the value of the right to information and possible strategies for implementation. The Office of the Ombudsman facilitated the visit of

an Anti-Corruption and Freedom of Information (FOI) specialist, who was engaged by the UNDP/UNODC, with the agreement of the Government, to develop drafts of an FOI policy and law. The Government had sought to enact an FOI law by early 2017.

327. Article 70 of the Constitution requires that the proceedings of Parliament are held in public. The Standing Orders of Parliament state that members of the public and the press shall be allowed as spectators to sittings of Parliament (please see information provided under article 10). During the country visit, Solomon Islands reported that, as a practice, civil society was heard on pending legislation and policy decisions. It further informed that in the parliamentary process, hearings were regularly held and witnesses, who were not part of the Government, invited to testify and provide views on the bills and pending legislation. This happened in particular on the draft Anti-Corruption Bill.

328. Also the Development Services Exchange, the main umbrella NGO in Solomon Islands, and Transparency Solomon Islands reported to have organized occasional public information and discussion events on draft bills, including the draft Anti-Corruption Bill. The civil society noted that it would be helpful to have additional information from the Government on the timeline of opportunities for review on pending legislation.

329. At the International Anti-Corruption Day in 2015, the Prime Minister announced that a Freedom of Information Bill was a “top priority for the government.”¹⁸

330. Solomon Islands regularly marks International Anti-Corruption Day, including through marches, radio awareness-raising programmes on corruption and its effects, and public discussion panels. The preparations are led by the Office of the Prime Minister, with a robust participation of the civil society. During the country visit, Solomon Islands reported that the Government generally disseminated information to public through an umbrella organization of the NGOs. Also, there were occasional poster and public awareness campaigns through media and large signs sponsored by the Transparency International Solomon Islands and also other CSOs.

331. The Leadership Code Commission conducts regular public awareness and outreach programmes to educate the public on the effects of corruption and reporting complaints.¹⁹

332. The draft *Anti-Corruption Bill* states that one of its objectives is to introduce measures to prevent corruption, including raising public awareness about the effects and prevention of corruption.

333. The draft *Whistleblowers Protection Bill* requires the Solomon Islands Independent Commission Against Corruption to undertake activities to create public awareness, including among employees of private sector organisations, of the ways in which, and the appropriate authorities to which, a person may make a public interest

¹⁸ <http://pmpresssecretariat.com/2015/12/22/the-prime-ministers-statement-anti-corruption-international-day-9th-december-2015/> [accessed 30 May 2016].

¹⁹ Chapter III report p 7.

disclosure; and the protections offered by this Act to a person who makes such a disclosure.

Draft Anti-Corruption Bill

5. Objects of Act

The object of this Act is to combat corruption in Solomon Islands in all its forms by:

- (a) establishing the Solomon Islands Independent Commission Against Corruption to prevent, investigate and prosecute corruption offences; and
- (b) establishing a system for receiving and managing complaints about potential corruption engaged in by persons in the public or private sector; and
- (c) introducing measures to prevent corruption, including raising public awareness about the effects and prevention of corruption.

334. Article 12 of the Constitution provides for the protection of freedom of expression. Defamation is criminalised under the Penal Code.

Constitution 1978

Protection of freedom of expression

12.(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with his correspondence.

(2) Nothing contain in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) in the interest of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or
- (c) that imposes restriction upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Compensation for contravention of rights and freedoms

17. Any person any of whose rights or freedoms under this Chapter has been contravened shall be entitled to compensation for the contravention thereof from the

person or authority which contravened it.

Enforcement of protective provisions

18.(1) Subject to the provisions of subsection (6) of this section, if any person alleges that any of the provisions of sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction-

(a) to hear and determine any application made by any person in pursuance of the preceding subsection;

(b) to determine any question arising in the case of any person which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions, including the payment of compensation, as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 3 to 16 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(5) Parliament may confer upon the High Court powers additional to those conferred by this section for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) Rules of court making provision with respect to the practise and procedure of the High Court in relation to the jurisdiction conferred on it by or under this section (including rules with respect to the time within which any application or reference shall or may be made or brought) may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

[Penal Code \[Cap 26\]](#)

PART XIX DEFAMATION

Definition of libel

191. Any person who, by print, writing, painting, effigy, or by libel any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed "libel".

Definition of defamatory matter

192. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

Definition of publication

193.(1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Definition of unlawful publication

194. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part of this Code, unless -

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Part of this Code

Cases in which publication of defamatory matter is absolutely privileged

195.(1) The publication of defamatory matter is absolutely privileged and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely-

- (a) if the matter is published by the Governor-General, the Cabinet or Parliament, in any official document or proceeding; or
- (b) if the matter is published in the Cabinet or Parliament by the Prime Minister, a Minister or a member of Parliament; or
- (c) if the matter is published by order of the Governor-General; or
- (d) if the matter is published concerning a person subject to naval or military discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in

respect of such conduct, and to some person having authority over him in respect of such conduct; or

(e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a Judge, Magistrate, commissioner, advocate, assessor, witness or party thereto; or

(f) if the matter published is in fact a fair report of anything said, done or published in the Cabinet or Parliament; or

(g) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Part whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt a person from any liability to punishment under any other Part of this Code or under the express provisions of any other Act in force within Solomon Islands.

Cases in which publication of defamatory matter is conditionally privileged

196. A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely-

(a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court:

Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged; or

(b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the last preceding section; or

(c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or

(d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

(e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or

(f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance or act published

or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or

(g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or

(h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter or having authority by law to inquire into or receive complaints respecting such conduct or matter; or

(i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

Explanation as to good faith

197. A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section, if it is made to appear either-

(a) that the matter was untrue, and that he did not believe it to be true; or

(b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

Presumption as to good faith

198. If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution.

(b) Observations on the implementation of the article

335. Although identified in the NACS, Solomon Islands does not yet have a specific access / right to information legislation in place but remains a general principle.

336. In terms of participation of society in public decision-making processes, the Constitution requires that the proceedings of Parliament be held in public. The Standing Orders of Parliament state that members of the public and the press shall be allowed as spectators to sittings of Parliament. As a practice, civil society is heard on pending legislation and policy decisions.

337. The drafting and implementation of the National Anti-Corruption Strategy involves representatives from civil society as members of the Steering Committee. The Strategy also seeks to maximize citizen input into “the policy process.” Additionally, NACS aims to implement anti-corruption curricula at all levels of education.

338. Solomon Islands regularly marks International Anti-Corruption Day, including through radio awareness-raising programmes on corruption and its effects, and public discussion panels. The LCC occasionally conducts public awareness and outreach programmes to educate the public on the effects of corruption and reporting complaints. Neither the LCC nor the Ombudsman has a functioning website.

339. The extensive stakeholder consultations in the development of the NACS was identified as a good practice.

340. Solomon Islands is recommended to strengthen participation of society in the prevention of corruption through the NACS, and in particular through contributions to the public decision-making processes, public awareness measures and public education programmes.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

341. Absent the establishment of the proposed anti-corruption agency, the correct body for receiving corruption complaints depends on the type of corruption. The Office of the Ombudsman investigates complaints regarding administrative actions of public servants, whereas the Leadership Code Commission investigates complaints concerning the abuse of public office. Neither has a functioning website. The Leadership Code Commission may initiate investigations at will based on reasonable cause for suspicion, with or without a complaint. The complaints made to Ombudsman must meet the criteria codified in the Ombudsman Act 2017.

342. The key Solomon Island NGO concerned with accountability anti-corruption issues is the local chapter of Transparency International – Transparency Solomon Islands (TSI). With approximately 90 members, they are engaged in a range of activities supporting increased accountability and transparency in the public and private sectors. One of their key activities for 2009 was the establishment of an advocacy centre for those unable or unwilling to lodge complaints through the normal processes. The rationale for the establishment of the centre is that many Solomon Islanders do not feel comfortable going to a solicitor’s office or cannot afford a solicitor’s services, meaning that many complaints never surface. By providing this

centre, TSI hopes to increase access to complaints mechanisms. They are also active in promoting electoral reform and education about UNCAC.

343. The main vehicle for addressing corruption issues within the private sector is the Solomon Islands Chamber of Commerce and Industry (SICCI). With around 1900 members, SICCI is well organized and quite vocal. They have publicly cautioned the Solomon Islands Government against intervening in the affairs of the National Provident Fund (NPF) Board and have been outspoken on issues relating to the Parliamentary Entitlements Commission (PEC). They are supportive of the creation of an agency to more effectively combat corruption within Solomon Islands.

344. The draft *Whistleblowers Protection Bill* aims to protect persons making disclosures about conduct that may constitute corruption, maladministration, or misconduct in public service from liability and victimization. The draft *Whistleblowers Protection Bill* obliges each public body to publicise the ways in which a person may make a public interest disclosure relating to the conduct of the body or any of its officers and the protections offered to a person who makes such a disclosure.

345. Protection is provided under the *Money Laundering and Proceeds of Crime Act* for those reporting suspicious transactions.

[Draft Whistleblowers Protection Bill 2016](#)

Part 2 Protections from liability and victimization

5. Appropriate authority for public interest disclosures

The “appropriate authority” for making a public interest disclosure is:

- (a) for a disclosure relating to a suspected corruption offence – the Solomon Islands Independent Commission Against Corruption (either directly or through an integrity officer as defined in section 3 of the Anti-Corruption Act 2016); or
- (b) for a disclosure relating to an allegation of maladministration – the Ombudsman; or
- (c) for a disclosure relating to an allegation of misconduct in office – the Leadership Code Commission; or
- (d) if the person making the disclosure is unsure which of the authorities mentioned in paragraphs (a) to (c) the disclosure should be made to, one of the following:
 - (i) for a disclosure relating to the conduct of a police officer – the Police and Prisons Service Commission or the Commissioner of Police;
 - (ii) for a disclosure relating to the use of public money – the Auditor-General;
 - (iii) for a disclosure relating to the conduct of a Judge, a Magistrate or a public officer who is a legal practitioner – the Chief Justice;
 - (iv) for a disclosure relating to the conduct of a member of Parliament – the Speaker of Parliament;

- (v) for a disclosure relating to an election – the Electoral Commission;
- (vi) for a disclosure relating to the conduct of a political party – the Political Parties Commission;
- (vii) for a disclosure relating to the conduct of an officer of a local authority or a local authority – the Minister responsible for the local authority;
- (viii) for a disclosure otherwise relating to a public officer – the Public Service Commission.

6. Protection from liability – public interest disclosure

- (1) A person who make a public interest disclosure to an appropriate authority in good faith:
 - (a) incurs no civil or criminal liability by doing so; and
 - (b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.
- (2) Subsection (1) applies even if the public interest disclosure is made in breach of an obligation of confidentiality.
- (3) For subsection (1), a person makes a public interest disclosure in good faith only if the person:
 - (a) believes on reasonable grounds that the information contained in the disclosure is true; or
 - (b) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

7. Protection from liability –cooperation with authorities

- (1) This section applies if a person:
 - (a) complies with a requirement imposed by a relevant authorized officer; or
 - (b) otherwise cooperates with a relevant authorized officer.
- (2) The person:
 - (a) incurs no civil or criminal liability by doing so; and
 - (b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.
- (3) Subsection (2) applies even if the person breaches an obligation of confidentiality.
- (4) A statement made by the person to the relevant authorized officer is not admissible as evidence against the person in any civil or criminal proceeding unless:
 - (a) the person is a defendant or witness in criminal proceedings for a corruption offence or an inquiry by the Leadership Code Commission into misconduct in office, in which case the statement may be used to discredit the person's testimony; or

(b) the person is being prosecuted for perjury, subornation of perjury or defeating or obstructing the course of justice in relation to the statement.

(5) Subsections (2) and (4) do not apply in relation to any information given by the person that the person knows is misleading, unless the person draws the misleading aspect of the information to the attention of the relevant authorized officer.

Part 3 Obligations of public bodies and officers

9. Obligations to publicise effect of Act

(1) Each public body must publicise, within and outside the body:

(a) the ways in which, and the appropriate authorities to which, a person may make a public interest disclosure relating to the conduct of the body or any of its officers; and

(b) the protections offered by this Act to a person who makes such a disclosure.

(2) The Solomon Islands Independent Commission Against Corruption must undertake activities to create public awareness, including among employees of private sector organisations, of:

(a) the ways in which, and the appropriate authorities to which, a person may make a public interest disclosure; and

(b) the protections offered by this Act to a person who makes such a disclosure.

10. Confidentiality of identity of informant

(1) A person commits an offence if the person:

(a) while exercising a power or performing a function for an appropriate authority, obtains the identity of a person who makes a public interest disclosure to an appropriate authority; and

(b) engages in conduct that results in the disclosure of the identity of the person.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

(2) Subsection (1) does not apply if the person discloses the identity of the person:

(a) to the extent necessary to ensure the matters to which the disclosure relates are properly investigated; or

(b) with the consent of the person.

(3) Subsection (1) applies despite any other statutory provision, or a common law rule, to the contrary.

346. The report of the Ombudsman notes that between 2009 and 2011, the Office has embarked on Outreach Tours to rural schools, covering 80% of rural Community High Schools. The Office had commenced combined Outreach Programs with the other Accountability Institutions; Office of the Auditor General and the Leadership Code Commission.²⁰

²⁰ Office of the Ombudsman, Progress Report on Activities and Programs between 2009 and 2011 Highlighting Status and Achievement of each Activity and the Plan for 2012 and beyond [2011] SBOM 1 (1 November 2011).

347. During the country visit, Solomon Islands informed that as part of the NACS, it aimed at establishing an anonymous corruption reporting mechanism, inspired by the Phones against Corruption initiative of Papua New Guinea.

(b) Observations on the implementation of the article

348. Absent the establishment of the proposed anti-corruption agency, the correct body for receiving corruption complaints depends on the type of corruption. The Office of the Ombudsman investigates complaints regarding administrative actions of public servants, whereas the Leadership Code Commission investigates complaints concerning the abuse of public office. Neither has a functioning website.

349. Solomon Islands is recommended to take additional measures to ensure that the relevant anti-corruption bodies are known to the public and that reporting procedures, including anonymously, are established and accessible to the public.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of Art. 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

350. Section 17 of the *Money Laundering and Proceeds of Crime Act* criminalizes the offence of money laundering (as amended in 2010). Financial institutions are required to report suspicious transactions under section 14 of the *Money Laundering and Proceeds of Crime Act*.

[Money Laundering and Proceeds of Crime Act 2002](#)

[Money Laundering and Proceeds of Crime \(Amendment\) Act 2010](#)

[Interpretation](#)

2. (1) In this Act, unless the context otherwise requires –

"account" means any facility or arrangement by which a financial institution does any of the following –

(a) accepts deposits of currency;

(b) allows withdrawals of currency;

(c) pays cheques or payment orders drawn on the financial institution, or collects cheques or payment orders on behalf of a person other than the financial institution;

(d) provides a safety deposit box or any other form of safe deposit;

"appeal" includes proceedings by way of discharging or setting aside a judgment, and an application for a new trial or for stay of execution;

"authorised officer" means a person designated by the Minister as an authorised officer for the purposes of this Act;

"cash" means any coin or paper money that is designated as legal tender in the country of issue and includes any bearer bond, traveller's cheque, postal note or money order;

"cash dealer" means –

(a) a casino, gambling house or lottery operator (including a person who carries on such a business through the internet), when its customers engage in financial transactions equal to or above the minimum prescribed amount;

(b) a real estate agent, when involved in transactions for its client relating to the buying and selling of real estate;

(c) a dealer in precious metals or in precious stones, when the dealer engages in any cash transaction with a customer equal to or above the minimum prescribed amount;

(d) an accountant when preparing or carrying out transactions for the client relating to the following activities –

(i) buying or selling real estate or businesses;

(ii) managing money, securities or other assets;

(iii) managing bank, savings or securities accounts;

(iv) organising contributions for the creation, operation or management of companies;

(v) creating, operating or managing a legal entity or an arrangement;

(e) a trust or company service provider, which as a business, provides any of the following services –

(i) formation or management of a legal entity or an arrangement;

(ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to any other legal entity or arrangement;

(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a legal entity or arrangement;

(iv) acting as (or arranging for another person to act as) a trustee of an express trust;

(v) acting as (or arranging for another person to act as) a nominee

shareholder for another person;

"Commission" means the Anti-Money Laundering Commission established by section 11;

"correspondent bank" means a financial institution by which correspondent banking services are provided;

"correspondent banking services" means banking services provided by one financial institution to another financial institution;

"cross-border correspondent banking services" means correspondent banking services provided by a financial institution in one country to a financial institution in another country;

"currency" means the following –

(a) the coin and paper money of Solomon Islands or of another country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in Solomon Islands or the country of issue;

(b) monetary instruments that may be exchanged for money, including cheques, travellers' cheques, money orders, and negotiable instruments in a form in which title passes on delivery;

(c) precious metals, precious stones, pearls or jewellery;

(d) currency in electronic form;

(e) any other prescribed kind of monetary instrument which is found at any place in Solomon Islands;

"customer" in relation to a transaction or an account, includes –

(a) the person in whose name a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction or account;

(c) any person to whom a transaction has been assigned or transferred;

(d) any person who is authorised to conduct a transaction; or

(e) any other prescribed person;

"data" means any form of representations, in any form, of information or concepts;

"defendant" –

(a) means a person that is under investigation for a serious offence or has been charged with a serious offence, whether or not the defendant has been convicted of the offence; and

(b) includes, in the case of proceedings for a restraining order under section 55, a person who is being investigated for or about to be charged with, a serious offence;

"Director" means the Director of the Unit;

"document" means any record of information, and includes –

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols, or perforations having

meaning for persons qualified to interpret them;

(c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;

(d) a map, plan, drawing, photograph or similar thing; or

(e) an electronic document;

"financial institution" means any entity or person who conducts one or more of the following business activities or operations for or on behalf of a customer –

(a) banking as defined in the Financial Institutions Act 1998, including acceptance of deposits and other repayable funds from the public;

(b) lending, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(c) financial leasing;

(d) money transmission services, including–

(i) collecting, holding, exchanging or remitting funds or the value of money; or

(ii) delivering funds;

(e) issuing and managing means of payment (such as credit cards, travellers' cheques and bankers' drafts);

(f) issuing financial guarantees and commitments;

(g) trading for its own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;

(h) participating in securities issues and the provision of financial services related to such issues;

(i) money-broking;

(j) individual and collective portfolio management;

(k) investing, administering or managing funds or money on behalf of other persons over the minimum prescribed amount;

(l) safekeeping and administration of cash or liquid securities on behalf of other persons over the minimum prescribed amount;

(m) safe custody services of currency over the minimum prescribed amount;

(n) insurance, insurance intermediation, securities dealing or futures broking;

(o) trustee administration or investment management of a superannuation or provident fund scheme;

(p) any other business that the Minister may prescribe taking into consideration the interest of the national economy;

and "financial institution" includes the following –

(aa) the Central Bank of Solomon Islands;

(bb) a credit institution, as defined under the Financial Institutions Act 1998;

"financing of terrorism offence" means the offence of financing terrorism prescribed under the Counter-Terrorism Act 2009;

"gift" includes any transfer of property by a person ("first person") to another person ("transferee") directly or indirectly –

(a) after the commission of a serious offence by the first person;

(b) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and

(c) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

"interest", in relation to property, means –

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property;

"legal practitioner" means a notary public, attorney, barrister or solicitor when preparing or carrying out transactions for the client relating to the following activities –

(a) buying or selling real estate or businesses;

(b) managing money, securities or other assets;

(c) managing bank, savings or securities accounts;

(d) organising contributions for the creation, operation or management of companies;

(e) creating, operating or managing a legal entity or an arrangement;

"minimum prescribed amount" means the amount prescribed under the Currency Declaration Act 2009;

"Minister" means the Minister responsible for this Act;

"occasional transaction" means any transaction involving cash that is conducted by any person other than through an account in respect of which the person is the customer;

"offence of money laundering" means an offence of money laundering set out in section 17, and "money laundering offence" has the same meaning;

"politically exposed person" means an individual who is or has been entrusted with a prominent public function in Solomon Islands or another country such as Head of State or of government, Minister, judge, a member of legislature, the head of a government department or statutory body and any other prescribed person and includes any spouse, child, brother or sister or parent, brother-in-law, sister-in-law or parent-in-law) or close associate of such person;

"proceeds of crime" –

(a) means any property or economic advantage derived or realised, directly or indirectly, as a result of or in connection with the commission of an offence irrespective of the identity of the offender and irrespective of whether committed before or after the commencement of this Act; and

(b) includes, on a proportional basis, property into which any property derived or realised directly or indirectly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised directly or indirectly from such property at any time since the offence;

"property" means –

(a) currency;

(b) any kind of asset whether corporeal or incorporeal, moveable or immovable, tangible or intangible, whether situated in Solomon Islands or another country, including any legal document or instrument, including electronic or digital, evidencing title to, or legal or equitable interest in such assets; or

(c) bank credit, traveller's cheque, bank cheque, money order, share, securities, bond, draft, letter of credit or other similar property, whether situated in Solomon Islands or another country, including any legal or equitable interest in any such property;

"realisable property" means –

(a) any property held by a defendant; or

(b) any property held by a person to whom a defendant has directly or indirectly made a gift;

"record" means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device;

"serious offence" means an offence against a provision of –

(a) any law in Solomon Islands relating to proceeds of crime or unlawful activity, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months; or

(b) a law of another country, in relation to acts relating to proceeds of crime or unlawful activity, which if the acts had occurred in Solomon Islands the acts would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty of not less than twelve months;

"supervisory authority" means the Central Bank of Solomon Islands, the Unit or any other prescribed authority;

"suspicious transaction" means a transaction referred to in section 14, 14A or 14B;

"sworn statement", includes an affidavit;

"tainted property" means property determined to be tainted property under section 33;

"terrorist" has the meaning given to it in the Counter-Terrorism Act 2009;

"terrorist financing offence" means the terrorist financing offence set out under the Counter-Terrorism Act 2009;

"terrorist organisation" has the meaning given to it in the Counter-Terrorism Act 2009;

"transaction", in relation to property, includes –

- (a) opening of an account;
- (b) any deposit, withdrawal, exchange or transfer of funds in any currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; or
- (f) any other prescribed transaction;

"Unit" means the Solomon Islands Financial Intelligence Unit established by section 11D.

(2) A reference in this Act to the law of another country includes a reference to any law of, or in force in, that country or part of that country.

Financial institution to report suspicious transactions

14. (1) This section applies if a financial institution, cash dealer or legal practitioner suspects on reasonable grounds that a transaction or activity or attempted transaction or activity is or may be related to one or more of the following –

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence;
- (b) the commission of a money laundering offence, financing of terrorism offence or any other serious offence;
- (c) an act preparatory to a money laundering offence or financing of terrorism offence.

(2) The financial institution, cash dealer or legal practitioner shall –

- (a) prepare a report of such transaction or activity or attempted transaction or activity; and
- (b) send the report to the Unit, as soon as possible, but no later than two working days after forming the suspicion.

(3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Transactions involving terrorist organisations

14A. Any transaction or attempted transaction by a terrorist organisation shall be deemed to be a suspicious transaction, which shall be reported to the Unit in accordance with the provisions of this Act or the prescribed procedures.

Duty to report certain transactions with no legitimate purpose

14B. (1) This section applies where a transaction or attempted transaction –

- (a) is complex, unusual or large and does not have any apparent or visible

economic or lawful purpose; or

(b) is part of an unusual pattern of transaction that does not have any apparent or visible economic or lawful purpose.

(2) The financial institution, cash dealer or legal practitioner shall –

(a) prepare a report of the transaction or attempted transaction; and

(b) give the report to the Unit, as soon as possible, but no later than two working days from the date of forming the suspicion.

(3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Supervisory body or auditor to report suspicious transactions

14C. (1) This section applies if a supervisory authority or the auditor of a financial institution, cash dealer or legal practitioner has reasonable grounds to suspect that a transaction, an attempted transaction or information that it has in its possession concerning any transaction or attempted transaction, is or may be related to one or more of the following–

(a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or serious offence;

(b) the commission of a money laundering offence, financing of terrorism offence or serious offence;

(c) an act preparatory to money laundering offence or a financing of terrorism offence.

(2) The supervisory authority, the auditor of the financial institution, a cash dealer or a legal practitioner shall report the transaction or attempted transaction or the information to the Unit, as soon as possible but no later than two working days from the date of forming the suspicion.

(3) A supervisory authority, auditor of the financial institution, cash dealer or legal practitioner who contravenes subsection (2), without reasonable excuse, commits an offence.

Financial institution, cash dealer or legal practitioner to report financial transaction

14D. (1) A financial institution, cash dealer or legal practitioner shall report to the Unit the following –

(a) any single cash transaction exceeding the minimum prescribed amount unless the originator and beneficiary of the transaction are financial institutions or cash dealers carrying on the business set out in the definition of "financial institution" or "cash dealer" and acting on their own behalf;

(b) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction sent from Solomon Islands to another country; or

(c) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction received in Solomon Islands from another country.

(2) Subsection (1)(b) does not apply if the financial institution or cash dealer sends an electronic or other funds transfer to a person in Solomon Islands, even if the final recipient of the fund is outside Solomon Islands.

(3) Subsection (1)(c) does not apply if the financial institution or cash dealer receives an electronic or other funds transfer from a person in Solomon Islands, even if the initial sender of the fund was outside Solomon Islands.

(4) The report shall be given –

(a) for any transaction or transfer in Solomon Islands currency, within fifteen days after the date the transaction or transfer was made; or

(b) for any transaction or transfer in a foreign currency, within two days after the date the transaction or transfer was made.

(5) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (4) commits an offence.

(6) The Central Bank of Solomon Islands, or the Unit may, on the application of a financial institution, cash dealer or legal practitioner, exempt in writing the reporting of transactions referred to in subsection (1)(a) relating to deposit or withdrawal by its established customers using their accounts with the financial institution, cash dealer or legal practitioner.

Avoidance of section 14D

14E. (1) This section applies to a person who conducts two or more transactions or electronic or other funds transfers that are of an amount below the minimum prescribed amount.

(2) A person commits an offence if the person conducts any transaction or transfer for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions or transfers will not be made under section 14D(1).

(3) The court may take into account the following when deciding whether or not a person has committed an offence under subsection (2) –

(a) the manner or form in which the transaction or transfer was conducted;

(b) the value of the currency involved in each transaction or transfer;

(c) the aggregate value of the currency involved in the transaction or transfer;

(d) the period of time over which the transaction or transfer occurred;

(e) the interval of time between the transaction and transfer;

(f) the location at which the transaction or transfer was initiated or conducted;

(g) any explanation made by the person concerned as to the manner or form in which the transaction or transfer was conducted.

Form and content of reports

14F. (1) A report under section 14, 14A, 14B, 14C or 14D shall –

(a) subject to subsection (2), be in a form approved by the Commission and may be given by way of facsimile transmission or electronic mail or other means;

- (b) contain a statement of the grounds on which the person making the report –
 - (i) for a report under section 14, 14A, 14B or 14C, holds the suspicion; or
 - (ii) for a report under section 14D, became aware of the transaction; and
 - (c) be signed or otherwise authenticated by the person making the report.
- (2) A report under a section mentioned in subsection (1) may be made orally, including by telephone, but a written report shall be prepared in accordance with subsection (1) within twenty-four hours after the oral report is made.
- (3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.

Additional information

- 14G.(1) This section applies where a person has made a report or provided information about a transaction or attempted transaction under this Act to the Unit.
- (2) A person shall give to the Unit any further information that the person has about the transaction or attempted transaction, or the parties to the transaction or attempted transaction if requested to do so by the Unit.
- (3) A person who fails to comply with subsection (2), without reasonable excuse, commits an offence.

Disclosure of reports and other information

- 14H. (1) A person shall not disclose to any other person –
- (a) the fact that a financial institution or cash dealer, legal practitioner, supervisory authority or the auditor of a financial institution or cash dealer, has formed a suspicion in relation to a transaction or an attempted transaction;
 - (b) any report made or likely to be made under this Act to the Unit;
 - (c) any information given or likely to be given under this Act to the Unit;
 - (d) any other information from which the person to whom the information is disclosed could reasonably be expected to infer any of the circumstances in paragraph (a), (b) or (c).
- (2) Subsection (1) does not apply to a disclosure made to the following –
- (a) any officer, employee, consultant or agent of a person who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that person's duties;
 - (b) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure;
 - (c) the supervisory authority of a financial institution or cash dealer;
 - (d) any person authorised to assist the Unit under this Act.
- (3) A legal practitioner to whom information to which subsection (1) applies has been disclosed shall not disclose that information except to another legal practitioner, for the purpose of –

- (a) the performance of the first-mentioned legal practitioner's duty; or
 - (b) obtaining legal advice or representation in relation to the disclosure.
- (4) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.
- (5) A person commits an offence if the person –
- (a) discloses any fact, report or information contrary to this section;
 - (b) discloses any fact, report or information contrary to this section with intent to prejudice an investigation of a money laundering offence, financing of terrorism offence or any other serious offence; or
 - (c) discloses any fact, report or information contrary to this section for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or any other person.

Protection of identity of persons and information in suspicious transaction and other reports

14I. (1) Except for the purposes set out in subsection (2), a person shall not disclose any information that identifies or is likely to identify another person who has –

- (a) handled a transaction in respect of which a suspicious transaction report or other report under this Act has been made;
- (b) prepared a suspicious transaction report or other report under this Act; or
- (c) given a suspicious transaction report or other report under this Act, or information under this Act, to the Unit.

(2) In subsection (1), the purposes are –

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence; or
- (b) the enforcement of this Act or any other prescribed Act.

(3) Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.

(4) A person who contravenes subsection (1) without reasonable excuse commits an offence.

Protection of persons reporting suspicious transaction

14J. No civil or criminal proceedings shall be taken in relation to any act taken in good faith under this Act or in compliance with any permission, authority or direction given under this Act against –

- (a) a financial institution, cash dealer or legal practitioner or an officer, employee or agent of the financial institution, cash dealer or legal practitioner acting in the course of employment or agency; or

(b) the auditor or supervisory authority of a financial institution, cash dealer or legal practitioner or the officer, employee or agent of the auditor or supervisory authority acting in the course of employment or agency.

False or misleading statements

14K. A person commits an offence if the person, in making a report or providing information required under this Act –

(a) makes any statement that the person knows is false or misleading in a material particular; or

(b) omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular.

Legal professional privilege

14L. (1) Nothing in this Act requires a legal practitioner to disclose any legal professional privileged communication.

(2) If the information –

(a) relates to an offence of money laundering or involving proceeds of crime or financing of terrorism offence; and

(b) such information consists of receipts, payments, income, expenditure or financial transactions of the legal practitioner, client or other person,

such information is not a privileged communication if it is contained in or comprises the whole or part of any financial transaction records, account or document prepared or kept by the legal practitioner in connection with any account held by the legal practitioner."

Offence of money laundering

17. (1) A person who –

(a) converts or transfers property;

(b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property; or

(c) acquires, possesses or uses any property,

knowing or having reasonable grounds to believe or suspect that the property in whole or in part is proceeds of crime or directly or indirectly represents any other person's proceeds of crime commits an offence and is liable on conviction –

(i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding ten years, or both; or

(ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

(2) For the purposes of proving an offence of money laundering, it is not necessary to prove which serious offence has been committed.

(3) Nothing in this Act prevents a person that committed any other offence that

generated the proceeds of crime from being convicted of an offence of money laundering in respect of those proceeds of crime.

(4) A person who attempts, facilitates, aids and abets, conspires, counsel and procures or incites any other person to commit an offence of money laundering commits an offence and is liable on conviction to the penalties specified under subsection (1).

(5) For the purposes of this section, when proving that property is the proceeds of crime it is not necessary that the person is convicted of the serious offence that generated the proceeds of crime.

351. Note: For §11, 11A, 11B, 11D, 11E, and 11F of the *Money Laundering and Proceeds of Crime Act 2002*, see the section under Article 6, Paragraph 2. For §11C, 11G, 11H, 11I, 11J, 11K, 11L, and 11M of the Act, see Article 14, Paragraph 1(b).

352. According to available FIU records, suspicious transaction reporting (STR) started in 2007. It was reported that there is no reporting threshold for STRs, but only for cash transaction reports. Furthermore, regulations on anti-money laundering and prevention of money laundering were under development as of March 2013. It was also reported that currently only banks are required to file STRs, though there was a plan to begin receiving STRs also for cash dealers, casinos and other entities, as provided for in the Anti-Money Laundering and Proceeds of Crime Act.

Suspicious Transaction Reports (STRs) for 2011-2012

Institutions	2011	2012	Total
Bank A	5	2	7
Bank B	1	9	10
Bank C	5	16	21
Bank D	1	0	1
Others	0	1	1
Total	12	28	40

STRs disseminated to law enforcement for further investigation*

	2011	2012
Total STRs Received	12	28
Referrals to Law	No information available	14

* One STR was further received from Bank A in 2013 that had not been referred to law enforcement for further investigation as of March 2013

(b) Observations on the implementation of the article

353. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Subparagraph 1 (b) of Art. 14

1. Each State Party shall:

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

354. Section 11 of the *Money Laundering and Proceeds of Crime Act* establishes the Anti-Money Laundering Commission. Section 11D establishes the Solomon Islands Financial Intelligence Unit. Section 11I of the Act confers on the Financial Intelligence Unit the power to authorise the disclosure of any report or information to an equivalent agency or unit in another country or international organisation.

Money Laundering and Proceeds of Crime Act 2002

PART IA – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE ANTI-MONEY LAUNDERING COMMISSION AND THE SOLOMON ISLANDS FINANCIAL INTELLIGENCE UNIT

Funds of the Commission

11C. The funds of the Commission and the Unit comprise –

- (a) moneys appropriated by Parliament; and
- (b) moneys from other sources (other than public funds) received by or on behalf of the Commission or Unit.

Delegation of powers

11G. (1) The Director may, by notice in the Gazette, delegate to any officer, employee, consultant or agent of the Unit any power in this Part, except any power delegated by the Commission to the Director.

(2) The exercise of any delegated power has the same effect as if it had been conferred directly to the person by this section and not by delegation.

(3) If the person appointed as the Director ceases to hold office, any delegation made by the person shall continue to have effect as if the delegation were made by the person for the time being holding office as Director.

(4) Any delegation made under this section is revocable at will and no delegation prevents the exercise of the delegated power by the Director.

Functions and powers of the Unit in relation to information and reports

11H. (1) The functions of the Unit are–

- (a) to receive information or report in terms of the provisions of or for the purposes this Act, including information or report from another country, and to analyse, review and assess such information or report;
- (b) to forward any information or report to the appropriate law enforcement agency, if the Director has reasonable grounds to suspect that such information or report may involve an offence of money laundering, a terrorist financing offence, the proceeds of crime or any other offence under this Act;
- (c) to compile statistics and records, and disseminate information within Solomon Islands or to another country and make recommendations arising out of any information or report received;
- (d) to issue guidelines on customer identification, record keeping and reporting, and the identification of suspicious transactions;
- (e) where appropriate, to periodically provide feedback to a financial institution or cash dealer, legal practitioner or any relevant department, office, agency or institution of the Government or provincial government on the outcomes relating to any report or information provided under this Act;
- (f) to destroy a suspicious transaction report received or collected on the expiry of six years from the date of receiving the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report.

(2) The powers of the Unit are –

- (a) to request information or report from any financial institution, cash dealer or legal practitioner required under the provisions of this Act;
- (b) to make any enquiries from a financial institution, cash dealer or legal practitioner on whether or not a suspicious transaction has been reported;
- (c) to require a financial institution or cash dealer to disclose records in its possession, custody or control that pertain to any transaction or transfer relating to a particular account or person, within a particular period;
- (d) with a warrant issued under section 11K or on upon written request and with the consent of the financial institution, cash dealer or legal practitioner, to enter the premises or place of any financial institution, cash dealer or legal practitioner during ordinary business hours for the purpose of inspecting any record kept for the purposes of this Act, ask any question of any officer or employee of the financial institution, cash dealer or legal practitioner relating to such record, and make notes and take copies of the record, and for such purpose –
 - (i) to use or cause to be used any computer system or data processing system in the premises or place to examine any data contained in or available to the system;

- (ii) to reproduce any record, or cause it to be reproduced from the data, in the form of a print out or other intelligible output and remove the print out or other output for examination or copying; and to use or cause to be used any copying equipment in the premises or place to make copies of any record;
- (e) to collect any information that the Unit considers relevant to any proceeds of crime, offence of money laundering, financing of terrorism offence or any other offence under this Act, whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by a Government department or agency;
- (f) to obtain from a Government department or agency the records of a person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or obtain such records to trace proceeds of crime;
- (g) to obtain from any telecommunication company or authority established in Solomon Islands, the record of any telephone call of the person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or to obtain such records to trace proceeds of crime;
- (h) to act on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority or auditing authority of another country for purposes of this Act;
- (i) to refer any report, and information pertaining to that report, to the Police if, on the basis of the Unit's analysis and assessment based the Director has reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation or prosecution of the offence of money laundering, terrorist financing offence or any other offence which may be relevant to trace the proceeds of crime and in that regard, send a copy of the report or information to the relevant supervisory authority and the Commission;
- (j) to instruct any financial institution, cash dealer or legal practitioner to take such steps as may be appropriate in relation to any information or report received by the Unit, to enforce compliance with this Act or to facilitate any investigation by the Unit or the Police;
- (k) where the Director has reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, offence of money laundering, terrorist financing offence, or proceeds of crime, to direct orally or in writing that the financial institution cash dealer or legal practitioner either to proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Unit, except that—
 - (i) any direction shall not exceed five working days if the direction is in writing, unless extended by the order of a Judge before the five days expire;
 - (ii) any direction given orally shall not exceed twenty-four hours and shall be recorded in writing within twenty-four hours of giving such direction;

- (l) to ask any question or obtain further information on any person or transaction referred to in a report made pursuant to this Act;
- (m) to provide or conduct training programmes for financial institutions, cash dealers or legal practitioners in relation to customer identification, keeping of record, reporting obligation, identification of suspicious transaction or any other obligation of financial institutions, cash dealers or legal practitioners under this Act;
- (n) to conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorist activities;
- (o) to conduct public education and awareness on matters relating to prevention, detection or deterrent of money laundering and financing of terrorism;
- (p) to disclose any report or information derived from such report to any Government department or agency, subject to the confidentiality requirements under this Act;
- (q) to disclose any report or information derived from such report under this Act to any government department or agency of another country or any international organisation;
- (r) to liaise and to enter into any agreement or arrangement regarding the exchange of information under this Act with any government department or agency of another country or any international organisation;
- (s) to provide a written monthly report to the Commission on its activities; and
- (t) to provide to the Commission prior to the end of each financial year a written report on the Unit's expected activities and outcomes for the following year, without disclosing confidential information or information that may jeopardise any ongoing investigation or prosecution.

Disclosure of information and report to foreign agencies

11I. (1) The Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation, that has powers, functions and duties similar to those of the Unit –

(a) on such terms and conditions as are set out in an agreement or arrangement entered into under subsection (2); or

(b) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Unit and the government department or agency of another country or international organisation at the time of disclosure.

(2) The Unit, with the approval of the Commission, has the power to enter into a written agreement or arrangement with the government department or agency of another country or international organisation, with powers, functions and duties similar to the Unit regarding the exchange of information between the Unit and that institution, agency or organisation.

(3) Any report or information exchanged under subsection (1) shall be limited to reporting or disclosing the report or information that the Unit, the government department or agency of another country or the international organisation has reasonable grounds to suspect would be relevant to the investigation or prosecution of a serious offence, a money laundering offence, financing of terrorism offence or an offence that is substantially similar to such offence.

(4) Any agreement or arrangement entered into under subsection (2) shall include the following terms –

(a) a restriction on the use of the report or information only for purposes relevant to investigating or prosecuting a serious offence, offence of money laundering, financing of terrorism offence or an offence that is substantially similar to such offences; and

(b) a condition that the report or information be treated in a confidential manner and not be further disclosed without the prior written consent of the Unit.

Exemption from liability

11J. Section 25 applies to the Commission, the Director, an authorised officer, an employee, a consultant or an agent of the Unit.

Examination of records

11K. (1) The Director may apply to a Principal Magistrate for a search warrant to enter and search for any document, record or thing in the premises or place of a financial institution, cash dealer or legal practitioner or of its director, officer, employee, consultant or agent whom the Director has reasonable grounds to suspect has contravened this Act.

(2) A search warrant issued under this section may authorise the seizure and removal of such document, record or thing on the premises.

(3) The owner or occupier of the premises or place referred to in subsection (1), and any person found in the premises or place, shall –

(a) give the Director or any authorised person all reasonable assistance to enable the Director or authorised person to carry out the search;

(b) provide any information that may reasonably be required relating to the administration of this Act, or any regulations or guidelines made under it; or

(c) permit the taking of any document, record or thing which the Director may consider relevant to the investigation.

(4) Any person who wilfully obstructs, hinders, or fails to cooperate with a person conducting a search pursuant to this section or harms or threatens to harm a person conducting such a search, commits an offence.

Investigation powers

11L. The Director may, with or without the assistance of the Police, conduct investigations and enquiries on behalf of a financial intelligence unit from or a law

enforcement agency of another country.

Non-disclosure

11M. (1) This section applies to any current or former Director, officer, employee, consultant or agent of the Unit.

(2) A person referred to in subsection (1) shall not disclose any information or matter the person has knowledge of or obtained in the performance of the duties, functions or powers under this Act, except—

- (a) for the purposes of performing his duties, functions or powers under this Act;
- (b) if required by an order of the court;
- (c) for the detection, investigation or prosecution of a serious offence, money laundering offence or financing of terrorism offence;
- (d) for the purposes of tracing the proceeds of crime; or
- (e) for purposes of enforcing the provisions of this Act.

(3) Any person who wilfully discloses information or matter in contravention of subsection (2) commits an offence.

355. Note: For §11, 11A, 11B, 11D, 11E, and 11F of the *Money Laundering and Proceeds of Crime Act 2002*, see Article 6 Paragraph 2. For §2, 14, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I, 14J, 14K, 14L, and 17 of the Act, see the previous section on Article 14 Paragraph 1(a). For §12I and 13B, see Article 14 Paragraph 3.

356. There is a Memorandum of Understanding (MOU) governing coordination between the Royal Solomon Islands Police Force and the Financial Intelligence Unit. The Financial Intelligence Unit reports to the Anti-Money Laundering Commission, which is chaired by the Attorney General. The Financial Intelligence Unit provides quarterly reports to the Commission and is staffed by three officers of the Central Bank of Solomon Islands and one seconded officer from the Royal Solomon Islands Police Force.

357. The Financial Intelligence Unit has a mandate to exchange financial intelligence with other States in relation to money-laundering and terrorist financing. Information is shared as appropriate with the Royal Solomon Islands Police Force and other relevant agencies. The Financial Intelligence Unit has signed four memorandums of understanding with foreign Financial Intelligence Units and is a member of the Pacific FIU Association, Asia/Pacific Group on Money Laundering and Egmont Group.

(b) Observations on the implementation of the article

48. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 2 of Art. 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

49. The *Currency Declaration Act* requires a person who enters or leaves Solomon Islands with the minimum amount to make a declaration to an authorised officer in the prescribed form. A person who fails to declare or falsely declares the minimum amount to an authorised officer commits an offence and is liable on conviction to one or more of the following penalties-

- to a fine not exceeding 500,000 penalty units;
- to imprisonment for a term not exceeding five years;
- an order for forfeiture of the currency under section 10.

Currency Declaration Act 2009

Interpretation

2. In this Act, unless the context otherwise requires –

"currency" includes the following –

- (a) the coin and paper money of Solomon Islands or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (b) monetary instruments that may be exchanged for money, including cheques, travellers' cheques, money orders, and negotiable instruments in a form in which title passes on delivery;
- (c) precious metal, precious stone, pearl or jewellery made of precious metal or stone;
- (d) currency in electronic form;
- (e) any other prescribed kind of monetary instrument which is found at any place in Solomon Islands;

"minimum amount" means an amount equal to or more than the minimum amount of Solomon Islands currency or its equivalent in any other currency prescribed under section 16, which must be declared under section 3 for the purpose of this Act;

Obligation to declare currency

3. (1) A person who enters or leaves Solomon Islands with the minimum amount, must make a declaration to an authorised officer in the prescribed form.

(2) Any person who sends out of or receives into Solomon Islands the minimum amount by postal services, courier services, transshipment by any craft or any other prescribed means must declare the minimum amount to the Customs in the prescribed form.

(3) Any person who fails to declare or falsely declares the minimum amount to an authorised officer commits an offence and is liable on conviction to one or more of the following penalties-

- (a) to a fine not exceeding 500,000 penalty units;
- (b) to imprisonment for a term not exceeding five years;
- (c) an order for forfeiture of the currency under section 10.

Power to question

4. (1) The powers under this Act are in addition to the powers conferred upon an authorised officer under any other written law, in particular the power to question, search, seize or detain a person or thing.

(2) An authorised officer may question a person entering or leaving the Solomon Islands on the source, ownership, acquisition, use, or intended destination of any currency (whether or not declared) in that person's possession or custody.

(3) A person who, without reasonable excuse on being questioned by an authorised officer, fails or refuses to answer any question or gives a false answer to any question put to that person by the authorised officer, commits an offence and is liable on conviction to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years.

Power to search

5. (1) Subject to subsection (6), an authorised officer may search any premises, place, or craft for currency, if the authorised officer, has reasonable grounds for suspecting that there is on the premises, place or craft, currency –

- (a) which is recoverable currency or is intended by any person for use in unlawful conduct; and
- (b) whether or not the amount exceeds the minimum amount.

(2) An authorised officer may exercise the powers in subsection (3), if the authorised officer has reasonable grounds for suspecting that a person is carrying currency –

- (a) which is recoverable currency or is intended by any person for use in unlawful conduct and the amount of which is not less than the minimum amount; or
- (b) that such person has failed to declare the minimum amount in the prescribed form.

(3) The authorised officer may, if it is necessary or expedient, require the person to submit to -

- (a) search of anything, including goods, that a person has in his or her possession or control; or

(b) a search of his or her person.

(4) For the purpose of subsection (3)(b), an authorised officer may detain a person for so long as it is necessary for the officer to conduct and complete the search.

(5) The search of a person under subsection (3)(b) must be carried out by an authorised officer of the same gender as the person to be searched.

(6) No search shall be conducted in any residential premises under this section unless the authorised officer obtains a warrant from a Magistrate authorising the officer to conduct a search of the residential premises pursuant to the powers given under this section.

Determination of unlawful conduct

12. (1) In determining whether or not conduct has been unlawful, the Judge or the court before which the issue is to be determined must decide on a balance of probabilities whether it has been proven -

- (a) that any matters alleged to constitute unlawful conduct have occurred; or
- (b) that any person intended to use any currency in unlawful conduct.

(2) In deciding whether any currency was obtained through unlawful conduct-

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct;
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that the currency was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

(3) The portion of the mixed currency which is attributable to the recoverable currency represents the currency obtained through unlawful conduct.

Regulations

16. (1) The Minister may make regulations to give effect to the provisions or for the purposes of this Act, and in particular to make regulations for matters required to be prescribed in this Act.

(2) The prescribed minimum amount shall be \$50,000 unless another amount is prescribed under subsection (1) as the minimum amount.

50.Total Border Currency Reports (BCR) Received:

July 2009- Jan 2010	Jan 2010- Dec 2010	Feb 2012 – June 2012	2013
14	36	10	3 (and 1 outgoing)

(b) Observations on the implementation of the article

51.The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 3 of Art. 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*
- (b) To maintain such information throughout the payment chain; and*
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

(a) Summary of information relevant to reviewing the implementation of the article

52. Section 12I of the *Money Laundering and Proceeds of Crime Act* requires a financial institution, cash dealer or legal practitioner to pay special attention to any electronic fund transfer, other than an electronic funds transfer referred to in this Act, that does not contain complete originator information. Section 13B requires a financial institution or cash dealer to include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.

Money Laundering and Proceeds of Crime Act 2002

Due diligence and monitoring transactions

12I. (1) A financial institution, cash dealer or legal practitioner shall –

- (a) conduct ongoing due diligence on its relationship with each of its customers, in accordance with the guidelines issued by the Unit; and
- (b) conduct ongoing scrutiny of any transaction undertaken by each of its customers to ensure that the transaction being conducted is consistent with –
 - (i) the financial institution's, cash dealer's knowledge or legal practitioner's knowledge of the customer;
 - (ii) the customer's business and risk profile; and
 - (iii) where necessary, the source of funds.

(2) A financial institution, cash dealer or legal practitioner shall pay special attention to the following –

- (a) any business relation or transaction with any person in another country, which has been specified in writing by the Unit, that does not have any adequate system or law in place to detect, prevent or deter money laundering or the financing of terrorism;
- (b) any electronic fund transfer, other than an electronic funds transfer referred to in this Act, that does not contain complete originator information.

(3) For the purpose of subsections (1) and (2), a financial institution, cash dealer or legal practitioner shall –

- (a) examine as far as practicable the background and purpose of any transaction, business relation or transfer and record its findings in writing; and
 - (b) upon a request in writing by the Unit, make available such findings to the Unit or any person authorised by the Unit, to assist the Unit or such authorised person in any investigation relating to a money laundering offence, financing of terrorism offence or any other serious offence.
- (4) A financial institution, cash dealer or legal practitioner that fails to comply with a request under subsection (3)(b), without reasonable excuse, commits an offence.

Originator information

13B. (1) A financial institution or cash dealer shall include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.

(2) Subsection (1) does not apply –

- (a) to an electronic funds transfer that results from a transaction carried out using a credit or debit card if the credit or debit card number is included in the information accompanying such a transfer unless for a money transfer effected from the use of a credit or debit card as means of payment; or
 - (c) to an electronic funds transfer or settlement between financial institutions or cash dealers where the originator and beneficiary of the funds transfer are financial institutions or cash dealers acting on their own behalf.
- (3) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

53. Note: For §11, 11A, 11B, 11D, 11E, and 11F of the *Money Laundering and Proceeds of Crime Act 2002*, see Article 6 Paragraph 2. For §2, 14, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I, 14J, 14K, 14L, and 17 of the Act, see the previous section on Article 14 Paragraph 1(a). For §11C, 11G, 11H, 11I, 11J, 11K, 11L, and 11M, see Article 14 Paragraph 1(b).

(b) Observations on the implementation of the article

358. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 4 of Art. 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

(b) Observations on the implementation of the article

359. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. Solomon Islands reported during the Country Visit that it refers to international guidelines from organizations working against money-laundering in setting policy and developing law in this area.

Paragraph 5 of Art. 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

54. Financial Intelligence Unit officials have participated in training and exchange programmes in Cook Islands and Fiji. The Financial Intelligence Unit has entered into MOUs with FIUs of the Philippines, Indonesia, China (Taiwan) and Sri Lanka. The Financial Intelligence Unit has made a request to Cook Islands for information in the recent past, which was provided, but has never received a request from another country's Financial Intelligence Unit. No cases were reported in which the Financial Intelligence Unit provided or received information pursuant to a mutual legal assistance request. The Financial Intelligence Unit is also a member of the Egmont Group of FIUs, but has never used Egmont channels to cooperate. The Financial Intelligence Unit also participated in Asia/Pacific Group on Money Laundering (APG) and World Bank training workshops.

55. The Police cooperate with the Australian Federal Police, but does not use INTERPOL channels. The Police have provided information/evidence pursuant to a mutual legal assistance request.

56. The Office of the Director of Public Prosecutions has an MOU with Nauru on exchange of personnel/prosecutors. The Office of the Director of Public Prosecutions has also received ad hoc support from Australia, Papua New Guinea and Fiji.

57. Solomon Islands hosted the South Pacific Chiefs of Police Conference (SPCPC) in 2012 for Police Chiefs' cooperation.

58. Solomon Islands is also a member of the Melanesian Spearhead Group and the Pacific Islands Forum Secretariat that also allow a platform for arrangements to be concluded with Member States on law enforcement cooperation.

59. As part of the Pacific Transnational Crime Network (PTCN), the Australian Federal Police through its Law Enforcement Cooperation Program established the Transnational Crime Unit (TCU) under the Solomon Islands Police Force.

(b) Observations on the implementation of the article

360. The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

V. Asset recovery

Article 51. General provision

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

1. The *Money Laundering and Proceeds of Crime Act*, amended in 2010, outlines a number of customer due diligence requirements including requirements to verify a customer's identity, to establish and maintain customer records and to report suspicious transactions. In particular, section 13B of the *Money Laundering and Proceeds of Crime Act* requires a financial institution or cash dealer to include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.
2. Section 54 of the *Money Laundering and Proceeds of Crimes Act* empowers courts to cooperate with foreign jurisdictions. Section 23 of the same Act overrides secrecy obligations. Bank secrecy is no bar to the seizure of bank records or other records of financial institutions.
3. The powers of the Financial Intelligence Unit (FIU) to obtain information, records, and reports from banks and covered institutions are set out in section 11H of the *Money Laundering and Proceeds of Crime Act*. Section 11K further authorizes the examination of records. Section 11H(2)(h) provides that the powers of the Unit include acting on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority, or auditing authority of another country for purposes of the *Money Laundering and Proceeds of Crime Act*.
4. Section 11I provides that the Anti-Money Laundering Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation that has powers, functions and duties similar to those of the FIU. With the Anti-Money Laundering Commission's approval, the FIU has the power to enter into a written agreement or arrangement to exchange information with a government department or agency of another country or international organisation that has powers, functions and duties similar to the Unit.
5. The Financial Intelligence Unit has a mandate to exchange financial intelligence

with other States in relation to money-laundering and terrorist financing. Information is shared as appropriate with the Royal Solomon Islands Police Force and other relevant agencies. The Financial Intelligence Unit has signed four memorandums of understanding with foreign Financial Intelligence Units and is a member of the Pacific FIU Association, Asia/Pacific Group on Money Laundering and Egmont Group.

Money Laundering and Proceeds of Crime (Amendment) Act 2010

Interpretation

2.

(1) In this Act, unless the context otherwise requires –

“cash dealer” means –

- (a) a casino, gambling house or lottery operator (including a person who carries on such a business through the internet), when its customers engage in financial transactions equal to or above the minimum prescribed amount;
- (b) a real estate agent, when involved in transactions for its client relating to the buying and selling of real estate;
- (c) a dealer in precious metals or in precious stones, when the dealer engages in any cash transaction with a customer equal to or above the minimum prescribed amount;
- (d) an accountant when preparing or carrying out transactions for the client relating to the following activities –
 - (i) buying or selling real estate or businesses;
 - (ii) managing money, securities or other assets;
 - (iii) managing bank, savings or securities accounts;
 - (iv) organising contributions for the creation, operation or management of companies;
 - (v) creating, operating or managing a legal entity or an arrangement;
- (e) a trust or company service provider, which as a business, provides any of the following services –
 - (i) formation or management of a legal entity or an arrangement;
 - (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position in relation to any other legal entity or arrangement;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a legal entity or arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person;

“customer” in relation to a transaction or an account, includes –

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorised to conduct a transaction; or
- (e) any other prescribed person;

“financial institution” means any entity or person who conducts one or more of the following business activities or operations for or on behalf of a customer –

- (a) banking as defined in the Financial Institutions Act 1998, including acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (c) financial leasing;
- (d) money transmission services, including—
 - (i) collecting, holding, exchanging or remitting funds or the value of money; or
 - (ii) delivering funds;
- (e) issuing and managing means of payment (such as credit cards, travellers' cheques and bankers' drafts);
- (f) issuing financial guarantees and commitments;
- (g) trading for its own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;
- (h) participating in securities issues and the provision of financial services related to such issues;
- (i) money-broking;
- (j) individual and collective portfolio management;
- (k) investing, administering or managing funds or money on behalf of other persons over the minimum prescribed amount;
- (l) safekeeping and administration of cash or liquid securities on behalf of other persons over the minimum prescribed amount;
- (m) safe custody services of currency over the minimum prescribed amount;
- (n) insurance, insurance intermediation, securities dealing or futures broking;
- (o) trustee administration or investment management of a superannuation or provident fund scheme;
- (p) any other business that the Minister may prescribe taking into consideration the interest of the national economy;

and “financial institution” includes the following –

- (aa) the Central Bank of Solomon Islands;
- (bb) a credit institution, as defined under the Financial Institutions Act 1998;

Functions and powers of the Unit in relation to information and reports

11H. (1) The functions of the Unit are–

- (a) to receive information or report in terms of the provisions of or for the purposes this Act, including information or report from another country, and to analyse, review and assess such information or report;
- (b) to forward any information or report to the appropriate law enforcement agency, if the Director has reasonable grounds to suspect that such information or report may involve an offence of money laundering, a terrorist financing offence, the proceeds of crime or any other offence under this Act;
- (c) to compile statistics and records, and disseminate information within Solomon Islands or to another country and make recommendations arising out of any information or report received;
- (d) to issue guidelines on customer identification, record keeping and reporting, and the identification of suspicious transactions;
- (e) where appropriate, to periodically provide feedback to a financial institution or cash dealer, legal practitioner or any relevant department, office, agency or institution of the Government or provincial government on the outcomes relating to any report or information provided under this Act;
- (f) to destroy a suspicious transaction report received or collected on the expiry of six years from the date of receiving the report if there has been no further activity or information relating to the report or the person named in the report, or six years from the date of the last activity relating to the person or report.

(2) The powers of the Unit are –

- (a) to request information or report from any financial institution, cash dealer or legal practitioner required under the provisions of this Act;
- (b) to make any enquiries from a financial institution, cash dealer or legal practitioner on whether or not a suspicious transaction has been reported;
- (c) to require a financial institution or cash dealer to disclose records in its possession, custody or control that pertain to any transaction or transfer relating to a particular account or person, within a particular period;
- (d) with a warrant issued under section 11K or on upon written request and with the consent of the financial institution, cash dealer or legal practitioner, to enter the premises or place of any financial institution, cash dealer or legal practitioner during ordinary business hours for the purpose of inspecting any record kept for the purposes of this Act, ask any question of any officer or employee of the financial institution, cash dealer or legal practitioner relating to such record, and make notes and take copies of the record, and for such purpose

- (i) to use or cause to be used any computer system or data processing system in the premises or place to examine any data contained in or available to the system;
 - (ii) to reproduce any record, or cause it to be reproduced from the data, in the form of a print out or other intelligible output and remove the print out or other output for examination or copying; and to use or cause to be used any copying equipment in the premises or place to make copies of any record;
- (e) to collect any information that the Unit considers relevant to any proceeds of crime, offence of money laundering, financing of terrorism offence or any other offence under this Act, whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by a Government department or agency;
- (f) to obtain from a Government department or agency the records of a person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or obtain such records to trace proceeds of crime;
- (g) to obtain from any telecommunication company or authority established in Solomon Islands, the record of any telephone call of the person under investigation for committing, or attempting to commit a serious offence, offence of money laundering, financing of terrorism offence or an offence under this Act or to obtain such records to trace proceeds of crime;
- (h) to act on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority or auditing authority of another country for purposes of this Act;
- (i) to refer any report, and information pertaining to that report, to the Police if, on the basis of the Unit's analysis and assessment based the Director has reasonable grounds to suspect that a transaction or any other activity would be relevant to the investigation or prosecution of the offence of money laundering, terrorist financing offence or any other offence which may be relevant to trace the proceeds of crime and in that regard, send a copy of the report or information to the relevant supervisory authority and the Commission;
- (j) to instruct any financial institution, cash dealer or legal practitioner to take such steps as may be appropriate in relation to any information or report received by the Unit, to enforce compliance with this Act or to facilitate any investigation by the Unit or the Police;
- (k) where the Director has reasonable grounds to suspect that a transaction or attempted transaction may involve a serious offence, offence of money laundering, terrorist financing offence, or proceeds of crime, to direct orally or in writing that the financial institution cash dealer or legal practitioner either to proceed or refrain from proceeding with the transaction or attempted transaction, for a period to be determined by the Unit, except that—
- (i) any direction shall not exceed five working days if the direction is in writing, unless extended by the order of a Judge before the five

days expire;

(ii) any direction given orally shall not exceed twenty-four hours and shall be recorded in writing within twenty-four hours of giving such direction;

(l) to ask any question or obtain further information on any person or transaction referred to in a report made pursuant to this Act;

(m) to provide or conduct training programmes for financial institutions, cash dealers or legal practitioners in relation to customer identification, keeping of record, reporting obligation, identification of suspicious transaction or any other obligation of financial institutions, cash dealers or legal practitioners under this Act;

(n) to conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorist activities;

(o) to conduct public education and awareness on matters relating to prevention, detection or deterrent of money laundering and financing of terrorism;

(p) to disclose any report or information derived from such report to any Government department or agency, subject to the confidentiality requirements under this Act;

(q) to disclose any report or information derived from such report under this Act to any government department or agency of another country or any international organisation;

(r) to liaise and to enter into any agreement or arrangement regarding the exchange of information under this Act with any government department or agency of another country or any international organisation;

(s) to provide a written monthly report to the Commission on its activities; and

(t) to provide to the Commission prior to the end of each financial year a written report on the Unit's expected activities and outcomes for the following year, without disclosing confidential information or information that may jeopardise any ongoing investigation or prosecution.

Disclosure of information and report to foreign agencies

11I. (1) The Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation, that has powers, functions and duties similar to those of the Unit –

(a) on such terms and conditions as are set out in an agreement or arrangement entered into under subsection (2); or

(b) where such an agreement or arrangement has not been entered into, on such terms and conditions as may be agreed upon by the Unit and the

government department or agency of another country or international organisation at the time of disclosure.

(2) The Unit, with the approval of the Commission, has the power to enter into a written agreement or arrangement with the government department or agency of another country or international organisation, with powers, functions and duties similar to the Unit regarding the exchange of information between the Unit and that institution, agency or organisation.

(3) Any report or information exchanged under subsection (1) shall be limited to reporting or disclosing the report or information that the Unit, the government department or agency of another country or the international organisation has reasonable grounds to suspect would be relevant to the investigation or prosecution of a serious offence, a money laundering offence, financing of terrorism offence or an offence that is substantially similar to such offence.

(4) Any agreement or arrangement entered into under subsection (2) shall include the following terms –

(a) a restriction on the use of the report or information only for purposes relevant to investigating or prosecuting a serious offence, offence of money laundering, financing of terrorism offence or an offence that is substantially similar to such offences; and

(b) a condition that the report or information be treated in a confidential manner and not be further disclosed without the prior written consent of the Unit.

Exemption from liability

11J. Section 25 applies to the Commission, the Director, an authorised officer, an employee, a consultant or an agent of the Unit.

Financial institution, cash dealer or legal practitioner to verify customer's identity

12. (1) A financial institution, cash dealer or legal practitioner shall identify and verify the identity of the person, when the person –

(a) opens an account with the financial institution, cash dealer or legal practitioner;

(b) engages the services of the financial institution, cash dealer or legal practitioner for the purposes of providing one or more of the services set out in the definition of “financial institution”, “cash dealer” or “legal practitioner”;

(c) enters into a business relationship with the financial institution, cash dealer or legal practitioner; or

(d) conducts or attempts to conduct a transaction.

(2) In addition to complying with subsection (1), the financial institution, cash dealer or legal practitioner shall identify and verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted –

(a) when a person conducts or attempts to conduct a transaction through or by using the financial institution, cash dealer or legal practitioner; and

(b) the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of that other person.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Customer identification – other situations

12A. (1) A financial institution or cash dealer shall identify and verify the identity of a customer in accordance with the provisions set out in section 12C or 12F–

(a) when carrying out a funds transfer for the customer, other than an electronic funds transfer;

(b) if it reasonably suspects that the customer is involved in a money laundering offence, financing of terrorism offence or serious offence; or

(c) if it has doubts about the accuracy or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

Exceptions

12B. Sections 12(1), 12(2), and 12A(1)(a) do not apply to the following–

(a) to a financial institution or cash dealer that is subject to regulation and supervision of a supervisory authority;

(b) to any transaction that is part of an established business relationship with a person and the person has already produced satisfactory evidence of identity, unless the financial institution, cash dealer or legal practitioner suspects the transaction is suspicious or unusual;

(c) to any transaction that is an occasional transaction not exceeding the minimum prescribed amount, other than an electronic funds transfer, unless the financial institution or cash dealer suspects the transaction is suspicious or unusual.

Identification details

12C. (1) Without limiting section 12A or 12B, a financial institution, cash dealer or legal practitioner shall –

(a) if the customer is an individual, adequately identify and verify the customer's identity, including obtaining information relating to the following –

(i) the individual's name, address and occupation;

(ii) passport, driver's licence, national or official identifying document or any other document prescribed under subsection (3);

- (b) if the customer is a legal entity, adequately verify its legal existence and structure, including obtaining information relating to the following –
- (i) the customer's name, legal form, address and the directors;
 - (ii) the principal owners, beneficiaries and control structure;
 - (iii) provisions regulating the power to bind the entity;
 - (iv) the authorisation of any person purporting to act on behalf of the customer, and identify the person;
- (c) when entering into a business relationship, obtain information on the purpose and intended nature of the business relationship; and
- (d) have risk management systems capable of determining whether a customer is a politically-exposed person, and where the customer is determined to be such a person shall –
- (i) take reasonable measures to establish the source of property;
 - (ii) obtain the approval of a senior manager of the financial institution or cash dealer or legal practice before establishing a business relationship with the customer; and
 - (iii) conduct regular and ongoing enhanced monitoring of the business relationship.
- (2) When verifying the identity of a customer, a financial institution, cash dealer or legal practitioner shall use –
- (a) official or other document prescribed under subsection (3); or
 - (b) reliable and independent source document, data or information or such other evidence as is reasonably capable of verifying the identity of the customer.
- (3) The regulations may prescribe all or any of the following –
- (a) any official or identifying document, or reliable and independent source document, data or information or any other evidence that is required for identification or verification of any particular customer or class of customers;
 - (b) the timing of the identification and verification requirements of any particular customer or class of customers;
 - (c) the threshold for or the circumstances in which the provisions of this Act apply in relation to any particular customer or class of customers.
- (4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Cross-border correspondent banking services

12D. (1) This section applies to a financial institution if the institution carries out cross-border correspondent banking services or has other similar relationships (in this section referred to as “transaction”).

(2) The financial institution shall, in addition to its other obligations under this Act, do all of the following –

- (a) adequately identify and verify the person with whom it conducts the transaction;
- (b) gather sufficient information about the nature of the business of the person;
- (c) determine from publicly available information the reputation of the person and the quality of supervision the person is subject to;
- (d) assess the person's anti-money laundering and terrorist financing controls;
- (e) obtain the approval of a senior manager of the financial institution before establishing a new transaction;
- (f) document the responsibilities of the financial institution and the person.

(3) If the financial institution allows a person with whom it carries such transaction to establish accounts in the financial institution for use by that person's customers, the financial institution shall, in addition to its other obligations under this Act, be satisfied that the person –

- (a) has verified the identity of and is performing on-going due diligence on that person's customers that have direct access to accounts of the financial institution; and
- (b) may be able to provide to the financial institution the customer identification data of the customers referred to in this subsection upon request.

Intermediaries or third parties

12E. (1) If a financial institution, cash dealer or legal practitioner relies on an intermediary or a third party to undertake its obligations under any provision of this Act, or to introduce business to it, the financial institution, cash dealer or legal practitioner shall –

- (a) satisfy itself that the intermediary or third party is regulated and supervised and the intermediary or a third party has measures in place to comply with the requirements set out in this Act; and
- (b) ensure that copies of identification data and other relevant documentation relating to the requirements set out in this Act are made available to it from the intermediary or the third party upon request without delay; and
- (c) immediately obtain the information required by this Act.

(2) A financial institution, cash dealer or legal practitioner that contravenes subsection (1), without reasonable excuse, commits an offence.

Necessity of identification to conduct transaction

12F. (1) If satisfactory evidence of the identity of a person is not produced to or obtained by a financial institution, cash dealer or legal practitioner under this Act, the financial institution, cash dealer or legal practitioner shall –

- (a) prepare a suspicious transaction report on any transaction attempted to be conducted by the person; and

- (b) give it to the Unit as if the transaction were a suspicious transaction.
- (2) The financial institution, cash dealer or legal practitioner shall not proceed any further with the transaction unless the Unit gives written permission to proceed with the transaction.
- (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Financial institution, cash dealer or legal practitioner to maintain account in true name

- 12G. (1) A financial institution, cash dealer or legal practitioner shall maintain an account in the true name of the account holder.
- (2) A financial institution, cash dealer or legal practitioner shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.
 - (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

Financial institution, cash dealer or legal practitioner to retain customers' records

- 12H. (1) A financial institution, cash dealer or legal practitioner shall retain –
- (a) if evidence of a person's identity ("the identified person") is obtained under this Act, a record that indicates the kind of evidence that was obtained, and comprises either a copy of the evidence or information that enables a copy of it to be obtained; and
 - (b) a record of any correspondence between the identified person and the financial institution, cash dealer or legal practitioner.
- (2) The records mentioned in subsection (1) shall be retained for six years from the date the evidence was obtained or the date of the correspondence.
 - (3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2) commits an offence.

Due diligence and monitoring transactions

- 12I. (1) A financial institution, cash dealer or legal practitioner shall –
- (a) conduct ongoing due diligence on its relationship with each of its customers, in accordance with the guidelines issued by the Unit; and
 - (b) conduct ongoing scrutiny of any transaction undertaken by each of its customers to ensure that the transaction being conducted is consistent with –
 - (i) the financial institution's, cash dealer's knowledge or legal practitioner's knowledge of the customer;
 - (ii) the customer's business and risk profile; and

(iii) where necessary, the source of funds.

(2) A financial institution, cash dealer or legal practitioner shall pay special attention to the following –

(a) any business relation or transaction with any person in another country, which has been specified in writing by the Unit, that does not have any adequate system or law in place to detect, prevent or deter money laundering or the financing of terrorism;

(b) any electronic fund transfer, other than an electronic funds transfer referred to in this Act, that does not contain complete originator information.

(3) For the purpose of subsections (1) and (2), a financial institution, cash dealer or legal practitioner shall –

(a) examine as far as practicable the background and purpose of any transaction, business relation or transfer and record its findings in writing; and

(b) upon a request in writing by the Unit, make available such findings to the Unit or any person authorised by the Unit, to assist the Unit or such authorised person in any investigation relating to a money laundering offence, financing of terrorism offence or any other serious offence.

(4) A financial institution, cash dealer or legal practitioner that fails to comply with a request under subsection (3)(b), without reasonable excuse, commits an offence.

Opening accounts in false name, etc.

12J. (1) A person shall not open or operate an account with a financial institution, cash dealer or legal practitioner in a false, fictitious or incorrect name.

(2) If a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with a financial institution, cash dealer or legal practitioner unless the person has previously disclosed the other name or names to the financial institution, cash dealer or legal practitioner.

(3) If a person using a particular name in any dealing with a financial institution, cash dealer or legal practitioner discloses a different name or names by which that person is commonly known, the financial institution, cash dealer or legal practitioner shall –

(a) make a record of the disclosure; and

(b) give the Unit a copy of that record, upon requested in writing by the Unit.

(4) For the purposes of this section, a person opens an account in a false name if –

(a) the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known; or

(b) the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the financial institution, cash dealer or legal practitioner concerned) and, in doing so, uses a name other than a name by which the person is commonly known.

(5) A person who contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Financial institutions, cash dealers or legal practitioners to keep records

13. (1) A financial institution, cash dealer or legal practitioner shall keep records of every transaction it conducts, as are reasonably necessary, to enable the transaction to be readily reconstructed at any time by the Unit.

(2) Without limiting subsection (1), such records shall contain the following information –

- (a) the nature of the transaction;
- (b) the amount of the transaction and the currency in which it was denominated;
- (c) the date on which the transaction was conducted;
- (d) the name, address and occupation, business or principal activity, as the case may be, of each person –
 - (i) conducting the transaction; and
 - (ii) for whom, or for whose ultimate benefit, the transaction is being conducted, if the financial institution, cash dealer or legal practitioner has reasonable grounds to believe that the person is undertaking the transaction on behalf of any other person;
- (e) the type and identifying number of any account with the financial institution, cash dealer or legal practitioner involved in the transaction;
- (f) if the transaction involves a negotiable instrument other than cash –
 - (i) the drawer of the instrument;
 - (ii) the name of the entity on which it is drawn;
 - (iii) the name of any payee;
 - (iv) the amount and date of the instrument; and
 - (v) the number (if any) of the instrument and details of any endorsements appearing on the instrument;
- (g) the name and address of the financial institution, cash dealer or legal practitioner, and of each officer, employee or agent of the financial institution, cash dealer or legal practitioner who prepared the relevant record or a part of the record;
- (h) any other prescribed information.

(3) A financial institution, cash dealer or legal practitioner shall keep the records for six years after the completion of the transaction.

(4) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (3), without reasonable excuse, commits an offence.

Records in relation to reports and certain enquiries

13A. (1) In addition to the requirements under section 13, a financial institution, cash dealer or legal practitioner shall keep –

- (a) a record of any suspicious transaction report or other report made by the financial institution, cash dealer or legal practitioner to the Unit; and
- (b) a record of any enquiry relating to money laundering or the financing of terrorism made by the financial institution, cash dealer or legal practitioner to the Unit.

(2) A financial institution, cash dealer or legal practitioner shall keep the records referred to in subsection (1) for six years from the date on which the report or the enquiry was made.

(3) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (2), without reasonable excuse, commits an offence.

Originator information

13B. (1) A financial institution or cash dealer shall include accurate originator information on an electronic funds transfer and on any other form of funds transfer, and such information is to continue to remain part of the transfer.

(2) Subsection (1) does not apply –

- (a) to an electronic funds transfer that results from a transaction carried out using a credit or debit card if the credit or debit card number is included in the information accompanying such a transfer unless for a money transfer effected from the use of a credit or debit card as means of payment; or
- (b) to an electronic funds transfer or settlement between financial institutions or cash dealers where the originator and beneficiary of the funds transfer are financial institutions or cash dealers acting on their own behalf.

(3) A financial institution or cash dealer that contravenes subsection (1), without reasonable excuse, commits an offence.

Records to be made available

13C. A financial institution, cash dealer or legal practitioner shall make available any of its records to the Unit if requested to do so in writing by the Unit."

Financial institution to report suspicious transactions

14. (1) This section applies if a financial institution, cash dealer or legal practitioner suspects on reasonable grounds that a transaction or activity or attempted transaction or activity is or may be related to one or more of the following –

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or any other serious offence;
- (b) the commission of a money laundering offence, financing of terrorism offence or any other serious offence;

- (c) an act preparatory to a money laundering offence or financing of terrorism offence.
- (2) The financial institution, cash dealer or legal practitioner shall –
 - (a) prepare a report of such transaction or activity or attempted transaction or activity; and
 - (b) send the report to the Unit, as soon as possible, but no later than two working days after forming the suspicion.
- (3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Transactions involving terrorist organisations

14A. Any transaction or attempted transaction by a terrorist organisation shall be deemed to be a suspicious transaction, which shall be reported to the Unit in accordance with the provisions of this Act or the prescribed procedures.

Duty to report certain transactions with no legitimate purpose

- 14B. (1) This section applies where a transaction or attempted transaction –
- (a) is complex, unusual or large and does not have any apparent or visible economic or lawful purpose; or
 - (b) is part of an unusual pattern of transaction that does not have any apparent or visible economic or lawful purpose.
- (2) The financial institution, cash dealer or legal practitioner shall –
- (a) prepare a report of the transaction or attempted transaction; and
 - (b) give the report to the Unit, as soon as possible, but no later than two working days from the date of forming the suspicion.
- (3) A financial institution, cash dealer or legal practitioner that, without reasonable excuse, contravenes subsection (2) commits an offence.

Supervisory body or auditor to report suspicious transactions

14C. (1) This section applies if a supervisory authority or the auditor of a financial institution, cash dealer or legal practitioner has reasonable grounds to suspect that a transaction, an attempted transaction or information that it has in its possession concerning any transaction or attempted transaction, is or may be related to one or more of the following–

- (a) the detection, investigation or prosecution of a person for a money laundering offence, financing of terrorism offence or serious offence;
- (b) the commission of a money laundering offence, financing of terrorism offence or serious offence;
- (c) an act preparatory to money laundering offence or a financing of terrorism offence.

(2) The supervisory authority, the auditor of the financial institution, a cash dealer or a legal practitioner shall report the transaction or attempted transaction or the information to the Unit, as soon as possible but no later than two working days from the date of forming the suspicion.

(3) A supervisory authority, auditor of the financial institution, cash dealer or legal practitioner who contravenes subsection (2), without reasonable excuse, commits an offence.

Financial institution, cash dealer or legal practitioner to report financial transaction

14D. (1) A financial institution, cash dealer or legal practitioner shall report to the Unit the following –

(a) any single cash transaction exceeding the minimum prescribed amount unless the originator and beneficiary of the transaction are financial institutions or cash dealers carrying on the business set out in the definition of "financial institution" or "cash dealer" and acting on their own behalf;

(b) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction sent from Solomon Islands to another country; or

(c) any electronic or other funds transfer of an amount exceeding the minimum prescribed amount, in the course of a single transaction received in Solomon Islands from another country.

(2) Subsection (1) (b) does not apply if the financial institution or cash dealer sends an electronic or other funds transfer to a person in Solomon Islands, even if the final recipient of the fund is outside Solomon Islands.

(3) Subsection (1)(c) does not apply if the financial institution or cash dealer receives an electronic or other funds transfer from a person in Solomon Islands, even if the initial sender of the fund was outside Solomon Islands.

(4) The report shall be given –

(a) for any transaction or transfer in Solomon Islands currency, within fifteen days after the date the transaction or transfer was made; or

(b) for any transaction or transfer in a foreign currency, within two days after the date the transaction or transfer was made.

(5) A financial institution, cash dealer or legal practitioner that contravenes subsection (1) or (4) commits an offence.

(6) The Central Bank of Solomon Islands, or the Unit may, on the application of a financial institution, cash dealer or legal practitioner, exempt in writing the reporting of transactions referred to in subsection (1)(a) relating to deposit or withdrawal by its established customers using their accounts with the financial institution, cash dealer or legal practitioner.

Avoidance of section 14D

14E. (1) This section applies to a person who conducts two or more transactions

or electronic or other funds transfers that are of an amount below the minimum prescribed amount.

(2) A person commits an offence if the person conducts any transaction or transfer for the sole or dominant purpose of ensuring, or attempting to ensure, that a report in relation to the transactions or transfers will not be made under section 14D(1).

(3) The court may take into account the following when deciding whether or not a person has committed an offence under subsection (2) –

- (a) the manner or form in which the transaction or transfer was conducted;
- (b) the value of the currency involved in each transaction or transfer;
- (c) the aggregate value of the currency involved in the transaction or transfer;
- (d) the period of time over which the transaction or transfer occurred;
- (e) the interval of time between the transaction and transfer;
- (f) the location at which the transaction or transfer was initiated or conducted;
- (g) any explanation made by the person concerned as to the manner or form in which the transaction or transfer was conducted.

Form and content of reports

14F. (1) A report under section 14, 14A, 14B, 14C or 14D shall –

- (a) subject to subsection (2), be in a form approved by the Commission and may be given by way of facsimile transmission or electronic mail or other means;
- (b) contain a statement of the grounds on which the person making the report –
 - (i) for a report under section 14, 14A, 14B or 14C, holds the suspicion; or
 - (ii) for a report under section 14D, became aware of the transaction; and
- (c) be signed or otherwise authenticated by the person making the report.

(2) A report under a section mentioned in subsection (1) may be made orally, including by telephone, but a written report shall be prepared in accordance with subsection (1) within twenty-four hours after the oral report is made.

(3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.

Additional information

14G. (1) This section applies where a person has made a report or provided information about a transaction or attempted transaction under this Act to the Unit.

(2) A person shall give to the Unit any further information that the person has about the transaction or attempted transaction, or the parties to the transaction or attempted transaction if requested to do so by the Unit.

(3) A person who fails to comply with subsection (2), without reasonable excuse, commits an offence.

Secrecy obligations over-ridden

23. The provisions of this Act shall have effect notwithstanding any obligations as to secrecy or other restriction on disclosure or information imposed by law or otherwise.

(b) Observations on the implementation of the article

The reviewing experts observed that this provision does not require review for compliance, and is grateful for the comprehensive response of Solomon Islands.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of Art. 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

6. The *Money Laundering and Proceeds of Crime Act* contains a number of customer due diligence requirements. Financial institutions, cash dealers and legal practitioners are required to verify customer's identity; retain customer records; conduct ongoing due diligence on its relationships with each of its customers; and conduct ongoing scrutiny of any transaction undertaken by each of its customers. Part II of the FIU Guidelines requires financial institutions to conduct on-going due diligence on relationship with each customer and scrutiny of any transactions undertaken by customers to ensure that the transaction being conducted is consistent with the institution's knowledge of the customer, the customer's business and risk profile.
7. Financial institutions, cash dealers and legal practitioners are required to report suspicious transactions under section 14 of the *Money Laundering and Proceeds of Crime Act*.

8. The *Money Laundering and Proceeds of Crime Act* was amended in 2010 to include provisions on due diligence of politically exposed persons. The definition of “politically exposed persons” encompasses individuals entrusted with a prominent public function in the Solomon Islands or another country.
9. Section 12C(1)(c) provides that financial institutions, cash dealers and legal practitioners are required have risk management systems capable of determining whether a customer is a politically exposed person, and where the customer is determined to be such a person shall take reasonable measures to establish the source of property; obtain the approval of a senior manager of the financial institution or cash dealer or legal practice before establishing a business relationship with the customer; and conduct regular and ongoing enhanced monitoring of the business relationship.
10. The FIU Guidelines also contains requirements for financial institutions to put in place measures addressing politically exposed persons. However, these requirements are not enforceable.
11. All the banks interviewed as part of the Asia Pacific Group Mutual Evaluation Report stated that they had measures in place for scrutinizing customers’ transactions. These measures ranged from manual monitoring by customer service staff of customers’ transactions to more complex and automated, computer-based monitoring systems. However, there was no indication that this included measure for ensuring that customer due diligence information is kept up-to-date.²¹
12. Only one of the three banks interviewed had in place measures for identifying higher risk customers and business relationship and conducting enhanced due diligence on these customers or business relationships. The other two banks and financial institutions interviewed did not have measures in place for enhanced due diligence of higher risk customers.²²
13. In the Mutual Evaluation Report, two of the three banks interviewed had documented risk management measures for dealing with politically exposed persons. However, the assessors were not satisfied that all financial institutions (banks and no banks) were effectively implementing enhanced customer due diligence measures for dealing with politically exposed persons.²³

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

²¹ Asia/Pacific Group on Money Laundering, *Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism*, Solomon Islands 2010, p.87.

²² Asia/Pacific Group on Money Laundering, *Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism*, Solomon Islands 2010, p.87.

²³ Asia/Pacific Group on Money Laundering, *Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism*, Solomon Islands 2010, p.89.

Subparagraph 2 (a) of Art. 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

14. The Solomon Islands Financial Intelligence Unit issues advisories to banks and financial institutions.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Subparagraph 2 (b) of Art. 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

15. The amended *Money Laundering and Proceeds of Crime Act* provides for ongoing due diligence and scrutiny by financial institutions, cash dealers and legal practitioners. Under section 12I, a financial institution, cash dealer or legal practitioner must pay special attention to any business relation or transaction with any person in another country, which has been specified in writing by the Financial Intelligence Unit, that does not have any adequate system or law in place to detect, prevent or deter money laundering or the financing of terrorism. Note: The full text of Section 12I may be found under the section of this report regarding Art. 51.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 3 of Art. 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

16. Section 12 of the *Money Laundering and Proceeds of Crime Act* requires financial institutions, cash dealers and legal practitioners to verify the identity of their customers. Section 12H requires a financial institution, cash dealer or legal practitioner to retain a record of a person's identity and a record of any correspondence between the identified person and the financial institution, cash dealer or legal practitioner. Such records must be retained for six years from the date the evidence was obtained or the date of the correspondence.
17. Section 13 of the *Money Laundering and Proceeds of Crime Act* outlines the record keeping requirements of financial institutions, cash dealers and legal practitioners. Records must contain information on, amongst other things, the nature of the transaction; the amount of the transaction and the currency in which it was denominated; the date on which the transaction was conducted; the name, address and occupation, business or principal activity, as the case may be, of each person conducting the transaction; and for whom the transaction is being conducted. A financial institution, cash dealer or legal practitioner is required to keep the records for six years after the completion of the transaction.
18. In addition, a financial institution, cash dealer or legal practitioner must keep a record of any suspicious transaction report or other report made by the financial institution, cash dealer or legal practitioner to the Financial Intelligence Unit; and a record of any enquiry relating to money laundering or the financing of terrorism made by the financial institution, cash dealer or legal practitioner to the Financial Intelligence Unit for a period of six years.
19. Part II of the FIU Guidelines also contains requirements on record keeping with regards to types of records to be maintained and length of time it should be maintained. However, the FIU Guidelines is not considered enforceable.
20. The *Companies Act* requires companies to keep certain company records at its registered office. Section 124 of the *Companies Act* requires the directors of a company to ensure accounting records are kept that correctly record and explain the transactions of the company; will at any time enable the financial position of the company to be determined with reasonable accuracy; will enable the directors to ensure that the financial statements of the company comply with section 125

and with any regulations made under this Act; and will enable the financial statements of the company to be readily and properly audited.

21. Note: For the full text of Sections 12, 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12I, 12J, 13, 13A, 13B, and 13C of the Money Laundering and Proceeds of Crime Act, see Art. 51.

Companies Act 2009

Division 2—Company Records

Company records

113. (1) A company must keep the following documents at its registered office—

- (a) the rules of the company;
- (b) minutes of all meetings and resolutions of shareholders within the last 7 years;
- (c) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
- (d) a consent by each person named as a director to act as a director of the company in the prescribed form as well as the full names and residential and postal addresses of the current directors;
- (e) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;
- (f) the accounting records required by section 124 for the current accounting period and for the last 7 completed accounting periods of the company;
- (g) copies of all financial statements required to be completed under section 125 for the last 7 completed accounting periods of the company;
- (h) the share register.

(2) The references in subsection (1)(b), (c), and (e) to 7 years and the references in subsection (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company.

(3) The company records referred to in this section may be kept at a place in Solomon Islands other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (4).

(4) If any company records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the places where the records are kept.

(5) If a company fails to comply with subsection (1) or (4), the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Form of records

114. (1) The records of a company must be kept—

- (a) in written form; or
 - (b) in a form or in a manner that allows the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to—
 - (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

Inspection of records by directors

115. (1) Subject to subsection (2), every director of a company is entitled to inspect the records of the company—

- (a) in written form; and
 - (b) without charge; and
 - (c) at a reasonable time specified by the director.
- (2) The Court may, on application by the company, direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit if it is satisfied that—
 - (a) it would not be in the company's interests for a director to inspect the records; or
 - (b) the proposed inspection is for a purpose that is not properly connected with the director's duties.

Inspection of records by shareholders

116. (1) A company must keep the following records available for inspection in the manner prescribed in section 118 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company—

- (a) minutes of all meetings and resolutions of shareholders;
 - (b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;
 - (c) the records that must be available for public inspection under section 117.
- (2) If a company fails to comply with subsection (1) —
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Inspection of records by public

117. (1) A company must keep the following records available for inspection in the manner prescribed in section 118 by any person who serves written notice of intention to inspect on the company—

- (a) the certificate of incorporation or registration of the company;
- (b) the rules of the company, if they differ from the model rules;
- (c) the share register;
- (d) the full names and residential addresses of the directors;
- (e) details of the registered office of the company and of its postal address, if different from the registered office.

(2) If a company fails to comply with subsection (1), the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Manner of inspection

118. (1) Documents that may be inspected under section 116 or 117 must be available for inspection at the place at which the company's records are kept between the hours of 8.00 am and 4.00 pm on each working day during the inspection period.

(2) In this section, "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

(3) A person may require a copy of, or extract from, a document that is available for inspection by him or her under section 116 or 117 to be sent to the person—

- (a) within 5 working days after he or she has made a request in writing for the copy or extract; and
- (b) if he or she has paid a reasonable copying and administration fee specified by the company.

(4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3), the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Division 3—Documents to be sent to Registrar and Shareholders

Annual returns

119. (1) The directors of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return—

- (a) in the prescribed form; and
- (b) containing the prescribed information; and
- (c) accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.

- (3) The annual return must be signed by a director of the company or by a legal practitioner or chartered accountant authorised for that purpose.
- (4) On registration of a company under Part 2, the Registrar must allocate a month to the company for the purposes of this section.
- (5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4).
- (6) Despite subsection (1)—
 - (a) a company need not make an annual return in the calendar year of its incorporation; and
 - (b) a subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.
- (7) Different forms of annual return may be prescribed by the Registrar in respect of different classes of companies.

Registrar may send annual return form to company

120. (1) The Registrar may send to a company an annual return form that sets out the prescribed information as it appears on the Solomon Islands register—

- (a) for approval in accordance with section 119(3) if the information set out in the form is current as at a date in the month in which the return is required to be made; or
- (b) for such correction as may be required, and approval of the corrected information in accordance with section 119(3).

(2) If the annual return contains—

- (a) an address of the registered office of the company; or
- (b) a postal address of the company,

that is different from the address of the registered office or the postal address of the company entered on the Solomon Islands register, the Registrar may alter the Solomon Islands register accordingly.

(3) For the purposes of this section the Registrar may make provision for electronic submission of the annual return.

Special Annual Return

121. (1) The directors of a company must ensure that there is delivered to the Registrar a special annual return—

- (a) in the prescribed form or in a form approved by the Registrar by public notice; and
- (b) containing the prescribed information.

(2) The special annual return must be filed within 10 days of the occurrence of any of the following specified events—

- (a) the adoption of new rules by a company, or the alteration of the rules of a company, under section 14;
- (b) a change in the registered office or postal address of the company under section 18;
- (c) the issue of shares by the company, under section 25;
- (d) the acquisition by the company of its own shares under section 30;
- (e) the redemption of a share under section 34;
- (f) a change in the directors of the company, or of a change in the name or residential address of a director, under section 85;
- (g) the making of an order under section 99 altering or adding to the rules of a company;
- (h) any documents requested by the Registrar under section 176.

Annual report to shareholders

122. An annual report must be sent to shareholders in accordance with section 55.

Other documents to be sent to shareholders

123. In addition to any annual report required under section 55, a company must send the following documents to shareholders—

- (a) notice of any repurchase of shares to which section 30(4) applies;
- (b) notice of a written resolution approved under section 51;
- (c) financial statements required to be sent under section 125;
- (d) a written statement by an auditor under section 131;
- (e) a report by an auditor under section 133.

Division 4—Accounting and Audit

Accounting records to be kept

124. (1) The directors of a company must ensure accounting records are kept that—

- (a) correctly record and explain the transactions of the company; and
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) will enable the directors to ensure that the financial statements of the company comply with section 125 and with any regulations made under this Act; and
- (d) will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subsection (1), the accounting records must contain—

- (a) entries of money received and spent each day and the matters to which it relates; and
 - (b) a record of the assets and liabilities of the company; and
 - (c) if the company's business involves dealing in goods —
 - (i) a record of goods bought and sold, and relevant invoices; and
 - (ii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and
 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.
- (3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business—
- (a) invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.
- (4) The accounting records must be kept in a form permitted under section 114.
- (5) If the directors of a company fail to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Further information to be provided by overseas company

160. (1) An overseas company that carries on business in Solomon Islands must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of—

- (a) a change in the directors or in the names or residential addresses or postal addresses of the directors of the overseas company; or
 - (b) a change in the address of the place of business or principal place of business of the overseas company; or
 - (c) a change in the postal address in Solomon Islands of the overseas company; or
 - (d) a change in any person or in the postal address or residential or business address of any person authorised to accept service in Solomon Islands of documents on behalf of the overseas company.
- (2) If an overseas company fails to comply with subsection (1), the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Annual return of overseas company

161. (1) Any overseas company that carries on business in Solomon Islands must ensure that the Registrar receives each year, during the month allocated to the

overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the Solomon Islands register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Despite subsection (1), an overseas company that is deemed to be registered under this Part need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsection (1) or (2) within 6 months, the overseas company must be removed from the register.

(7) The Registrar must, on the application of a director or shareholder, restore an overseas company that has been removed from the Solomon Islands register under subsection (6).

(8) The application under subsection (7) must be received within 7 years and be accompanied by all outstanding annual returns and associated filing fees, and a late filing fee for each outstanding annual return.

Companies Regulations 2010

PART 3 – ANNUAL REPORT AND FINANCIAL STATEMENTS

Division 1 - Annual report

Contents of annual report for public companies

7. (1) every annual report for a public company must be in writing and be dated and, subject to sub regulation (3), must—

(a) state, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the accounting period; and

(b) state the total amount of donations made by the company during the accounting period; and

(c) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm.

(2) A company that is required to include group financial statements in its annual report must include, in relation to its subsidiaries, the information specified in sub regulation (1).

(3) The annual report of a company need not comply with sub regulation (1) (a) to (c) if, and to the extent that, all shareholders agree that the report need not do so.

Division 2 - Financial statements

Form of financial statements

8. (1) Subject to sub regulation (2), financial statements of a company prepared for the purposes of the Act—

- (a) must be in the form set out in Schedule 3; and
- (b) must contain the information required by that form; and
- (c) may contain any other information that the board of the company considers to be appropriate for inclusion in the financial statements.

(2) If, in the financial statements of a company, the amount of an item for an accounting period is not material and the amount of that item for the preceding accounting period is also not material, neither of those items need be separately disclosed.

Directions for preparation of financial statements

9. (1) Financial statements of a company prepared for the purposes of the Act must comply with the following accounting policies –

- (a) *Accrual accounting*: Accrual accounting must be used to record the effects of transactions and events when they occur;
- (b) *Accounts receivable*: Accounts receivable must be stated at their estimated net realisable value;
- (c) *Depreciation*: Depreciation must be calculated either—
 - (i) using the rates permitted under the Income Tax Act (Cap 123); or
 - (ii) on a systematic basis over the economic life of the asset;
- (d) *Inventories*: Inventories must be valued at the lower of cost and net realisable value;
- (e) *Non-current assets*: Non-current assets must be stated at cost or valuation less aggregate depreciation or amortisation.

Financial statements of public companies

10. In addition to the requirements of regulations 10 and 11, the financial statements of a public company must either—

- (a) comply with international accounting standards; or
- (b) if the financial statements of a public company do not comply with international accounting standards, state how, and why, the financial statements do not comply with those accounting standards.

Part III of the *Financial Institutions Act* provides for prudential supervision of licensed financial institutions.

Financial Institutions Act 1998

PART III PRUDENTIAL SUPERVISION

Prudential supervision.

8. (1) In the prudential supervision of licensed financial institutions and in determining whether or not a licensed financial institution carries on its business in a prudent manner, the Central Bank shall have regard to the following-

- (a) capital adequacy in relation to the size and nature of the business;
- (b) asset concentration and risk exposure;
- (c) separation of banking business from other business and from other interests of any person owning or controlling the licensed financial institution;
- (d) adequacy of liquidity in relation to liabilities;
- (e) asset quality and adequacy of provisions for losses;
- (f) internal controls, risk management accounting systems; and
- (g) such other matters as the Central Bank considers relevant.

(2) The Central Bank may require a licensed financial institution to submit within a prescribed time and in a prescribed form such periodic returns and other information as it considers necessary for the purposes of this Act.

(3) The Central Bank may require any licensed financial institution to submit a certificate from its external auditor verifying the accuracy or any return or information furnished under subsection (2).

(4) The Central Bank may in its absolute discretion impose upon any licensed financial institution and upon any director or officer of the institution administrative fines for-

- (a) failure to submit or for wilfully delaying the submission of any required return or information, or for wilfully submitting any false or inaccurate return or information required under subsection (2);
- (b) failure to submit the certificate of the external auditor, if required in accordance with subsection (3); or
- (c) failure to comply with a directive issued under section 16.

(5) (a) The administrative fines shall be in amounts as may be determined by the Central Bank to be appropriate but in no case may exceed ten thousand dollars for each violation or where the violation is a continuing one, may not exceed three thousand dollars for every day during which the violation continues, and shall take into consideration the surrounding circumstances, such as the nature and gravity of the violation. An administrative fine imposed shall be a civil debt and if not paid may be enforced by action in the Court.

(b) A licensed financial institution or any director or officer of that institution on whom an administrative fine is imposed may within fourteen days of the date of the notification of such fine, submit reasons to the Central Bank why such fine should not be imposed. After consideration of such submission, the Central Bank may confirm, vary or rescind the fine.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 4 of Art. 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

22. According to section 5(5) of the *Financial Institutions Act*, in “... considering an application, the Central Bank shall have regard to ... the need for and the viability of the financial institution proposed, its ownership spread, the financial capacity, history and qualifications of the applicant, promoters, substantial shareholders and management, their character and experience, the proposed financial institution’s accounting, risk management and internal control systems, the adequacy and the structure of its capital and the business activities it intends to undertake”.
23. In addition, section 5(6) requires that where the applicant is a foreign financial institution, the Central Bank shall in addition to the matters specified in subsection (5) have regard to the institution’s international reputation; the ownership spread of the institution or of its holding company; the relevant law and regulatory requirement relating to the licensing and supervision of financial institutions in its country of incorporation; and shall require written information from the supervisory authority in the applicant’s country of incorporation that the supervisory authority has no objection to the proposal to carry on banking business in Solomon Islands.
24. This framework creates opportunity for the Central Bank to satisfy itself that an institution is not a shell bank. The Central Bank has never issued a license to a shell bank. In addition, the Central Bank has proven vigilant regarding entry into the financial sector of the Solomon Islands, for example by recognizing the proposed “financing” (lending, though without deposit taking) business of an

applicant as “other banking business” under section 2(1)(b) of the definition. The Solomon Islands therefore do not approve the establishment of shell banks. The APG Mutual Evaluation Report concluded, “...shell banks have not existed in the Solomon Islands, and there is therefore no issue of continuing operation of existing shell banks.”²⁴

25. Guidelines issued by FIU establish that “... banks should refuse to enter into or continue a correspondent banking relationship with a bank incorporated in a country in which it has no physical presence and which is unaffiliated with a regulated financial group” (i.e. shell banks).
26. In addition, section 12D of the *Money Laundering and Proceeds of Crime Act* provides that where financial institutions carry out cross-border correspondent banking services, the financial institution must adequately identify and verify the person with whom it conducts the transaction; gather sufficient information about the nature of the business of the person; determine from publicly available information the reputation of the person and the quality of supervision the person is subject to; assess the person’s anti-money laundering and terrorist financing controls; obtain the approval of a senior manager of the financial institution before establishing a new transaction; and document the responsibilities of the financial institution and the person.

Financial Institutions Act 1998

Interpretation.

2. (1) In this Act unless the contrary intention appears, the expression-
“banking business” means-

- (a) the business of accepting deposits of money from the public or members thereof, withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and
- (b) any other activity recognised by the Central Bank as customary banking practice which a licensed financial institution engaging in the activities described in paragraph (a) may additionally be authorised to engage in by the Central Bank, or any related activity which the Central Bank may consider appropriate;

Licensing of financial institutions.

5. (1) Any person desirous of commencing banking business in Solomon Islands after the commencement of this Act shall, before commencing such business, apply for and obtain a licence to do so.
- (1A) No person other than a body corporate shall be issued with a license to carry on banking business pursuant to this Act

²⁴

Asia/Pacific Group on Money Laundering, *Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism*, Solomon Islands 2010, p.111.

(2) An application for a licence under this section shall be made in writing to the Central Bank in such form as shall be specified by the Central Bank and shall be accompanied by such fee as may be specified.

(3) Every person that makes an application under this section shall furnish to the Central Bank such information, and such documents, authenticated in such manner as the Central Bank may specify, as may be required by the Central Bank to assist it to consider the application. The Central Bank may conduct such investigations as it deems necessary in regard to such application.

(4) Any person who knowingly furnishes any information or document which is false or misleading in any material particular in connection with an application under this Act is guilty of an offence and is liable on conviction to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment not exceeding three years or to both such fine and imprisonment.

(5) In considering an application, the Central Bank shall have regard to the economic advantage of Solomon Islands, the need for and the viability of the financial institution proposed, its ownership spread, the financial capacity, history and qualifications of the applicant, promoters, substantial shareholders and management, their character and experience, the proposed financial institution's accounting, risk management and internal control systems, the adequacy and the structure of its capital and the business activities it intends to undertake.

(6) Where the applicant is a foreign financial institution, the Central Bank shall in addition to the matters specified in subsection (5) have regard to-

- (a) the institution's international reputation;
- (b) the ownership spread of the institution or of its holding company;
- (c) the relevant law and regulatory requirement relating to the licensing and supervision of financial institutions in its country of incorporation;

and shall require-

- (i) written information from the supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the proposal to carry on banking business in Solomon Islands;
- (ii) written confirmation that the applicant would provide support as necessary to its branch, subsidiary or affiliate in Solomon Islands; and
- (iii) details of the programme of training the applicant would adopt in order to place Solomon Islands citizens in management positions in its operations in Solomon Islands.

(7) Within four months after receipt of an application under this section, and all other additional relevant information and documents it may require, the Central Bank shall-

- (a) issue to the applicant a licence to carry on banking business subject to such terms and conditions as may be specified in the licence; or
- (b) inform the applicant that its application is refused.

(7A) The Central Bank may, within 60 days after receipt of the application, information and documents referred to in subsection (7), issue an interim licence to permit the applicant to carry on banking business for a period of 6 to 12 months from the date of issue, subject to such terms and conditions as may be specified in the licence.

(7B) Where the Central Bank issues an interim licence to an applicant under subsection (7A), the time limit in subsection (7) ceases to apply to the application but the Central Bank must, before the expiry of the interim licence, either —

(a) issue a licence under subsection (7) to permit the applicant to carry on banking business subject to such terms and conditions as may be specified in the licence; or

(b) inform the applicant that its application is refused.

(7C) The Central Bank may not issue a licence under subsection (7) or an interim licence under subsection (7A) unless it is satisfied in respect of the matters set out in subsection (5) and, where the applicant is a foreign financial institution, the matters set out in subsection (6).

(7D) For avoidance of doubt, the Central Bank may, in the terms and conditions specified in an interim licence, restrict the business and activities that may be carried on by the licensee, notwithstanding the definition of “banking business” in section 2.

(8) A licence issued under this Act cannot be assigned or transferred and any purported transfer or assignment shall be null and void.

(9) The Central Bank may impose new or additional conditions on a licence issued pursuant to this Act, or vary or remove any conditions already imposed. Before taking such action, the Central Bank shall, by notice in writing to the licensed financial institution concerned, inform it of the changes proposed and afford it an opportunity to make submissions in writing to the Central Bank in this regard no later than fourteen days from the date of the notice. The Central Bank shall take into account any such submissions received in deciding whether or not to proceed with the changes.

(10) Every licensed financial institution shall pay such annual fee as may be determined by the Central Bank from time to time, on such basis as the Minister may approve and as prescribed by regulations. The prescribed annual fee shall be paid upon the granting of a licence and not later than the fifteenth day of January of every succeeding year. The annual fee shall be considered as a debt due to the Bank and any licensed financial institution which fails to pay the fee by the due date shall be liable to a surcharge equivalent to one hundred per cent of the prescribed fee. All fees and surcharges received under this subsection shall be paid by the Central Bank to the Treasury on account of the Consolidated Fund.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was not in full compliance with this provision of the Convention. As a result, it was recommended that Solomon Islands take measures to require financial institutions to maintain a physical presence in Solomon Islands and be affiliated with a regulated financial

group in order to obtain a license to operate (art. 52(4)).

Paragraph 5 of Art. 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

27. The Leadership Code contained in the *Constitution* contains provisions on conflicts of interest.
28. Section 5 of the *Leadership Code (Further Provisions) Act* provides that every Leader shall, within three months of the date of commencement of this Act or of his becoming a Leader, and thereafter at intervals not exceeding two years, give a separate statement in respect of himself, his spouse and each of his children under the age of eighteen setting out to the best of his knowledge all directorships in any company or corporation held by each of them; the business occupations of each of them; the holdings of each of them of any shares of, or debentures or other securities charged upon, any company or corporation; the total income received by each of them during the period to which the statement relates and the sources of each of those incomes; all business transactions involving a sum of five hundred dollars or more entered into by each of them during the period to which the statement relates; all gifts received by each of them during the period to which the statement relates, and the value of each of such gifts; and the assets acquired by each of them during the period of which the statement relates. Failure to do so constitutes misconduct in office.
29. Section 9 provides further that a Leader who holds shares or any other investment in any company, corporation or incorporated association; whose spouse or any of whose children under the age of eighteen holds any such shares or other investment, who or whose spouse or children under the age of eighteen holds any position or any financial interest (whether as debtor, creditor or guarantor) in any company, corporation or unincorporated association, that could reasonably be expected to place him in a position in which he could be faced with a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.
30. Section 16 provides that any Leader who, being a member of a statutory corporation, Government agency or other public body proposes to speak or vote on any matter before such body or before a Committee thereof, and who has a direct or indirect interest in the matter shall before speaking or voting thereon comply with the rules of such body or committee thereof relating to the disclosure

of interest, or, if the rules of such body do not specifically make provision in that regard, shall be under a duty to give adequate notice of his interest in the matter under discussion.

31. Order 78 of the *Standing Orders of Parliament* provides that every Member must submit to the Speaker a written declaration of all shares and interests he may have in any company or business undertaking that has any contract with the Government and of any Office of Director or Manager he may hold in any Company or Business undertaking (whether or not it has a contract with the Government) and thereafter, upon his acquisition of any such share or interest or appointment to such office, he shall make such a declaration before the next sitting of Parliament he attends following upon the acquisition of that share or interest or appointment to that Office.
32. The *Penal Code* also contains a provision on conflicts of interest. Section 16 of the Central Bank of Solomon Islands Act also contains a provision on conflicts of interest.
33. There is no explicit legislative provision for the sharing of such information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with the Convention.

Constitution

Application of this Chapter

93. The provisions of this Chapter apply to and in relation to -

- (a) the Governor-General;
- (b) the Prime Minister and the other Ministers;
- (c) the Leader of the Official Opposition and the Leader of the Independent Members;
- (d) all other members of Parliament;
- (e) the Speaker;
- (f) members of any Commission established by this Constitution;
- (g) public officers;
- (h) officers of the government of Honiara city, provincial government officers, members of the Honiara city council and provincial assemblies;
- (i) officers of statutory corporations and Government agencies; and
- (j) such other officers as Parliament may prescribe.

Responsibilities of office

94. (1) A person to whom this Chapter applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not -

(a) to place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;

(b) to demean his office or position;

(c) to allow his integrity to be called into question; or

(d) to endanger or diminish respect for and confidence in the integrity of the government of Solomon Islands.

(2) In particular, a person to whom this Chapter applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by the preceding subsection.

(3) It is the further duty of a person to whom this Chapter applies -

(a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible, including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and

(b) if necessary, publicly to dissociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a) of this subsection, that might be expected to give rise to such a doubt.

(4) A person to whom this Chapter applies who -

(a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties;

(b) fails to carry out the obligations imposed by the preceding subsections of this section; or

(c) commits any act or omission prescribed under section 95 of this Constitution as constituting misconduct in office,

is guilty of misconduct in office.

Leadership Code (Further Provisions) Act **1999**

Interpretation

2. In this Act, unless the context otherwise requires—

“assets”, in relation to a Leader, include any debt or pecuniary obligation owed to him by any person, company, corporation or unincorporated association;

"Leader" means any person -

(a) whose office or position is specified in sections 93 and 127 (2) of the Constitution; or

(b) who is appointed as a member of any statutory authority or other body established by an Act of Parliament or Provincial Ordinance and includes any person whose emoluments are paid out of the Consolidated Fund;

Application of Act

3. (1) This Act shall apply to and in relation to all Leaders.
- (2) For the purposes of this Act, a person shall be deemed to be a Leader, notwithstanding that -
- (a) such person has resigned or ceased to hold office or position as a Leader, provided that an investigation under Part IV of this Act relates to any transaction or conduct which took place such person held the aforesaid office; and
 - (b) the office or position to which such person is appointed is by virtue of an Act of Parliament or Provincial Ordinance establishing such or not be a public office for the purposes of Chapter XIII of the Constitution.

Statement of assets etc. to be supplied by Leader

8.(1) Every Leader shall, within three months of his becoming a Leader, and thereafter at intervals not exceeding two years, give a separate statement in respect of himself, his spouse and each of his children setting out to the best of his knowledge -

- (a) all directorships in any company or corporation held by each of them;
 - (b) the business occupations of each of them;
 - (c) the holdings of each of them of any shares of, or debentures or other securities charged upon, any company or corporation;
 - (d) the total income received by each of them during the period to which the statement relates and the sources of each of those incomes;
 - (e) all business transactions involving a sum of one thousand dollars or more entered into by each of them during the period to which the statement relates;
 - (f) subject to subsection (4), all gifts received by each of them during the period to which the statement relates, and the value of each of such gifts; and
 - (g) the assets acquired by each of them during the period to which the statement relates.
- (2) The period to which a statement under sub-section (1) shall relate is -
- (a) in the case of the first statement made by a Leader, the preceding three months;
 - (b) in any other case, the period since the last statement was given.

(3) In the case of assets, income or gifts involving amounts less than five hundred dollars, it shall be sufficient if the statement gives general particulars and approximate amounts or values.

(4) It shall not be necessary for a Leader to include in the statement made under subsection (1), details of gifts made to himself, his spouse or any of his children during the course of each year in any case where such gifts -

- (a) were received from his spouse or children;
 - (b) were offered at or in connection with a custom ceremony; or
 - (c) not being gifts falling within categories (a) or (b) above, were of a total value of one hundred dollars or less.
- (5) The statement made in accordance with subsection (1) shall be submitted to the Commission.
- (6) Statements and information given to the Commission under the provisions of this section or section 9 shall not be revealed to any person except -
- (a) in the course of the duties of the Commission;
 - (b) for the purpose of proceedings or possible proceedings under Part V; or
 - (c) under an order of a court of competent jurisdiction.
- (7) Where a Leader fails to give a statement to the Commission as required under this section before the due dates as prescribed under this Act a sum of one hundred dollars shall thereupon become payable by way of penalty.
- (8) A penalty imposed under this section shall not prevent the Commission from taking any further action under any provision of this Act.

Requests for further information

- 9.(1) The Commission may, by notice in writing to a Leader require him to give such details or further details in respect of any statement made by such Leader in accordance with section 8 as may be specified in the notice.
- (2) In particular, but without affecting the generality of the powers conferred by subsection (1), such notice may relate to -
- (a) assets or income general particulars of which were shown in accordance with section 8 (3);
 - (b) omissions or apparent omissions from the statement;
 - (c) discrepancies between the statement and any other statement or other information lawfully available to the Commission.
- (3) Upon receiving such details or additional details the Commission shall make such amendments to the Register of Leaders' Interests as maybe necessary.
- (4) The Commission shall cause to be kept a register, called the Register of Leaders' Interests, for the purposes of registering interests of Leaders.

Offences relating to supply of statement

10. Any Leader who -

- (a) fails without reasonable excuse (the burden of proof of which shall be upon him) to give to the Commission a statement as require under section 8; or
- (b) fails without reasonable excuse (the burden of proof of which shall be upon him) to give to the Commission such details or further details as he may be required to supply in order to complied with any notice issued under section 9; or

(c) knowingly, recklessly or negligently gives in such statement or details any information that is false, misleading or incomplete in a material particular, is guilty of misconduct in office.

PART III MISCONDUCT IN OFFICE

Use of office for personal benefit

11. (1) Any leader who directly or indirectly asks or accepts, on behalf of himself or any associate of his, any benefit in relation to any action in the course of his official duties (whether such action has already been taken, is continuing or is to be taken in the future) or by reason of his official position, is guilty of misconduct in office:

Provided that this section shall not be construed so as to apply to any request made by a Leader for the payment of travel or subsistence expenses to which he may be entitled as a result of his carrying out his official duties or for the receipt by him of proper remuneration.

(2) Subsection (1) shall include the case of a Leader, who, except in the course of and for the purpose of his official duties or his official position, uses or allows his name or his official position to be used for the benefit of himself or any other person.

Shareholdings and other interests

12. (1) Subject to the provisions of this section, a Leader: -

(a) who holds shares or any other investment in any company, corporation or unincorporated association;

(b) whose spouse or any of whose children holds any such shares or other investment; or

(c) who or whose spouse or children holds any position or any financial interest (whether as debtor, creditor or guarantor) in any company, corporation or unincorporated association, that could reasonably be expected to place him in a position in which he could be faced with a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.

(2) Subsection (1) shall not apply to a Leader or to a spouse or child of a Leader who, prior to holding any shares, investment, position or financial interest referred to in subsection (1), has obtained the written approval of the Commission to do so.

(3) Subsection (1) shall not operate to prevent a person who becomes a Leader, or the spouse or child of such person, who -

(a) at the time that he becomes a Leader holds shares or other investment or holds a position or has a financial interest in any company, corporation or unincorporated association; or

(b) unexpectedly receives shares or other investment or financial interest in any unincorporated association, from holding the shares, or maintaining his

investment or financial interest therein for such period as is reasonably necessary to divest himself thereof.

Neglect of official business deemed misconduct.

13. A Leader who in furthering his personal business interests neglects or fails to give priority to his official business is guilty of misconduct in office.

Interest in Contracts

14. (1) Subject to the provisions of subsection (2) of this section and section 22, where any Leader or the spouse or child of such Leader has a controlling interest in any corporation or local company (such corporation or Local company being in this section referred to as the "relevant company") and that relevant company seeks, accepts or holds a beneficial interest in any contract concluded with the Government of Solomon Islands (such contract in this section being referred to as a "Government contract") such Leader is guilty of misconduct in office.

(2) Subsection (1) shall not apply in the case of any Leader who, prior to the relevant company seeking, accepting in the case of any or otherwise obtaining a beneficial interest in a Government contract, has obtained written permission of the Commission to such action.

(3) The Commission shall not give its permission under subsection (2) in any case where it is of the opinion that -

(a) the fact that the relevant company has sought, accepted or obtained the beneficial interest in any Government contract might in the future involve the Leader in a conflict of interest; or

(b) the seeking, accepting or obtaining by the relevant company of the beneficial interest in any Government contract involved or may involve the use by the Leader of his official position.

Engaging in other paid employment

15. (1) A Leader is guilty of misconduct in office if he engages in any paid employment other than his official employment, or accepts any emoluments for services rendered by him outside his official duties, without having first obtained the written approval of the Commission, which shall have special regard to the needs of the country in any case where the Leader has professional or other special skills.

(2) The Commission shall not give its approval under subsection (1) where it is of the opinion that -

(a) the engaging in other paid employment or acceptance of any emoluments for his services might in future involve the leader in a conflict of interest; or

(b) the obtaining of the other paid employment or the acceptance of any emoluments for his services involves or involved the use by the Leader of his official position.

(3) The Commission shall not give its approval under subsection (1) in any case where the Leader is a public officer without having first ensured that the Leader has obtained the consent of the Secretary for the Public Service or, if the officer is employed by a Government agency, the Chief Executive of the agency, to his engaging in paid employment or accepting emoluments for his services.

(4) For the purposes of this section -

"paid employment" shall include the holding of a directorship in any corporation or local company whether or not any fees are paid or payable in respect of such directorship.

(5) The provisions of this section shall not be construed as relieving any Leader from complying with the provisions of section 8 in relation to salary or emoluments received in respect of any paid employment other than his official employment or services rendered by him outside his official duties.

Interpretation of "conflict of interest"

16. In considering whether the conduct of a Leader or his spouse or any of his children has given or may give rise to a conflict of interest, (that is to say a situation where the Leader has to make a choice between his personal interests and his obligations as a Leader) account shall be taken by the Commission of the following matters -

(a) the amount of influence the Leader may have on the decision-making process of the Ministry, department, Government agency or authority in which he works or for which he is responsible;

(b) the esteem in which the public hold the office to which the Leader has been appointed and the need to ensure that the good reputation of that office is upheld;

(c) the possible financial gain or other benefit to the Leader; and

(d) the value to the development of Solomon Islands as a whole of the investment the Leader has made or may make, or the position the Leader is holding or may hold or the services he has given or may give to the company, corporation or unincorporated association concerned: Provided that in any case where there is doubt as to whether a conflict of interest has arisen, additional weight shall be given to those matters specified in paragraph (d).

Disclosure of interest.

21. (1) Any Leader who, being a member of a statutory corporation, Government agency or other public body, proposes to speak or vote on any matter before such body or before a committee thereof, and who has a direct or indirect interest in the matter shall before speaking or voting thereon comply with the rules of such body or committee thereof relating to the disclosure of interest, or, if the rules of such body or committee thereof do not specifically make provision in that regard, shall be under a duty to give adequate notice of his interest in the matter under discussion.

(2) The Minister may on the advice of the Commission make regulations relating to the disclosure of interest by Leaders who are members of any body which has no formal rules relating to disclosure of interest by members thereof.

(3) A Leader who fails to make a disclosure as required by subsection (1) or by regulations made under subsection (2) is guilty of misconduct in office.

Standing Orders of the National Parliament of the Solomon Islands

78. DECLARATION AND DISCLOSURE OR PERSONAL INTEREST

(1) Every Member shall, not later than the day before he makes his oath of allegiance pursuant to Section 63 of the Constitution, submit to the Speaker a written declaration of all shares and interests he may have in any company or business undertaking that has any contract with the Government and of any Office of Director or Manager he may hold in any Company or Business undertaking (whether or not it has a contract with the Government) and thereafter, upon his acquisition of any such share or interest or appointment to such office, he shall make such a declaration before the next sitting of Parliament he attends following upon the acquisition of that share or interest or appointment to that Office.

(2) The Speaker shall maintain a record of all declarations made under paragraph (1) of this Order and shall not disclose any of the contents of the same except upon a motion to that effect passed by Parliament, a request made pursuant to any Act of Parliament, or where he considers it fit and proper to do so.

(3) A Member shall not move any motion or amendment relating to a matter in which he has a direct personal pecuniary interest or speak or vote on any such matter, whether in Parliament or in any Committee, without disclosing the nature of that interest.

(4) A motion to disallow a Member's vote on the ground of non-disclosure of his personal pecuniary interest may be moved without notice by any Member immediately upon the statement of the numbers voting in a division by the Speaker, but not otherwise.

(5) The Speaker shall have discretion whether or not to propose the question upon such a motion; and in exercising such discretion he shall have regard to the nature of the question upon which the vote was taken and to the consideration whether the interest therein of that Member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of the inhabitants of Solomon Islands or whether his vote was given on a matter of state policy.

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from Parliament or Committee for the duration of the debate and any vote on the question.

(7) If a motion for the disallowance of a Member's vote is carried the Speaker shall direct the Clerk to alter the numbers voting in the original division accordingly.

Penal Code [Cap 26]

Officers charged with administration of property of a special character or with special duties

94. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, shall be guilty of a misdemeanour, and shall be liable to imprisonment for one year.

Central Bank of Solomon Islands Act 2012

Conflicts of interest

65.(1) Members of the Board and of the Central Bank's staff have a fiduciary duty to place the Central Bank's interests and its customers' interests before their own private or personal interest.

(2) Members of the Board and staff shall avoid any situation likely to give rise to a conflict of interest.

(3) A conflict of interest arises where members of the Board or staff have private or personal interests which may influence or appear to influence the impartial and objective performance of their duties.

(4) In this section, "private or personal interests" of members of the Board or staff means any potential advantage for themselves, their families, their other relatives up to the second degree, or their circle of friends and acquaintances.

(5) The Governor and the Deputy Governor –

(a) shall perform their duties on a full-time basis;

(b) shall not engage in any other occupation, whether gainful or not, except –

(i) for ex officio functions provided for by law; or

(ii) in exceptional cases, if approved by the Board.

(6) No member of the Board or of the staff shall receive or accept from any source any benefits, rewards, remuneration or gifts in excess of a customary or negligible amount, whether financial or non-financial, which benefits, rewards, remuneration or gifts are connected in any way whatsoever to their activities within the Central Bank.

(7) A breach of subsection (6) by a member of the Board or of the staff shall, independently of the value given or received, constitute a serious misconduct.

(8) Where it concerns a member of the Board, such misconduct constitutes serious misconduct within the meaning of section 43(2)(d).

(9) Such misconduct, where it concerns a member of the staff, may, at the discretion of the Governor, constitute grounds for disciplinary measures, including dismissal without compensation.

(10) Members of the Board and of the staff shall not use confidential information to which they have access for the purpose of carrying out private financial transactions, whether directly or indirectly through third parties, or whether conducted at their own risk and for their own account, or at the risk and for the account of a third party.

(11) Members of the Board shall before the last day of January each year disclose in full to the Board significant financial interests which the member or any person with whom the member has family, business, or financial connections may directly or indirectly possess and such disclosures shall comply with any internal rules adopted by the Board regarding such matters.

(12) Whenever any matter related to such interest is before the Board, the member concerned shall disclose his or her interest at the beginning of the discussion and shall not participate in the discussion and decision on such matter; however, his or her presence shall be counted for the purpose of constituting a quorum.

(13) The Board may establish internal rules to implement the requirements mentioned under this section.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in partial compliance with this provision of the Convention. As a result, it was recommended that Solomon Islands consider taking additional measures to permit competent authorities to share financial disclosure information obtained pursuant to the Leadership Code with other States parties (art. 52(5)). It was reported during the Country Visit that no such requests had been made to date, but that additional measures would be taken to permit such information sharing, upon request.

Paragraph 6 of Art. 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

34. The Leadership Code contained in the *Constitution* contains provisions on conflicts of interest.

35. Section 8 of the *Leadership Code (Further Provisions) Act 1999* provides that every Leader shall give a separate statement in respect of himself, his spouse and each of his children under the age of eighteen setting out all directorships in any company or corporation held by each of them; the holdings of each of them of any shares of, or debentures or other securities charged upon, any company or corporation; the total income received by each of them during the period to which the statement relates and the sources of each of those incomes; all business transactions involving a sum of five hundred dollars or more entered into by each

of them during the period to which the statement relates; all gifts received by each of them during the period to which the statement relates, and the value of each of such gifts; and the assets acquired by each of them during the period of which the statement relates. Failure to do so constitutes misconduct in office.

36. “Corporation” is defined to include anybody incorporated by statute and any company incorporated outside Solomon Islands.
37. Section 9 provides further that a Leader who holds shares or any other investment in any company, corporation or incorporated association; whose spouse or any of whose children under the age of eighteen holds any such shares or other investment, who or whose spouse or children under the age of eighteen holds any position or any financial interest (whether as debtor, creditor or guarantor) in any company, corporation or unincorporated association, that could reasonably be expected to place him in a position in which he could be faced with a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.
38. These provisions could cover whether or not a Leader has an interest in or signature or other authority over a financial account in a foreign country.
39. Section 16 provides that any Leader who, being a member of a statutory corporation, Government agency or other public body proposes to speak or vote on any matter before such body or before a Committee thereof, and who has a direct or indirect interest in the matter shall before speaking or voting thereon comply with the rules of such body or committee thereof relating to the disclosure of interest, or, if the rules of such body do not specifically make provision in that regard, shall be under a duty to give adequate notice of his interest in the matter under discussion.
40. Order 78 of the *Standing Orders of Parliament* provides that every Member must submit to the Speaker a written declaration of all shares and interests he may have in any company or business undertaking that has any contract with the Government and of any Office of Director or Manager he may hold in any Company or Business undertaking (whether or not it has a contract with the Government) and thereafter, upon his acquisition of any such share or interest or appointment to such office, he shall make such a declaration before the next sitting of Parliament he attends following upon the acquisition of that share or interest or appointment to that Office.
41. The *Penal Code* and *Central Bank of the Solomon Islands Act* also contains provisions on conflicts of interest.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was not in compliance with this provision of the Convention. As a result, it was recommended that Solomon Islands consider measures to require public officials to disclose any interest or signature or other authority related to financial accounts in a foreign country, and maintain appropriate records related to such accounts (art. 52(6)).

Article 53. Measures for direct recovery of property

Subparagraph (a) of Art. 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, it was reported that in Solomon Islands, it is possible for a State to have standing to file a civil action in Solomon Islands' courts with local legal counsel. The party would be recognized as the State through its consular representative. There may be required a waiver of immunity, which would permit a counter-suit. And this concept is based on common-law principles of standing, perhaps based on Commonwealth principles.

Subparagraph (b) of Art. 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

42. There is no legislative provision to allow other States parties to stand before the Solomon Island courts to claim damages or otherwise receive compensation for the damages incurred.
43. Common law theories of tort and contract, including obligation and remedy, are available to plaintiffs in a civil suit.

Criminal Procedure Code [Cap 7]

156. Power of courts to award expenses or compensation out of fine

(1) Whenever any court imposes a fine, or confirms on appeal, revision or otherwise a sentence of fine, or which a fine forms part, the court may, when passing judgement, order the whole or any part of the fine recovered to be applied-

- (a) in defraying expenses properly incurred in prosecution;
 - (b) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.
- (2) If the fine is imposed in a case which is subject to no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision or discontinuance of the appeal.
- (3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall account any sum paid or recovered as compensation under section.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that States have brought cases in Solomon Islands courts where States have been defendants in most cases. States also have standing to bring lawsuits and, in theory, they can be awarded damages.

Subparagraph (c) of Art. 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

44. Section 36 of the *Money Laundering and Proceeds of Crimes Act* safeguards rights of bona fide third parties. Sections 35 and 63 complement such safeguards. Section 36 refers to the rights of a "person". Note: See the section regarding Article 54, Paragraph 2(c) for the full text of Section 63 of the Money Laundering and Proceeds of Crimes Act

Money Laundering and Proceeds of Crimes Act 2002

Voidable transfers

35. The Court may –

- (a) before making a confiscation order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served in accordance with section 59, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the

conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of third parties

36. (1) Where an application is made for a confiscation order against property, a person who claims an interest in the property may apply to the Court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of property and the Court is satisfied on a balance of probabilities –

(a) that the person was not in any way involved in the commission of the offence; and

(b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest –

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was tainted property, the Court shall make an order declaring the nature, extent and value at the time the order is made of the person's interest.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the confiscation order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who –

(a) had knowledge of the application for the confiscation order before the order was made; or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with leave of the Court.

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) Any person exercising the powers conferred on the Court by section 67 shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of an appeal has expired and any appeal from that order has been determined –

(a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Interpretation and General Provisions Act [Cap 85]

16. Meaning of words in Acts

(1) In an Act

“person” includes any public body, company or association, and any body of persons corporate or unincorporated;

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that there is nothing in law or decisions that would prevent this from happening, but it is exceedingly rare or has never happened.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of Art. 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

45. Section 13 of the *Mutual Assistance in Criminal Matters Act* provides for the enforcement of foreign confiscation or restraining orders.

46. Section 13(1) of the *Mutual Assistance in Criminal Matters Act* provides that where a foreign State requests the Attorney-General to make arrangements for the enforcement of a foreign confiscation order, the Attorney-General may apply to the High Court for registration of the order. The High Court shall, on application by the Attorney-General, register a foreign confiscation order if the Court is satisfied that at the time of registration, the order is in force in the foreign State and is not subject to appeal; and where the person who is the subject of the order did not appear in the confiscation proceedings in the foreign State the person was given notice of the proceedings in sufficient time to enable him to defend them; or the person has absconded or died before such notice could be given.

47. Section 13(10) of the *Mutual Assistance in Criminal Matters Act* provides that “[w]here a foreign restraining order or a foreign confiscation order that has been registered pursuant to this section, the *Money Laundering and Proceeds of Crime Act 2002* shall be deemed to apply in relation to the order as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.”
48. As a member of the Commonwealth, the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* could, in principle, be applied by and to Solomon Islands, but the Scheme has not been used to date.

Mutual Assistance in Criminal Matters Act 2002

PART I. PRELIMINARY

Applicability of the Act

2. This Act shall apply in relation to mutual assistance in criminal matters between Solomon Islands and any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally.

Interpretation

3. In this Act, unless the context otherwise requires -

“foreign confiscation order” means an order, made by a court in a foreign State, for the purpose of –

- (i) the confiscation or forfeiture of property in connection with; or
- (ii) recovery of the proceeds of, a serious offence;

“foreign restraining order” means an order made in respect of a serious offence by a court in a foreign State for the purpose of restraining a particular person or all persons from dealing with property;

“foreign State” means -

- (i) any country other than Solomon Islands; and
- (ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international co-operation;

“proceeds of crime” means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as income, capital and other economic gains derived or realised from such property at any time since the commission of the offence;

“property” means real or personal property of every description, whether situated in Solomon Islands or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;

“serious offence” means an offence against a provision of -

(i) any law of Solomon Islands for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months, or more severe penalty including an offence against a law relating to taxation; and

(ii) a law of a foreign State, in relation to acts or omissions, which had they occurred in Solomon Islands, would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months, or more severe penalty including an offence of a purely fiscal character.

PART II. MUTUAL ASSISTANCE

Saving provision for other requests for assistance in criminal matters

5. Nothing in this Act shall be taken to limit -

(a) the power of the Attorney-General apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in criminal matters;

(b) the power of any other person or court, apart from this Act, to make requests to foreign States for forms of international assistance other than those specified in section 6; or

(c) the nature or extent of assistance in investigations or proceedings in criminal matters which Solomon Islands may lawfully give to or receive from foreign States.

Mutual legal assistance request by Solomon Islands

6. The request which the Attorney-General is authorised to make under section 4 are that the foreign State -

(a) have evidence taken, or documents or other articles produced in evidence in the foreign State;

(b) obtain and execute search warrants or other lawful instruments authorising a search for things believed to be located in that foreign State, which may be relevant to investigations or proceedings in Solomon Islands, and if found, seize them;

(c) locate or restrain any property believed to be the proceeds of crime located in the foreign State;

(d) confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the Money Laundering and Proceeds of Crime Act 2002;

(e) transmit to Solomon Islands any such confiscated property or any proceeds realised therefrom or any such evidence, documents, articles or things;

(f) transfer in custody to Solomon Islands a person detained in the foreign State who consents to assist Solomon Islands in the relevant investigation or proceedings;

(g) provide any other form of assistance in any investigation commenced or proceeding instituted in Solomon Islands, that involves or is likely to involve the exercise of a coercive power over a person or property believed to be in the foreign State; or

(h) permit the presence of nominated persons during the execution of any request made under this Act.

Requests enforcement of foreign confiscation or restraining order

13. (1) where a foreign State requests the Attorney-General to make arrangements for the enforcement of -

(a) a foreign restraining order; or

(b) a foreign confiscation order,

the Attorney-General may apply to the High Court for registration of the order.

(2) The High Court shall, on application by the Attorney-General, register a foreign restraining order if the Court is satisfied that at the time of registration, the order is in force in the foreign State.

(3) The High Court shall, on application by the Attorney-General, register a foreign confiscation order if the Court is satisfied that -

(a) at the time of registration, the order is in force in the foreign State and is not subject to appeal; and

(b) where the person who is the subject of the order did not appear in the confiscation proceedings in the foreign State -

(i) the person was given notice of the proceedings in sufficient time to enable him to defend them; or

(ii) the person has absconded or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that-

(a) the foreign restraining order is in force in the foreign State;

(b) the foreign forfeiture order is in force in the foreign state and is not subject to appeal; or

(c) the person who is the subject of the foreign forfeiture order was given notice of the proceedings in sufficient time to enable him to defend them, or that person had absconded or died before such notice could be given, is prima facie evidence of those facts, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with this section, a copy of any amendments made to the order in the foreign State, (whether before or after the registration), may be registered in

the same way as the order, but shall not have effect for the purposes of the Money Laundering and Proceeds of Crime Act 2002 until they are so registered.

(6) The High Court shall, on application by the Attorney-General cancel the registration of -

(a) a foreign restraining order, if it appears to the Court that the order has ceased to have effect;

(b) a foreign confiscation order, if it appears to the Court that the order has been satisfied or has ceased to have effect.

(7) Where a foreign restraining order against property is registered under this section, the Court may, upon application by a person claiming an interest in the property, make an order as to the giving or carrying out of an undertaking by the Attorney-General on behalf of Solomon Islands, with respect of the payment of damages or costs in relation to the registration or operation of the order

(8) Subject to subsection (9), where the foreign restraining order or foreign confiscation order comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act as the same as the duly authenticated foreign order.

(9) Registration effected by means of a facsimile ceases to have effect at the end of the period of fourteen days commencing on the date of registration, unless a duly authenticated original of the order has been registered by that time.

(10) Where a foreign restraining order or a foreign confiscation order that has been registered pursuant to this section, the Money Laundering and Proceeds of Crime Act 2002 shall be deemed to apply in relation to the order as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.

Sharing confiscated property with foreign State.

15. The Attorney-General may enter into an arrangement with the competent authorities of a foreign State for reciprocal sharing with that State of such part of any property realized -

(a) in the foreign State, as a result of action taken by the Attorney-General pursuant to section 6(d); or

(b) in Solomon Islands as a result of action taken in Solomon Islands pursuant to section 13(1), as the Attorney-General thinks fit.

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

1. PURPOSE AND SCOPE

1. (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of co-operation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.

(2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).

(3) Assistance in criminal matters under this Scheme includes assistance in

- (a) identifying and locating persons;
- (b) serving documents;
- (c) examining witnesses;
- (d) search and seizure;
- (e) obtaining evidence;
- (f) facilitating the personal appearance of witnesses;
- (g) effecting a temporary transfer of persons in custody to appear as a witness;
- (h) obtaining production of judicial or official records;
- (i) tracing, seizing and confiscating the proceeds or instrumentalities of crime; and
- (j) preserving computer data.

3. CRIMINAL MATTER

(1) For the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal or forfeiture proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence has been committed in respect of which such criminal proceedings could be so instituted.

(2) “Offence”, in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

(3) “Forfeiture proceedings” means proceedings, whether civil or criminal, for an order

- (a) restraining dealings with any property in respect of which there is reasonable cause to believe that it has been
 - (i) derived or obtained, whether directly or indirectly, from; or
 - (ii) used in, or in connection with, the commission of an offence;
- (b) confiscating any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii); or
- (c) imposing a pecuniary penalty calculated by reference to the value of any property derived or obtained as provided in paragraph (a)(i) or used as provided in paragraph (a)(ii).

ACTION IN THE REQUESTING COUNTRY

6. (1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.

(2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.

(3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

ACTION IN THE REQUESTED COUNTRY

7. (1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.

(2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.

(3) If the Central Authority of the requested country considers

(a) that the request does not comply with the provisions of this Scheme, or

(b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part, or

(c) that the request cannot be complied with, in whole or in part, or

(d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

(4) The requested country may make the granting of assistance subject to the requesting country giving an undertaking that:

(a) the evidence provided will not be used directly or indirectly in relation to the investigation or prosecution of a specified person; or

(b) a court in the requesting country will determine whether or not the material is subject to privilege.

(5) If the requesting country refuses to give the undertaking under sub-paragraph (4), the requested country may refuse to grant the assistance sought in whole or in part.

TRACING THE PROCEEDS OR INSTRUMENTALITIES OF CRIME

28. (1) A request under this Scheme may seek assistance in identifying, locating and assessing the value of property believed to have been derived or obtained,

directly or indirectly, from, or to have been used in, or in connection with, the commission of an offence and believed to be within the requested country.

(2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

SEIZING AND CONFISCATING THE PROCEEDS OF INSTRUMENTALITIES OF CRIME

29. (1) A request under this Scheme may seek assistance in securing:

- (a) the making in the requested country of an order relating to the proceeds of instrumentalities of crime; or
- (b) the recognition or enforcement in that country of such an order made in the requesting country.

(2) For the purpose of this paragraph, “an order relating to the proceeds of instrumentalities of crime” means:

- (a) an order restraining dealings with any property in respect of which there is reasonable cause to believe that it has been derived or obtained, directly or indirectly, from, or used in, or in connection with, the commission of an offence;
- (b) an order confiscating property derived or obtained, directly or indirectly, from, or used in or in connection with, the commission of an offence; and
- (c) an order imposing a pecuniary penalty calculated by reference to the value of any property so derived, obtained or used.

(3) Where the requested country cannot enforce an order made in the requesting country, the requesting country may request the making of any similar order available under the law of the requested country.

(4) The request shall be accompanied by a copy of any order made in the requesting country and shall contain so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.

(5) The law of the requested country shall apply to determine the circumstances and manner in which an order may be made, recognised or enforced in response to the request.

(6) The law of the requested country may provide for the protection of the interests of bona fide third parties in property restrained or confiscated as a result of a request made pursuant to this Scheme, by providing:

- (a) for the giving of notice of the making of orders restraining or confiscating property; and

(b) that any third party claiming an interest in property so restrained or confiscated may make an application to a court of competent jurisdiction for an order

(i) declaring that the interest of the applicant in the property or part thereof was acquired bona fide; and

(ii) restoring such property or the value of the interest therein to the applicant.

DISPOSAL OR RELEASE OF PROPERTY

30. (1) The law of the requested country shall apply to determine the disposal of any property

(a) forfeited; or

(b) obtained as a result of the enforcement of a pecuniary penalty order as a result of a request under this Scheme.

(2) The law of the requested country shall apply to determine the circumstances in which property made the subject of interim seizure as a result of a request under this Scheme may be released from the effects of such seizure.

(3) The law of the requested country may provide that the proceeds of an order of the type referred to in sub-paragraphs 27(2)(b) and (c), or the value thereof, may be

(a) returned to the requesting country; or

(b) shared with the requesting country in such proportion as the requested country in its discretion deems appropriate in all the circumstances.

49. There have not been many confiscation orders, although the Police force has in the past seized vehicles and assets in general criminal cases. Confiscation has only begun to be used after the 2010 amendments to the *Money Laundering and Proceeds of Crime Act*.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that a confiscation order from a foreign court can be recognized through MLA and the Attorney General's office to have the Solomon Islands court recognize the foreign court order. Solomon Islands confirmed that the MLA scheme likely applies with some minor variation.

Subparagraph 1 (b) of Art. 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) *Summary of information relevant to reviewing the implementation of the article*

50. Section 13 of the *Mutual Assistance in Criminal Matters Act* provides for the enforcement of foreign confiscation or restraining orders. “Foreign confiscation order” is defined as an order, made by a court in a foreign State, for the purpose of the confiscation or forfeiture of property in connection with; or recovery of the proceeds of, a serious offence. The offence of money laundering would constitute a serious offence.
51. Section 13(10) of the *Mutual Assistance in Criminal Matters Act* provides that “[w]here a foreign restraining order or a foreign confiscation order that has been registered pursuant to this section, the *Money Laundering and Proceeds of Crime Act 2002* shall be deemed to apply in relation to the order as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.”
52. Section 6 of the *Mutual Assistance in Criminal Matters Act* confers power on the Attorney-General to make a request of another State to confiscate any property believed to be located in the foreign State, which is the subject of a confiscation order made under the *Money Laundering and Proceeds of Crime Act*.
53. Section 33(1) of the *Money Laundering and Proceeds of Crimes Act* regulates the confiscation of illegal proceeds upon conviction where the Court is satisfied that property is tainted property or proceeds of crime in respect of a serious offence. The offence of money laundering would constitute a serious offence for the purpose of this section. Section 33(3) refers to the possibility of confiscating other property (other than money) the value of which corresponds to such proceeds of crime.
54. As a member of the Commonwealth, the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* could, in principle, be applied by and to Solomon Islands, but the Scheme has not been used to date.

Money Laundering and Proceeds of Crime Act 2002

2. “proceeds of crime” –

- (a) means any property or economic advantage derived or realised, directly or indirectly, as a result of or in connection with the commission of an offence irrespective of the identity of the offender and irrespective of whether committed before or after the commencement of this Act; and
- (b) includes, on a proportional basis, property into which any property derived or realised directly or indirectly from the offence was later successively converted, transformed or intermingled, as well as income,

capital or other economic gains derived or realised directly or indirectly from such property at any time since the offence;

“property” means –

(a) currency;

(b) any kind of asset whether corporeal or incorporeal, moveable or immovable, tangible or intangible, whether situated in Solomon Islands or another country, including any legal document or instrument, including electronic or digital, evidencing title to, or legal or equitable interest in such assets; or

(c) bank credit, traveller's cheque, bank cheque, money order, share, securities, bond, draft, letter of credit or other similar property, whether situated in Solomon Islands or another country, including any legal or equitable interest in any such property;

“serious offence” means an offence against a provision of –

(a) any law in Solomon Islands relating to proceeds of crime or unlawful activity, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than twelve months; or

(b) a law of another country, in relation to acts relating to proceeds of crime or unlawful activity, which if the acts had occurred in Solomon Islands the acts would have constituted an offence for which the maximum penalty is imprisonment or other deprivation of liberty of not less than twelve months;

Confiscation order on conviction

33. (1) Where, upon application by the Director of Public Prosecutions, the Court is satisfied that property is tainted property or proceeds of crime in respect of a serious offence for which a person has been convicted, the Court may order that specified property be confiscated.

(2) In determining whether property is tainted property or proceeds of crime the Court may infer, in the absence of evidence to the contrary -

(a) that the property was used in or intended for use in or in connection with the commission of the offence if it was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted; or

(b) that the property was derived, obtained or realised as a result of the commission of the offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence for which the person was convicted, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) Where the Court orders that property, other than money, be confiscated, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a confiscation order should be made under subsection (1) the Court shall have regard to -

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the offence concerned;
- (c) any undue hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a confiscation order, the Court may give such directions as are necessary or convenient for giving effect to the order.

Effect of confiscation

34. (1) Subject to subsection (2), where the Court makes a confiscation order against any property, the property vests absolutely in the Government of Solomon Islands by virtue of the order.

(2) Where property ordered to be confiscated is registrable property -

- (a) the property vests in the Government of Solomon Islands in equity but does not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with;
- (b) the Government of Solomon Islands is entitled to be registered as owner of the property; and
- (c) the Director of Public Prosecutions has power on behalf of the Government of Solomon Islands to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government of Solomon Islands as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a confiscation order against property -

- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Government of Solomon Islands before the relevant appeal date; and
- (b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Permanent Secretary, Ministry of Finance.

(4) In this section -

“registrable property” means property the title to which is passed by registration in accordance with the provisions of the Land and Titles Act;

“relevant appeal date” used in relation to a confiscation order made in consequence of a person’s conviction of a serious offence means -

- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal

against the making of a confiscation order expires without an appeal having been lodged, whichever is the later, or

(b) where an appeal against a person's conviction or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Subparagraph 1 (c) of Art. 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

55. The Solomon Islands recognizes all foreign confiscation orders as long as they are in force in the foreign country. The Act makes no distinction between confiscation orders based on prior conviction or confiscation orders obtained in foreign proceedings that do not require prior conviction for an offence. Section 13(4) of the Mutual Assistance in Criminal Matters Act provides that a statement contained in the foreign request to the effect that the person who is the subject of the foreign forfeiture order was given notice of the proceedings in sufficient time to enable him to defend them, or that person had absconded or died before such notice could be given is *prima facie* evidence of those facts.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. Solomon Islands did not report having had such an experience to date under this provision.

Subparagraph 2 (a) of Art. 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) *Summary of information relevant to reviewing the implementation of the article*

56. The Solomon Islands has laws and procedures in place to allow it to respond effectively and in a timely manner to foreign requests for the freezing and seizure of property subject to confiscation by a foreign country. The *Money Laundering and Proceeds of Crime Act* and the *Mutual Assistance in Criminal Matters Act* combined make available for the purposes of executing foreign requests for assistance the powers available under the Solomon Islands' laws to freeze, seize and restrain property for the purposes of confiscation. Section 13 of the *Mutual Assistance in Criminal Matters Act* goes further by allowing the enforcement in the Solomon Islands of foreign restraining orders as long as such orders are in force in the foreign country. The *Mutual Assistance in Criminal Matters Act* and the *Money Laundering and Proceeds of Crime Act* make the extensive identification and tracing powers provided for by the *Money Laundering and Proceeds of Crime Act* for the purposes of confiscation available to the Attorney General and the competent authorities for the purposes of executing a foreign technical assistance request.
57. Section 49 gives the police authority to seize any property found in the course of a search that the police officer believes on reasonable grounds to be tainted property. This means that seizure measures are available against the instrumentalities and the proceeds of serious offences. Alternatively, the Director of Public Prosecutions may apply for a restraining order against any tainted property under section 55 of the *Money Laundering and Proceeds of Crime Act*. The order prohibits "the defendant or any person from disposing of or otherwise dealing with the property or such part thereof or interest therein as is specified in the order except in such manner as may be specified in the order. Upon the request of the Director of Public Prosecutions, if the circumstances so require, the court may appoint a person to take custody of the property or part thereof and to require any person having possession of the property to give possession to the person appointed by the court.
58. Section 70 of the *Money Laundering and Proceeds of Crime Act* gives a police officer the power to obtain a court order requiring a person who is in possession or control of any document relevant to identifying, locating, quantifying property or any document relevant to locating or identifying any document necessary for the transfer of any such property to deliver this document to the officer. This production order is supported in case of failure to comply by a fine not exceeding one thousand Solomon dollars for individuals and two thousand for body corporate. For individuals an imprisonment of up to one year is also possible.

59. Note however that this order may not be used to obtain bankers books and it only applies once a person has been convicted of a serious offence.
60. Section 21 gives the Police the power to obtain “property tracking and monitoring orders.” Under section 21(b), the court may extend the tracking order by compelling the financial institution or cash dealer to produce to the police order all information obtained about any transaction conducted by or for that person during such period before or after the order as the Court directs.
61. Sections 49-50 gives a police officer the power to search for tainted property.
62. Section 74 of the *Money Laundering and Proceeds of Crime Act* gives a police officer upon obtaining a warrant the power to search any land or premises and seize any document relevant to identifying, locating, quantifying property or any document relevant to locating or identifying any document necessary for the transfer of any such property to deliver this document to the officer. This search warrant is only available where a person has been charged or convicted of a serious offence.
63. Section 77 of the *Money Laundering and Proceeds of Crime Act* gives the Director of Public Prosecutions or a police officer the authority to apply ex parte to a judge for a “monitoring order” directing a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution.

Money Laundering and Proceeds of Crime Act 2002

Property tracking and monitoring Orders

21. For the purpose of determining whether any property belongs to or is in the possession or under the control of any person, a police officer may, upon application to the Court obtain an order -

(a) that any document relevant to -

(i) identifying, locating or quantifying any such property; or

(ii) identifying or locating any document necessary for the transfer of any such property,

belonging to, or in the possession or control of that person be delivered forthwith to the police officer; or

(b) that the financial institution or cash dealer forthwith produce to the police officer all information obtained about any transaction conducted by or for that person during such period before or after the order as the Court directs.

Powers to search for and seizure of tainted property

49. (1) A police officer may -

(a) search a person for tainted property or proceeds of crime;

(b) enter upon land or upon or into premises and search the land or premises for tainted property or proceeds of crime; and

(c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property or proceeds of crime,

provided that the search or seizure is made -

(i) with the consent of the person or the occupier of the land or premises as the case may be; or

(ii) under warrant issued under section 50.

(2) Where a police officer searches a person under this Division, he may also search -

(a) the clothing that is being worn by the person; and

(b) any property in, or apparently in, the person's immediate control.

Search warrants in relation to tainted property

50. (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind or proceeds of crime -

(a) on a person;

(b) in the clothing that is being worn by a person;

(c) otherwise in a person's immediate control; or

(d) upon land or upon or in any premises,

the police officer may lay before a magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind or proceeds of crime.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable -

(a) to search the person for tainted property of that kind or proceeds of crime;

(b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind or proceeds of crime; and

(c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind or proceeds of crime.

(3) A warrant may be issued under subsection (2) in relation to tainted property or proceeds of crime, whether or not an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that -

- (a) an information will be laid in respect of the relevant offence within forty-eight hours; and
- (b) the property is tainted property or proceeds of crime.

(5) A warrant issued under this section shall state -

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
- (b) a description of the kind of property authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, a police officer finds -

- (a) property that the police officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property or proceeds of crime in relation to another serious offence; or
- (b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a serious offence, the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Production orders

70. (1) Where a person has convicted of a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of -

- (a) a document relevant to or quantifying property of the person locating a document necessary for the such person; or
- (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence, or to identifying or locating a document necessary for the transfer of tainted property in relation to the offence, the police officer may apply *ex parte* and in writing to a judge in chambers for an order against the person suspected of having possession or control of a document of the kind referred. The application shall be supported by an affidavit.

(2) The judge may, if he considers there are reasonable grounds for so doing, make an order that the person produce to a police officer, at a time and place specified in the order, any documents of the kind referred to in subsection (1), provided that an order under this subsection may not require the production of bankers books.

- (3) A police officer to whom documents are produced may -
- (a) inspect the documents;
 - (b) make copies of the documents; or
 - (c) retain the documents for so long as is reasonably necessary for the purposes of this Act.
- (4) Where a police officer restrains documents produced to him, he shall make a copy of the documents available to the person who produced them.
- (5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that -
- (a) the document might tend to incriminate the person or make the person liable to a penalty; or
 - (b) the production of the document would be in breach of an obligation (whether imposed by law or otherwise) of the person not to disclose the existence or contents of the document.

Production orders in relation to foreign offences

73. Where a foreign State requests assistance to locate or seize property suspected to be tainted in respect of an offence within its jurisdiction, the provisions of section 69 apply *mutatis mutandis* provided that the Attorney-General has, under section 4(2) of the Mutual Assistance in Criminal Matters Act, 2002, authorised the giving of assistance to the foreign State.

Power to search for and seize documents relevant to locating property

74. A police officer may:-

- (a) enter upon land or into premises;
- (b) search the land or premises for any document of the type described in section 70(1); and
- (c) seize any document found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document in relation to a serious offence, provided that the entry, search and seizure is made within the content of the occupier of the land or the premises, or under warrant issued under section 75.

Search warrant for location of documents relevant to locating property

75. (1) Where -

- (a) a person has been charged or convicted of a serious offence; or
- (b) the police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, upon any land or upon or in any premises, a document of the type described in section 70(1) in relation to the offence, the police officer may make application supported by

information on oath to a magistrate for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable -

(a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and

(b) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under subsection (2) unless he is satisfied that -

(a) a production order has been given in respect of the document and has not been complied with;

(b) a production order in respect of the document would be unlikely to be effective;

(c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer does not gain immediate access to the document without any notice to any person; or

(d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall state -

(a) the purpose for which it is issued, including a reference to the nature of the relevant offence;

(b) a description of the kind of documents authorised to be seized;

(c) a time at which the warrant ceases to be in force; and

(d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer finds -

(a) a document of the type described in section 70(1) that the police believes on reasonable grounds to relate to the relevant offence, or to another serious offence; or

(b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a serious offence,

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Search warrants in relation to foreign offences

76. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions

of section 75 apply *mutatis mutandis*, provided that the Attorney-General has, under section 4(2) of the Mutual Assistance in Criminal Matters Act 2002, authorised the giving of assistance to the foreign State.

Monitoring orders

77. (1) The Director of Public Prosecutions or a police officer may apply, *ex parte* and in writing to a judge for an order (in this section called a "(monitoring order)" directing a financial institution to give information to a police officer. An application under this subsection shall be supported by an affidavit.

(2) A monitoring order shall -

- (a) direct a financial institution to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institutions;
- (b) not have retrospective effect; and
- (c) only apply for a period of a maximum of three months from the date of making.

(3) A judge shall not issue a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought -

- (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of a serious offence; or
- (b) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.

(4) A monitoring order shall specify -

- (a) the name or names in which the account is believed to be held; and
- (b) the class of information that the institution is required to give.

(5) Where a financial institution, which has been given notice of a monitoring order, knowingly-

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this subsection and shall on conviction be liable:-

- (i) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or
- (ii) for a legal entity, to a fine not exceeding 1,000,000 penalty units.

Mutual Assistance in Criminal Matters Act 2002

Foreign requests for the location of proceeds of crime.

14. Where a foreign State requests the Attorney-General to assist in locating property believed to be the proceeds of a serious crime committed in that State, the Attorney-General may authorise the making of any application under section 70, 75 or 77 of the *Money Laundering and Proceeds of Crime Act 2002*, for the purpose of acquiring the information sought by the foreign State.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. It was reported that this was similar to the handling of a foreign confiscation order.

Subparagraph 2 (b) of Art. 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

64. Section 49 of the *Money Laundering and Proceeds of Crime Act* gives the police power to seize any property found in the course of a search that the police officer believes on reasonable grounds to be tainted property. This means that seizure measures are available against the instrumentalities and the proceeds of serious offences. Alternatively, the Director of Public Prosecutions may apply for a restraining order against any tainted property under section 55 *et seq.* of the *Money Laundering and Proceeds of Crime Act*. The order prohibits “the defendant or any person from disposing of or otherwise dealing with the property or such part thereof or interest therein as is specified in the order except in such manner as may be specified in the order.” Upon the request of the Director of Public Prosecutions, if the circumstances so require, the court may appoint a person to take custody of the property or part thereof and to require any person having possession of the property to give possession to the person appointed by the court.

Money Laundering and Proceeds of Crime Act 2002

Search warrants in relation to tainted property

50. (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind or proceeds of crime -

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person's immediate control; or
- (d) upon land or upon or in any premises, the police officer may lay before a magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind or proceeds of crime.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by suet] force as is necessary and reasonable -

- (a) to search the person for tainted property of that kind or proceeds of crime;
- (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind or proceeds of crime; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind or proceeds of crime.

(3) A warrant may be issued under subsection (2) in relation to tainted property or proceeds of crime, whether or not an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that -

- (a) an information will be laid in respect of the relevant offence within forty-eight hours; and
- (b) the property is tainted property or proceeds of crime.

(5) A warrant issued under this section shall state -

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
- (b) a description of the kind of property authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, a police officer finds -

- (a) property that the police officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property or proceeds of crime in relation to another serious offence; or

(b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a serious offence,
the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Application for restraining orders

55. (1.) The Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the defendant or specified realisable property held by a person other than the defendant.

(2) An application for a restraining order may be made ex parte and shall be in writing and be accompanied by a sworn statement stating –

(a) where the defendant has been convicted of a serious offence –

- (i) the serious offence for which he was convicted;
- (ii) the date of the conviction;
- (iii) the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (iv) a description of the property in respect of which the restraining order is sought;
- (v) the name and address of the person who is believed to be in possession of the property;
- (vi) the grounds for the belief that the property is tainted property, proceeds of crime or property that may be used to satisfy a confiscation order or pecuniary penalty order in relation to the offence;
- (vii) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; and
- (viii) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or a gift caught by this Act, or is subject to the effective control of the defendant; or

(b) where the defendant is charged or is about to be charged with a serious offence –

- (i) the serious offence for which he is charged or about to be charged;
- (ii) the grounds for believing that the defendant committed the offence;
- (iii) a description of the property in respect of which the restraining order is sought;
- (iv) the name and address of the person who is believed to be in possession of the property;

- (v) the grounds for the belief that the property is tainted property or proceeds of crime in relation to the offence or property derived from a serious offence, or property that may be used to satisfy a confiscation order or pecuniary penalty order; and
- (vi) the grounds for the belief that the defendant derived a benefit directly or indirectly from the commission of the offence; or
- (c) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property or proceeds of crime or in relation to the offence and is subject to the effective control of the defendant or a gift caught by this Act; or
- (d) the grounds for the belief that a confiscation order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

Restraining orders

56. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that:-

- (a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence;
- (b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence;
- (c) there is reasonable cause to believe that the property is tainted property or proceeds of crime that may satisfy a confiscation order or pecuniary penalty order in relation to an offence, or that the defendant derived a benefit directly or indirectly from the commission of the offence;
- (d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property or the proceeds of crime, that may satisfy a confiscation order or pecuniary penalty order in relation to an offence and that the property or proceeds is subject to the effective control of the defendant; or
- (e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property, the Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order.

(2) Where an order has been made under subsection (1) the Court may at the request of the Director of Public Prosecutions, if satisfied that the circumstances so require -

- (a) direct the Registrar of the court or such other person as the Court may appoint, to take custody of the property or such part thereof as is specified

in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and

(b) require any person having possession of the property to give possession thereof to the Registrar of the Court or to the person appointed under paragraph (a) to take custody and control of the property.

(3) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this subsection, may make provision for meeting out of the property or a specified part of the property, any or all of the following -

(a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;

(b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Division; and

(c) any specified debt incurred by the person in good faith.

(4) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant, the Court may have regard to the matters referred to in section 46.

(5) Where the Registrar of the court or other person appointed under subsection (2) is given a direction in relation to any property, he may apply to the Court for directions on any question respecting the management or preservation of the property under his control.

(6) An application under section 55 shall be served on all persons interested in the application or such of them as the Court thinks expedient and all such persons shall have the right to appear at the hearing and be heard.

(7) When the application is made under section 55(1) on the basis that a person is about to be charged, any order made by the Court shall lapse if the person is not charged within reasonable time.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that this was possible and indeed common to receive such requests from States. The Attorney General is the central authority, and then directs the request to the correct authorities, which may often be the DPP's office.

Subparagraph 2 (c) of Art. 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) *Summary of information relevant to reviewing the implementation of the article*

65. The *Money Laundering and Proceeds of Crime Act* gives the authorities power to preserve property subject to confiscation.
66. Section 49 of the *Money Laundering and Proceeds of Crime Act* gives the police power to seize any property found in the course of a search that the police officer believes on reasonable grounds to be tainted property. This means that seizure measures are available against the instrumentalities and the proceeds of serious offences. Alternatively, the Director of Public Prosecutions may apply for a restraining order against any tainted property under section 55 of the *Money Laundering and Proceeds of Crime Act*. The order prohibits “the defendant or any person from disposing of or otherwise dealing with the property or such part thereof or interest therein as is specified in the order except in such manner as may be specified in the order. Upon the request of the Director of Public Prosecutions, if the circumstances so require, the court may appoint a person to take custody of the property or part thereof and to require any person having possession of the property to give possession to the person appointed by the court.
67. While seizure of property by the police is not available in relation to property that constitutes benefits derived from the commission of a serious offence that may be subject to pecuniary penalty order under the *Money Laundering and Proceeds of Crime Act* instead of confiscation. Instead, only a restraining order by the court supported by possible surrender of custody to a person appointed by the court is the only available provisional measure under the Act for the preservation of property derived directly or indirectly from the proceeds of a serious offence.

Money Laundering and Proceeds of Crime Act 2002

Undertaking by the Government of Solomon Islands

57. (1) Before making an order under section 56(1), the Court may require the Director of Public Prosecutions on behalf the Government of Solomon Islands to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Director of Public Prosecutions may give such undertakings with respect to the payment of damages or costs or both as are required by the Court.

Notice of application for restraining order

58. Before making a restraining order the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in the property, unless the Court is of the opinion that giving such notice before making the order would result in the disappearance, dissipation or reduction in value of the property.

Service of restraining order

59. A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

Registration of restraining order

60. (1) A copy of a restraining order which affects lands in Solomon Islands shall be registered with the Commissioner of Lands.

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge, under the *Land and Titles Act Cap 133*.

(3) Where particulars of a restraining order are registered under the *Land and Titles Act*, a person who subsequently deals with the property shall, for the purposes of section 61 be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order

61. (1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits an offence and shall upon conviction be liable -

(a) for a natural person, to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years, or both; or

(b) for a legal entity to a fine not exceeding 1,000,000 penalty units.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for, sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public Prosecutions may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may -

(a) set aside the disposing or dealing as from the day on which the disposition or dealing took place; or

(b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interest in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of restraining Order

62. A restraining order remains in force until -

- (a) it is discharged, revoked or varied;
- (b) a confiscation order or pecuniary penalty order made under this Act is paid in full satisfaction of the order;
- (c) a confiscation order or a pecuniary penalty order, as the case may be, is made in respect of property which is the subject of the order.

Review of restraining order

63. (1) A person who has an interest in property in respect of which a restraining order was made, may at any time, apply to the Court for an order under subsection (4).

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least three working days notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who in the opinion of the Court appears to have an interest in the property.

(4) On an application under subsection (1), the Court may revoke or vary the order or make the order subject to such conditions as the Court thinks fit. For the purposes of this subsection the Court may -

- (a) require the applicant to enter into recognisances; or
- (b) vary the order to permit the payment of reasonable living expenses to the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) may only be made if the Court is satisfied that -

- (a) the applicant is the lawful owner to the property or is entitled to lawful possession thereof, and appears to be innocent of any complicity, in the commission of a serious offence or of any collusion in relation to such offence; and
- (b) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

Extension of restraining order

64. (1) The Director of Public Prosecutions may apply to the Court that made it restraining order for an extension of the period of the operation of the order.

(2) Where the Director of Public Prosecutions makes an application under subsection (1), the Court may extend the operation of a restraining order for a specified period, if it is satisfied that a confiscation order may be made in respect

of the property or part thereof or that a pecuniary penalty order may be made against the person.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported this was possible so long as appropriate MLA requirements were met and there was a sufficient connection between the arrest/charge and the property.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of Art. 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

68. Section 13 of the *Mutual Assistance in Criminal Matters Act* provides for the enforcement of foreign confiscation or restraining orders. Section 13(1) of the *Mutual Assistance in Criminal Matters Act* provides that where a foreign State requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order; or a foreign confiscation order, the Attorney-General may apply to the High Court for registration of the order. The High Court shall, on application by the Attorney-General, register a foreign restraining order if the Court is satisfied that at the time of registration, the order is in force in the foreign State. Upon application by the Attorney-General, the High Court is to register a foreign confiscation order if the Court is satisfied that at the time of registration, the order is in force in the foreign State and is not subject to appeal; and where the person who is the subject of the order did not appear in the confiscation proceedings in the foreign State the person was given notice of the proceedings in sufficient time to enable him to defend them; or the person has absconded or died before such notice could be given.

69. Section 13(10) of the *Mutual Assistance in Criminal Matters Act* provides that the *Money Laundering and Proceeds of Crime Act* applies to a registered foreign confiscation order, as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.
70. Section 7 of the *Mutual Assistance in Criminal Matters Act* outlines what a request for assistance should contain.
71. As a member of the Commonwealth, the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* could, in principle, be applied by and to Solomon Islands, but the Scheme has not been used to date.

Mutual Assistance in Criminal Matters Act 2002

Contents of requests for assistance

7. (1) A request for mutual assistance shall -

- (a) give the name of the authority conducting the investigation or proceeding to which the request relates;
- (b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) give a description of the purpose of the request and of the nature of the assistance being sought;
- (d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested State, give details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order;
- (e) give details of any procedure that the requesting State wishes to be followed by the requested State in giving effect to the request, particularly in the case of a request to take evidence;
- (f) include a statement setting out any wishes of the requesting State concerning any confidentiality relating to the request and the reasons for those wishes;
- (g) give details of the period within which the requesting State wishes the request to be complied with;
- (h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and
- (i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not comply with subsection (1).

72. In the last 10 years, two mutual legal assistance requests have been received from Australia. The first was in relation to tax evasion and the second, proceeds of crime in the logging industry. Both requests related to one another. The first request required a search warrant that Solomon Islands Police Force (with support of the Australian Federal Police at the time) sought through a court order. The High Court did not grant the order on a technical point, claiming that the request was not sufficiently specific. There were no further proceedings. The second request then came about a year later and was framed differently.
73. Mutual legal assistance can be afforded for the purposes of the recovery of assets. There have been no examples of this, but there would be nothing preventing this form of assistance being provided.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. Solomon Islands did not report any cases where this has occurred.

Paragraph 2 of Art. 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

74. As stated above, section 13(10) of the *Mutual Assistance in Criminal Matters Act* provides that the *Money Laundering and Proceeds of Crime Act* applies to a registered foreign confiscation order, as if the serious offence which is the subject of the order had been committed in Solomon Islands, and the order had been made pursuant to that Act.
75. In addition, the *Mutual Assistance in Criminal Matters Act* provides for foreign requests for an evidence-gathering order or search warrant (section 8); restraining orders (section 12); and for the location of proceeds of crime (section 14).
76. The *Money Laundering and Proceeds of Crimes Act* regulates in section 33(1) the confiscation of illegal proceeds upon conviction. Section 33(3) refers to the possibility of confiscating other property (other than money) the value of which

corresponds to such proceeds of crime. Sections 50 and 51 of the *Money Laundering and Proceeds of Crime Act* (as amended in 2010) regulate the seizure of tainted property considered as proceeds of crime. Section 35 allows courts to consider voidable transfers of tainted property as proceeds of crime.

77. Administrative freezing of transactions by the Financial Intelligence Unit is possible under section 11H(2)(k) of the *Money Laundering and Proceeds of Crime Act*, although this power has not been exercised to date
78. As a Commonwealth country, the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* would apply, however, to date, it has not been used.

Mutual Assistance in Criminal Matters Act 2002

Foreign requests for an evidence-gathering order or search warrant.

8. (1) notwithstanding anything contained in any law for the time being in force, where the Attorney-General grants a request by a foreign State to obtain evidence in Solomon Islands, an authorised person may apply to the High Court for -

- (a) a search warrant; or
- (b) an evidence-gathering order.

(2) The High Court to which an application is made under subsection (1) shall issue an evidence-gathering order or a search warrant under this subsection, where it is satisfied that there are reasonable grounds to believe that -

- (a) a serious offence has been or may have been committed against the law of the foreign State;
- (b) evidence relating to that offence may -
 - (i) be found in a building, receptacle or place in Solomon Islands; or
 - (ii) be able to be given by a person believed to be in Solomon Islands;
- (c) in the case of an application for a search warrant, it would not, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(3) For the purposes of subsection (2)(a), a statement contained in the foreign request to the effect that a serious offence has been or may have been committed against the law of the foreign State is prima facie evidence of that fact.

(4) Notwithstanding the provisions of the Criminal Procedure Code or any other law, the High Court may where it thinks appropriate, issue an evidence-gathering order in lieu of a search warrant and the provisions of subsections (5), (6), (7), (8) and (9) shall apply in respect of such evidence-gathering order.

(5) An evidence-gathering order -

(a) shall provide for the manner in which the evidence is to be obtained in order to give proper effect to the foreign request, and in particular, may require any person named therein to -

- (i) make a record from data or make a copy of a record;
- (ii) attend court to give evidence on oath or otherwise until excused;
- (iii) produce to the High Court or to any person designated by the Court, any thing, including any document, or copy thereof, or

(b) may include such terms and conditions as the High Court considers desirable, including those relating to the interests of the person named therein or of third parties.

(6) A person named in an evidence-gathering order may refuse to answer a question or to produce a document or thing where the refusal is based on -

- (a) a privilege recognised by a law in force in the foreign State that made the request; or
- (b) a law currently in force in the foreign State that would render the answering of that question or the production of that document or thing by that person in its own jurisdiction an offence.

(7) Where a person refuses to answer a question or to produce a document or thing pursuant to subsection (6)(a) or (b), the High Court shall report the matter to the Attorney-General who shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.

(8) Any written statement received by the Attorney-General from the foreign State in response to a request under subsection (7) shall be admissible in the evidence-gathering proceedings, and for the purposes of this section whether the person's refusal is well-founded under the foreign law.

(9) A person who, without reasonable comply with a lawful order of the High Court made under this section or who having refused pursuant to subsection (6), continues to refuse notwithstanding the admission into evidence of statement under subsection (8) to the effect that the refusal is not well founded, commits a contempt of court and is punishable accordingly.

(10) A search warrant shall be in the usual form in which a search warrant is issued in Solomon Islands, varied to the extent necessary to suit the case.

(11) No document or thing seized and ordered to be sent to a foreign State shall be sent until the Attorney-General is satisfied that the foreign State has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the document or thing.

Foreign requests for Solomon Islands Restraining Orders

12. (1) Where a foreign State pursuant to criminal proceedings commenced in that State in respect of a serious offence, requests the Attorney-General to obtain the issue of a restraining order against property some or all of which is believed to be

located in Solomon Islands, and there are reasonable grounds to believe that the property is located in Solomon Islands, the Attorney-General may apply to the High Court for a restraining order under subsection (2).

(2) Where the Attorney-General makes an application to the High Court under subsection (1), the Court may make a restraining order in respect of the property, and the Money Laundering and Proceeds of Crime Act 2002, and this Act shall apply in relation to the application and to any restraining order made as a result, as if the serious offence which is the subject of the order had been committed in Solomon Islands.

Foreign requests for the location of proceeds of crime.

14. Where a foreign State requests the Attorney-General to assist in locating property believed to be the proceeds of a serious crime committed in that State, the Attorney-General may authorise the making of any application under section 70, 75 or 77 of the Money Laundering and Proceeds of Crime Act 2002, for the purpose of acquiring the information sought by the foreign State.

Money Laundering and Proceeds of Crime Act 2002

Examination of records

11K. (1) The Director may apply to a Principal Magistrate for a search warrant to enter and search for any document, record or thing in the premises or place of a financial institution, cash dealer or legal practitioner or of its director, officer, employee, consultant or agent whom the Director has reasonable grounds to suspect has contravened this Act.

(2) A search warrant issued under this section may authorise the seizure and removal of such document, record or thing on the premises.

(3) The owner or occupier of the premises or place referred to in subsection (1), and any person found in the premises or place, shall –

(a) give the Director or any authorised person all reasonable assistance to enable the Director or authorised person to carry out the search;

(b) provide any information that may reasonably be required relating to the administration of this Act, or any regulations or guidelines made under it; or

(c) permit the taking of any document, record or thing which the Director may consider relevant to the investigation.

(4) Any person who wilfully obstructs, hinders, or fails to cooperate with a person conducting a search pursuant to this section or harms or threatens to harm a person conducting such a search, commits an offence.

Search warrants in relation to tainted property

50. (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, tainted property of a particular kind or proceeds of crime -

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person's immediate control; or
- (d) upon land or upon or in any premises,

the police officer may lay before a magistrate an information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for tainted property of that kind or proceeds of crime.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable -

- (a) to search the person for tainted property of that kind;
- (b) to enter upon the land or in or upon any premises and to search the land or premises for tainted property of that kind or proceeds of crime; and
- (c) to seize property found in the course of the search that the police officer believes on reasonable grounds to be tainted property of that kind or proceeds of crime.

(3) A warrant may be issued under subsection (2) in relation to tainted property or proceeds of crime, whether or not an information has been laid in respect of the relevant offence.

(4) A magistrate shall not issue a warrant under subsection (2) unless, where an information has not been laid in respect of the relevant offence at the time when the application for the warrant is made, the magistrate is satisfied that -

- (a) an information will be laid in respect of the relevant offence within forty-eight hours; and
- (b) the property is tainted property or proceeds of crime.

(5) A warrant issued under this section shall state -

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
- (b) a description of the kind of property authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(6) If during the course of searching under a warrant issued under this section, a police officer finds -

(a) property that the police officer believes on reasonable grounds to be tainted property either of a type not specified in the warrant or tainted property in relation to another serious offence; or

(b) any thing the police officer believes on reasonable grounds may afford evidence as to the commission of a serious offence, the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Searches in emergencies

51. (1) Where, a police officer suspects on reasonable grounds that -

(a) particular property is tainted property or proceeds of crime;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the police officer may -

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

(2) If during the course of a search conducted under this section, a police officer finds -

(a) property that the police officer believes on reasonable grounds to be tainted property; or

(b) anything the police officer believes on reasonable grounds may afford evidence as to the commission of a criminal offence,

the police officer may seize that property or proceeds of crime or thing.

79. There have not been many confiscation orders, although the Police force has in the past seized vehicles and assets in general criminal cases. Confiscation has only begun to be used after the 2010 amendments to the Money Laundering and Proceeds Act.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, it was reported that the FIU would be the body to assist in tracing and freezing such assets.

Paragraph 3 of Art. 55

3. The provisions of article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

80. The Attorney General has the authority to make and act on mutual legal assistance requests, pursuant to section 4 of the *Mutual Assistance in Criminal Matters Act*. Specifically, “grant the request, in whole or in part, on such terms and conditions as he thinks fit”.

81. Section 7 of the *Mutual Assistance in Criminal Matters Act* details what a request should include. Section 7 provides that a request for confiscation should contain details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in the requested State; and in the case of a request to restrain or forfeit assets, details of the offence in question, particulars of any investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of any relevant restraint or forfeiture order.

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

CONTENTS OF THE REQUEST FOR ASSISTANCE

14. (1) except in the case of a request for the preservation of computer data under Article 1 (3) (j) of this Scheme, a request under the Scheme shall:

(a) specify the nature of the assistance requested;

(b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

(c) indicate any time-limit within which compliance with the request is desired, stating reasons;

(d) contain the following information:

(i) the identity of the agency or authority initiating the request;

(ii) the nature of the criminal matter; and

(iii) whether or not criminal proceedings have been instituted.

(e) where criminal proceedings have been instituted, contain the following information:

(i) the court exercising jurisdiction in the proceedings;

(ii) the identity of the accused person;

(iii) the offences of which he stands accused, and a summary of the facts;

(iv) the stage reached in the proceedings; and

(v) any date fixed for further stages in the proceedings.

(f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of known facts.

(2) A request shall normally be in writing, and if made orally in the case of urgency, shall be confirmed in writing forthwith.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 4 of Art. 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

82. Sections 12(2), 13(10) and 14 of the *Mutual Assistance in Criminal Matters Act* provide that the provisions of the *Money Laundering and Proceeds of Crime Act* apply in relation to foreign requests for assistance. Note: For the full text of Section 12 of the *Mutual Assistance in Criminal Matters Act*, see the section of this report on UNCAC Article 55, para. 2. For the full text of 13, see Article 54, para. 1(a). For 14, see Article 54, para. 2(a).

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Paragraph 5 of Art. 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. It was reported during the country visit that this was completed during the First Cycle review.

Paragraph 6 of Art. 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

83. The Solomon Islands does not make cooperation for purposes of confiscation conditional on the existence of a treaty.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was not fully in compliance with this provision of the Convention. As a result, it was recommended that Solomon Islands take measures to ensure the required domestication process for the Convention as a legal basis for mutual legal assistance and international cooperation for purposes of confiscation and asset recovery.

Paragraph 7 of Art. 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

84. Section 4 of the *Mutual Assistance in Criminal Matters Act* provides that the Attorney-General may refuse a request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other

essential public interest of Solomon Islands. There does not appear to be a ground for refusal on the basis that the Solomon Islands does not receive sufficient and timely evidence or if the property is of a de minimis value. However, section 4(2)(a) provides that the Attorney-General may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence grant the request, in whole or in part, on such terms and conditions as he thinks fit. This may enable the Attorney-General to refuse a request for assistance where the Solomon Islands does not receive sufficient and timely evidence or if the property is of a de minimis value.

85. Section 7 of the *Mutual Assistance in Criminal Matters Act* provides that a request for mutual assistance must, where applicable, give details of the property to be traced, restrained, seized or confiscated. Section 7(2) provides that a request for mutual assistance from a foreign State may be granted, if necessary after consultation, notwithstanding that the request, as originally made, does not contain this information. Note: For the full text of Section 7, see the portion of this report located under Article 55, paragraph 1.

Mutual Assistance in Criminal Matters Act 2002

Authority to make and act on mutual assistance

4. (1) The Attorney-General may make requests on behalf of Solomon Islands to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced or proceedings instituted in Solomon Islands relating to any serious offence. (2) The Attorney-General may, in respect of any request from a foreign State for mutual assistance in any investigation commenced or proceeding instituted in that State relating to a serious offence -

- (a) grant the request, in whole or in part, on such terms and conditions as he thinks fit;
- (b) refuse the request, in whole or in part, on the ground that to grant the request would be likely to prejudice the sovereignty, security or other essential public interest of Solomon Islands; or
- (c) after consulting with the competent authority of the foreign state, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Solomon Islands.

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

REFUSAL OF ASSISTANCE

8. (1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern

- (a) conduct which would not constitute an offence under the law of that country; or

- (b) an offence or proceedings of a political character; or
 - (c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or
 - (d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.
- (2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme
- (a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
 - (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
- (3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.
- (4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that if it does not receive timely and sufficient evidence or if the property is of no value, it can refuse cooperation. There are, however, no known cases where this has happened in practice.

Paragraph 8 of Art. 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

86. A duty to consult is only required under section 4(2)(c) of the *Mutual Assistance in Criminal Matters Act* before postponing a request on the grounds that it would

interfere with an ongoing investigation or proceeding in Solomon Islands. There is no duty to consult before refusing assistance under section 4(2)(b).

87. Section 31 of the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* also provides generally for consultation but this Scheme has not been used in practice

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

CONSULTATION

31. The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that in practice, it would always consult with the requesting State before the freeze order was lifted.

Paragraph 9 of Art. 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

88. Section 36 of the *Money Laundering and Proceeds of Crimes Act* safeguards the rights of bona fide third parties. Section 36 gives any person who claims an interest in the property subject to confiscation to apply to the court for an order declaring the nature, extent and value at the time the order was made of the person's interest. If the confiscation order has already been issued and executed, the competent court shall direct that the property or part thereof to which the interest of the applicant relates be returned to the applicant; or an amount equivalent to the value of the interest of the applicant be paid to the applicant. Sections 33, 35, 38 and 63 complement such safeguards. Mention should also be made of sections 29, 30, 32, 46, 53, 55 and 59. Note: For the full text of Section 33, see Art. 54, para. 1(b). For the full text of Sections 35 and 36, see Art. 53(c). For 55, see Art. 54, para. 2(b). For 59 and 63, see Art. 54, para. 2(c).

89. The *Penal Code* also protects the rights of bona fide third parties that may be affected by a court warrant enforcing a fine or similar payment order against a property of the defendant. Section 28(4-10) sets a procedure for the third party affected by the warrant to challenge the warrant and to protect his interest in the property.

90. The third party protection available under the *Money Laundering and Proceeds of Crime Act* is also available for the terrorism financing offences under section 6

of the *Counter Terrorism Act*. The forfeiture measures provided for under Part 6 of the *Counter Terrorism Act* adopt the same approach to the protection of bona fide third parties. The scheme of protection relies on allowing sufficient notice of the measure that may affect the rights of a third party and giving that party a right to be heard. The provisions consequently give the courts the power to make orders that ensure that the interests of the party concerned are not affected.

Money Laundering and Proceeds of Crimes Act 2002

Notice of application

29. (1) Where the Director of Public Prosecutions applies for a confiscation order against property in respect of the person's conviction of a serious offence -

- (a) the Director of Public Prosecutions shall give not less than fourteen days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;
- (b) the person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application; and
- (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to -
 - (i) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; and
 - (ii) publish in the Gazette or a newspaper published and circulating in Solomon Islands, a notice of the application.

(2) Where the Director of Public Prosecutions applies for a pecuniary penalty order against a person -

- (a) the Director of Public Prosecutions shall give the person not less than fourteen days' notice of the application; and
- (b) the person may appear and adduce evidence at the hearing of the application.

Amendment of application

30. (1) The Court hearing the application under section 28(1) may, before the final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property or benefit, as the case may be, upon being satisfied that-

- (a) the property or benefit was not reasonably capable of identification when the application was made; or
- (b) necessary evidence became available only after the application was originally made.

(2) Where the Director of Public Prosecutions applies to amend an application for a confiscation order and the amendment would have the effect of including additional property in the application for confiscation, he shall give not less than

fourteen days written notice of the application to amend to any person who he has a reason to believe may have an interest in the property to be included in the application for a confiscation order.

(3) Any person who claims an interest in the property to be included in the application for a confiscation order may appear and adduce evidence at the hearing of the application to amend.

(4) Where the Director of Public Prosecutions applies to amend an application for a pecuniary penalty order against a person and the effect of the amendment would be to include an additional benefit in the application he shall give the person not less than fourteen days written notice of the application to amend.

Procedure for in rem confiscation order where person dies or absconds

32. (1) Where -

(a) an information has been laid alleging the commission of the offence by a person; and

(b) a warrant for the arrest of the person has been issued in relation to that information, the Director of Public Prosecutions may apply to the Court for a confiscation order in respect of any tainted property or proceeds of crime if the defendant has died or absconded.

(2) For the purposes of subsection (1), the person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued, and the person shall be deemed to have so absconded on the last day of that period.

(3) Where the Director of Public Prosecutions applies under this section for a confiscation order against any tainted property or proceeds of crime the Court shall, before hearing the application -

(a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property or proceeds of crime; and

(b) direct notice of the application to be published in the Gazette and in a newspaper published and circulating in Solomon Islands containing such particulars and for so long as the Court may require.

Payment instead of a confiscation order

38. Where the Court is satisfied that a confiscation order should be made in respect of the property of a person convicted of a serious offence, but that the property or any part thereof or interest therein cannot be made subject to such an order and, in particular -

(a) cannot, on the exercise of due diligence be located;

(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference, that the title or interest was transferred for the purpose of avoiding the confiscation of the property;

- (c) is located outside Solomon Islands;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been co-mingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the Government of Solomon Islands an amount equal to the value of the property, part or interest.

Lifting the corporate veil

46. (1) In assessing the value of benefits derived by a person from the commission of a serious offence, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person, whether or not he has-

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the Court may have regard to -

- (a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;
- (b) any trust that has any relationship to the property;
- (c) any relationship whatsoever between the, persons having an interest in the, property or in companies of the kind referred to in paragraph (a) or trust of the -kind referred to in paragraph (b), and any other persons.

(3) Where the Director of Public Prosecutions makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person.

- (a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and
- (b) a person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Return of seized property

53. (1) Where property has been seized under section 50 or section 51 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that -

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property or proceeds of crime; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the return of the property to the person.

Penal Code [Cap 26]

Distress

28. (1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within the territorial limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any property belonging to such person without such limits when endorsed by a Magistrate within the territorial limits of whose jurisdiction such property is found.

(4) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under this section may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in this section referred to as the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to upon affidavit which shall be filed with the notice.

(5) Upon receipt of a valid notice given under subsection (4) of this section, the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct the stay of execution proceedings.

(6) Upon the issue of an order under subsection (5) of this section, the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(7) A notice shall be served upon the person whose property was, by the warrant issued under subsection (1) of this section, directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place

fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing, of the objection.

(8) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with the provisions of subsection (7) of this section.

(9) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(10) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with the provisions of subsection (8) of this section, the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems fit.

(11) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (4) of this section of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

(12) No distress made under this section shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

Counter Terrorism Act 2009

Forfeiture of property after conviction

36. (1) Without limiting any other law, where any person is convicted of an offence under this Act, the High Court may order that any terrorist property used for, or in connection with or received as payment for reward for the commission of the offence be forfeited to the Crown.

(2) Before making an order under subsection (1), the Court shall give every person claiming or appearing to have an interest in the property, an opportunity to be heard.

Application by Attorney General for forfeiture order

37. (1) Where the Attorney General has reasonable grounds to believe that a property is a terrorist property, the Attorney General may apply to the Court for a forfeiture order against the property.

(2) The Attorney General shall –

- (a) name as a defendant to the application any person known to own or control the property the subject of the application; and
- (b) serve the application on the defendant.

(3) The Solomon Islands Courts (Civil Procedure) Rules 2007 apply to proceedings relating to forfeiture under this section unless the procedures, management, administration and control of forfeited properties are prescribed by regulations.

Making of forfeiture order

38. (1) If the High Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court shall order that the property be forfeited to the Crown.

(2) If the Court is satisfied that any defendant in the proceedings –

- (a) has any interest in the property the subject of the application;
- (b) did not know and could not reasonably be expected to know that the property was terrorist property; and
- (c) was not a member of any terrorist organisation,

the Court must determine the nature and extent of that interest and may order that any interest of the defendant is not affected by the forfeiture order.

(3) If the Court makes a forfeiture order over all or part of the property the subject of the application, the Court may give any directions that are necessary or convenient to give effect to the order.

Revocation of forfeiture order

39. (1) A person who claims an interest in the property the subject of a forfeiture order, and who was not served in accordance with section 37(2)(b), may apply to the High Court, within six months after the making of the order for revocation of the order.

(2) The person must name the Attorney General as the defendant in the proceedings and must serve the application on the Attorney General. (3) If a person makes an application under this section, the Court shall determine –

- (a) the nature, extent and value of any interest of the person in the property subject to the forfeiture order; and
- (b) whether the person falls within the category of persons described in section 37(2)(a).

(4) If the Court determines that the person satisfies the requirement in section 38(2), the Court may –

- (a) revoke all or part of the forfeiture order and make an order for the return of the property, or part of the property in which the applicant has an interest, to the applicant; or

- (b) if the property is no longer vested in the Crown, revoke all or part of the forfeiture order and make an order for the payment of an amount of money equal to the value of the interest of the applicant, as specified in the order, to the applicant.

Order for seizure and restraint of property

40. (1) Where a Judge is satisfied, on an ex parte application made to the Judge in chambers by the Attorney General, that there are reasonable grounds to believe that there is in any premises, place, vessel, vehicle or aircraft, any property in respect of which an order for forfeiture may be made under this Part, the Judge may issue –

- (a) a warrant authorising a police officer to search the premises, place, vessel, vehicle or aircraft and to seize any property the police officer believes, on reasonable grounds, may be the subject of a forfeiture order under this Part; and

- (b) a freezing order prohibiting any person from disposing of, or otherwise dealing with any interest in that property other than any property specified in the order.

(2) On an application made under subsection (1) at the request of the Attorney General, if the Judge is of the opinion that the circumstances so require, the Judge may –

- (a) appoint a person to take control of, manage, or otherwise deal with the whole or any part of the property in accordance with the directions of the Judge; and

- (b) require any person having possession of the property to give possession to the person appointed under paragraph (a).

(3) The power to manage or otherwise deal with the property under subsection (2) includes –

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and

- (b) in the case of property that has little or no value, the power to destroy that property.

(4) Before a person appointed under subsection (2) destroys any property, the person shall apply to a Judge for a destruction order.

(5) Before making a destruction order, the Judge shall require notice to be given, in such manner as the Judge may direct, to any person who, in the opinion of the Judge, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.

(6) A Judge may order that any property in respect of which an application is made under subsection (4), be destroyed if the Judge is satisfied that the property has little or no financial value, or may pose a health, safety or security risk if it is not destroyed.

(7) A management order under subsection (2) ceases to have effect when the subject property is returned to the applicant in accordance with the law or forfeited to the Crown.

(8) The Attorney General may apply to a Judge to cancel or vary an order issued under this section.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Article 56. Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

91. There is no legislative basis for the spontaneous transmission of information to another State party on proceeds of offences established in accordance with the Convention.
92. Informally information could, in principle, be transmitted to a competent authority in another State where such information could assist, but a formal request for information would be required. In practice, the competent authority does not have such authorisation and thus would not be protected if such information were provided.
93. The reviewers for the review of Chapters III and IV recommended that Solomon Islands consider granting legal authority to the Attorney General to proactively transmit information to a foreign competent authority in relation to mutual legal assistance, without a prior request, where such information could assist in the investigation and prosecution of UNCAC offences.²⁵

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was not fully in compliance with

²⁵ Country Review Report of Solomon Islands, Review by Iraq and the Slovak Republic of the Implementation by the Solomon Islands of Articles 15-42 of Chapter III “Criminalisation and Law Enforcement” and Articles 44-50 of Chapter IV “International Cooperation” of the United Nations Convention Against Corruption for the Review Cycle 2010-2015.

this provision of the Convention. During the country visit, Solomon Islands reported that there is no legislation on this topic, but that in practice such cooperation might occur on a case-by-case basis or through law enforcement cooperation. As a result, it was recommended that Solomon Islands consider granting legal authority to the Attorney General to proactively transmit information to a foreign competent authority in relation to asset recovery, without a prior request, where such information could assist in initiating or carrying out investigations, prosecutions or judicial proceedings of Convention offences (art. 56).

Article 57. Return and disposal of assets

Paragraph 1 of Art. 57

1. Property confiscated by a State Party pursuant to articles 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

94. Section 36 of the *Money Laundering and Proceeds of Crime Act* sets out the general rules for the protection of the rights of third parties against confiscation orders that may affect their rights. Section 36 gives any person who claims an interest in the property subject to confiscation to apply to the court for an order declaring the nature, extent and value at the time the order was made of the person's interest. If the confiscation order has already been issued and executed, the competent court shall direct that the property or part thereof to which the interest of the applicant relates be returned to the applicant; or an amount equivalent to the value of the interest of the applicant be paid to the applicant.
95. Section 34 of the *Money Laundering and Proceeds of Crime Act* provides that where property ordered to be confiscated is registrable property the property vests in the Government of Solomon Islands in equity but does not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with; and the Director of Public Prosecutions has power on behalf of the Government of Solomon Islands to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government of Solomon Islands as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.
96. Section 53 provides that a third party with interest in the property may apply for an order that the property be returned.

Money Laundering and Proceeds of Crime Act 2002

Effect of confiscation

34. (1) Subject to subsection (2), where the Court makes a confiscation order against any property, the property vests absolutely in the Government of Solomon Islands by virtue of the order.

(2) Where property ordered to be confiscated is registrable property -

(a) the property vests in the Government of Solomon Islands in equity but does not vest in the Government of Solomon Islands at law until the applicable registration requirements have been complied with;

(b) the Government of Solomon Islands is entitled to be registered as owner of the property; and

(c) the Director of Public Prosecutions has power on behalf of the Government of Solomon Islands to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government of Solomon Islands as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a confiscation order against property -

(a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Government of Solomon Islands before the relevant appeal date; and

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Permanent Secretary, Ministry of Finance.

(4) In this section -

“registrable property” means property the title to which is passed by registration in accordance with the provisions of the Land and Titles Act Cap. 133.

“relevant appeal date” used in relation to a confiscation order made in consequence of a person’s conviction of a serious offence means -

(a) the date on which the period allowed by rules of court for the lodging of an appeal against a person’s conviction or for the lodging of an appeal against the making of a confiscation order expires without an appeal having been lodged, whichever is the later, or

(b) where an appeal against a person’s conviction or against the making of a confiscation order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later.

Protection of third parties

36. (1) Where an application is made for a confiscation order against property, a person who claims an interest in the property may apply to the Court, before the confiscation order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of property and the Court is satisfied on a balance of probabilities -

(a) that the person was not in any way involved in the commission of the offence; and

(b) where the person acquired the interest during or after the commission of the offence, that he acquired the interest -

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was tainted property, the Court shall make an order declaring the nature, extent and value at the time the order is made of the person's interest.

(3) Subject to subsection (4), where a confiscation order has already been made directing the confiscation of property, a person who claims an interest in the property may, before the end of the period of twelve months commencing on the day on which the confiscation order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who -

(a) had knowledge of the application for the confiscation order before the order was made; or

(b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3), except with leave of the Court.

(5) A person who makes an application under subsection (1) or (3) shall give not less than fourteen days written notice of the making of the application to the Director of Public Prosecutions, who shall be a party to any proceedings in the application.

(6) Any person exercising the powers conferred on the Court by section 67 shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of an appeal has expired and any appeal from that order has been determined -

(a) direct that the property or part thereof to which the interest of the applicant relates, be returned to the applicant; or

(b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Return of seized property

53. (1) Where property has been seized under section 50 or section 51 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that -

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property or proceeds of crime; and
- (c) the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property, the Court shall order the return of the property to the person.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that a State would be treated the same as any other person for purpose of ownership claims, but would also have to comply with the MLA process. This has not, however, yet occurred in practice.

Paragraph 2 of Art. 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

97. Section 36 of the *Money Laundering and Proceeds of Crimes Act* safeguards the rights of bona fide third parties. Section 36 gives any person who claims an interest in the property subject to confiscation to apply to the court for an order declaring the nature, extent and value at the time the order was made of the person's interest. If the confiscation order has already been issued and executed, the competent court shall direct that the property or part thereof to which the interest of the applicant relates be returned to the applicant; or an amount equivalent to the value of the interest of the applicant be paid to the applicant. Sections 33, 35, 38 and 63 complement such safeguards. Note: For the full text of Sections 29, 30, and 32, see the section of this report regarding Art. 55, paragraph 9. For Section 33, see Art. 54, paragraph 1(b). For Sections 35 and 36, see Art. 53(c). For Sections 38, 46, and 53, see Art. 55, paragraph 9. For Sections 55, 59, and 63, see Art. 54, paragraph 2(b) and paragraph 2(c).
98. The *Penal Code* also protects the rights of bona fide third parties that may be affected by a court warrant enforcing a fine or similar payment order against a property of the defendant. Section 28(4-10) sets a procedure for the third party affected by the warrant to challenge the warrant and to protect his interest in the property.
99. The third party protection available under the *Money Laundering and Proceeds of Crime Act* is also available for the terrorism financing offences under section 6 of the *Counter Terrorism Act*. The forfeiture measures provided for under Part 6 of the *Counter Terrorism Act* adopt the same approach to the protection of bona

fide third parties. The scheme of protection relies on allowing sufficient notice of the measure that may affect the rights of a third party and giving that party a right to be heard. The provisions consequently give the courts the power to make orders that ensure that the interests of the party concerned are not affected.

100. Section 15 of the *Mutual Assistance in Criminal Matters Act* provides for the sharing of confiscated property with the foreign State. Note: For the full text of Section 15, see Art. 54, paragraph 1(a).

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, reference was made to Section 14 of the MLA Act along with 75-77 in the Money Laundering Act.

Subparagraph 3 (a) of Art. 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(a) Summary of information relevant to reviewing the implementation of the article

101. There is no legislative basis to enable the waiving of the requirement of a final judgement in the requesting State Party.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, it was reported that although no specific provision in legislation matches this, it is the principle of the Solomon Islands to conduct a full return of stolen public assets. Provisions cited above on MLA and ML Acts apply.

Subparagraph 3 (b) of Art. 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such

confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(a) Summary of information relevant to reviewing the implementation of the article

102. Section 15 of the *Mutual Assistance in Criminal Matters Act* provides that the Attorney-General may enter into an arrangement with the competent authorities of a foreign State for reciprocal sharing with that State of such part of any property realized as the result of enforcement of a foreign confiscation order. Note: For the full text of Section 15, see the section of this report on Art. 54, paragraph 1(a) of UNCAC.

103. There is no legislative basis enabling the waiving of the requirement of a final judgement in the requesting State Party.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands stated that the similar approach applies under its MLA guide.

Subparagraph 3 (c) of Art. 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

104. Section 15 of the *Mutual Assistance in Criminal Matters Act* provides that the Attorney-General may enter into an arrangement with the competent authorities of a foreign State for reciprocal sharing with that State of such part of any property realized as the result of enforcement of a foreign confiscation order. Note: For the full text of Section 15, see the section of this report on Art. 57, paragraph 2 of UNCAC.

105. There are no systematic measures to allow victims to file for compensation.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that this would be addressed in a similar process to the above. Confiscated and forfeited property could be converted to cash and used to pay victims or restitution, which could include other States.

Paragraph 4 of Art. 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

106. Expenses do not appear to be addressed in the *Mutual Assistance in Criminal Matters Act*. As part of the review for Chapter III and IV, it was confirmed that the Solomon Islands has and would bear the ordinary costs associated with executing a mutual legal assistance request. Moreover, it was provided that consultations would take place with the requesting State if the expenses to be incurred would be of a substantial or extraordinary nature.²⁶

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

EXPENSES OF COMPLIANCE

13. (1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.

(3) If in the opinion of the requested country, the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

²⁶ Country Review Report of Solomon Islands, Review by Iraq and the Slovak Republic of the Implementation by the Solomon Islands of Articles 15-42 of Chapter III “Criminalisation and Law Enforcement” and Articles 44-50 of Chapter IV “International Cooperation” of the United Nations Convention Against Corruption for the Review Cycle 2010-2015, p 163.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands confirmed that the understanding under the First Cycle review that is still the case that Solomon Islands would bear the ordinary costs of executing any and all MLA requests. The presumption is that Solomon Islands would take on the request unless the expenses are extraordinary.

Paragraph 5 of Art. 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention. During the country visit, Solomon Islands reported that there are no examples of this occurring in practice. However, this is foreseen as a possibility that such cost sharing agreements would be concluded.

Article 58. Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

107. Section 11D of the *Money Laundering and Proceeds of Crime Act* establishes the Financial Intelligence Unit.

108. Section 11H(1) establishes the functions of the Financial Intelligence Unit which include receiving information or report in terms of the provisions of or for the purposes this Act, including information or report from another country, and to analyse, review and assess such information or report; and to forward any information or report to the appropriate law enforcement agency, if the Director has reasonable grounds to suspect that such information or report may involve an

offence of money laundering, a terrorist financing offence, the proceeds of crime or any other offence under this Act.

109. Section 11H(2)(h) provides that the powers of the Unit include acting on behalf of Solomon Islands in seeking information from any government agency, law enforcement agency, supervisory authority or auditing authority of another country for purposes of the *Money Laundering and Proceeds of Crime Act*.
110. Section 11I provides that the Anti-Money Laundering Commission has the power to authorise the disclosure of any report or information to the government department or agency of another country or an international organisation that has powers, functions and duties similar to those of the FIU. With the Anti-Money Laundering Commission's approval, the FIU has the power to enter into a written agreement or arrangement with the government department or agency of another country or international organisation, with powers, functions and duties similar to the Unit regarding the exchange of information between the Unit and that institution, agency or organisation.
111. There is a Memorandum of Understanding (MOU) governing coordination between the Royal Solomon Islands Police Force and the Financial Intelligence Unit. The Financial Intelligence Unit reports to the Anti-Money Laundering Commission, which is chaired by the Attorney General. The Financial Intelligence Unit provides quarterly reports to the Commission and is staffed by three officers of the Central Bank of Solomon Islands and one seconded officer from the Royal Solomon Islands Police Force.
112. The Financial Intelligence Unit has a mandate to exchange financial intelligence with other States in relation to money-laundering and terrorist financing. Information is shared as appropriate with the Royal Solomon Islands Police Force and other relevant agencies. The Financial Intelligence Unit has signed four memorandums of understanding with foreign Financial Intelligence Units and is a member of the Pacific FIU Association, Asia/Pacific Group on Money Laundering and Egmont Group.

Money Laundering and Proceeds of Crime (*Amendment*) Act 2010

Establishment of the Commission

11. (1) The Commission established under the repealed section 11 is hereby re-established and continues under this section as the Anti-Money Laundering Commission consisting of the following members –

- (a) the Attorney General or a representative of the Attorney General, as the Chairperson;
- (b) the Governor of the Central Bank of Solomon Islands or a representative of the Governor, as the Deputy Chairperson;
- (c) the Commissioner of Police or a representative of the Commissioner;
- (d) the Permanent Secretary for Finance or a representative of the Permanent Secretary;

- (e) the Comptroller of Customs, or a representative of the Comptroller.
- (2) The Director of the Unit or a representative of the Director shall be the secretary to the Commission.
- (3) The Commissioner may invite any technical expert or any other person to advise the Commission on any matter relating to this Act.
- (4) The Commission may regulate its own procedures.
- (5) The members of the Commission are entitled to allowances and other expenses as are prescribed.

Functions of the Commission

11A. The functions of the Commission are –

- (a) to provide overall management, control and supervision of the operations of the Unit and the Director;
- (b) to formulate, implement, monitor and review policies in relation to this Act;
- (c) to receive monthly reports from the Director in relation to the functions, powers operations and other responsibilities of the Unit;
- (d) to submit annual reports of its operations and of the Unit to the Minister for laying in Parliament;
- (e) to perform other functions conferred on it under this Act or any other written law.

Powers of the Commission

11B. The powers of the Commission are –

- (a) to appoint a suitably qualified person as the Director;
- (b) to appoint other suitably qualified officers, employees, consultants or agents of the Unit as are necessary for the administration and operation of this Act;
- (c) to determine the remuneration and other terms and conditions of employment of persons appointed under paragraphs (a) and (b) or of persons seconded to the Unit, including their promotion, transfer, suspension, discipline and dismissal;
- (d) to authorise in writing any person subject to any terms and conditions that the Commission may specify, to carry out any power, duty or function conferred on the Director under this Act; and
- (e) to exercise other powers conferred on it by this Act or under any other written law.

Funds of the Commission

11C. The funds of the Commission and the Unit comprise –

- (a) moneys appropriated by Parliament; and
- (b) moneys from other sources (other than public funds) received by or on behalf of the Commission or Unit.

Establishment of the Unit

11D. (1) The Unit established under the repealed section 11A (4) is hereby re-established and continues under this section as the Solomon Islands Financial Intelligence Unit.

(2) The Unit shall be charged with the administration of the provisions of this Act, subject to the supervision and control of the Commission.

Director of the Unit

11E. (1) This section establishes the position of the Director of the Unit who shall be appointed under section 11B.

(2) A person is not entitled to be appointed as the Director if the person—

- (a) is, or has been a member of Parliament, provincial assembly or local authority at any time during the immediately last four years;
- (b) is or has been a director, officer or employee of or holds any shares in any financial institution or cash dealer; or
- (c) is a financial institution or cash dealer.

(3) The Director shall not hold any other office or be employed in any other occupation or capacity except with the prior approval of the Commission.

Powers and functions of the Director

11F. (1) The Director shall exercise all the powers, duties and functions of the Unit under this Act or any other written law.

(2) The Director shall report to the Commission on any exercise of the Director's or Unit's powers, duties and functions under this Act.

(3) The functions of the Director are—

- (a) to be responsible for the organisation and operation of the Unit, including preparing the annual reports of the Commission and the Unit and submit it to the Commission;
- (b) to be responsible for the training of officers, employees, agents of the Unit or any other person on matters relating to this Act;
- (c) to ensure that officers, employees, consultants, agents of the Unit or any other person acting on behalf of the Unit, take the prescribed oath of confidentiality and are issued with a certificate of identity as the authority to act on behalf of the Unit;
- (d) to obtain, with prior consultation with the Commission, technical assistance from another country or international organisation, including but not limited to, the temporary employment of law enforcement and intelligence consultants from another country.

(4) The Director shall not disclose any information, except in accordance with this Act, that would directly or indirectly identify an individual who provided a report

or information to the Unit, or a person or an entity about whom a report or information was provided under this Act.

Delegation of powers

11G. (1) The Director may, by notice in the Gazette, delegate to any officer, employee, consultant or agent of the Unit any power in this Part, except any power delegated by the Commission to the Director.

(2) The exercise of any delegated power has the same effect as if it had been conferred directly to the person by this section and not by delegation.

(3) If the person appointed as the Director ceases to hold office, any delegation made by the person shall continue to have effect as if the delegation were made by the person for the time being holding office as Director.

(4) Any delegation made under this section is revocable at will and no delegation prevents the exercise of the delegated power by the Director.

113. Note: Sections 11H, 11I, and 11J can be found under the section of this report regarding Article 51.

Examination of records

11K. (1) The Director may apply to a Principal Magistrate for a search warrant to enter and search for any document, record or thing in the premises or place of a financial institution, cash dealer or legal practitioner or of its director, officer, employee, consultant or agent whom the Director has reasonable grounds to suspect has contravened this Act.

(2) A search warrant issued under this section may authorise the seizure and removal of such document, record or thing on the premises.

(3) The owner or occupier of the premises or place referred to in subsection (1), and any person found in the premises or place, shall –

(a) give the Director or any authorised person all reasonable assistance to enable the Director or authorised person to carry out the search;

(b) provide any information that may reasonably be required relating to the administration of this Act, or any regulations or guidelines made under it; or

(c) permit the taking of any document, record or thing which the Director may consider relevant to the investigation.

(4) Any person who wilfully obstructs, hinders, or fails to cooperate with a person conducting a search pursuant to this section or harms or threatens to harm a person conducting such a search, commits an offence.

Investigation powers

11L The Director may, with or without the assistance of the Police, conduct investigations and enquiries on behalf of a financial intelligence unit from or a law enforcement agency of another country.

Non-disclosure

11M. (1), this section applies to any current or former Director, officer, employee, consultant or agent of the Unit.

(2) A person referred to in subsection (1) shall not disclose any information or matter the person has knowledge of or obtained in the performance of the duties, functions or powers under this Act, except–

- (a) for the purposes of performing his duties, functions or powers under this Act;
- (b) if required by an order of the court;
- (c) for the detection, investigation or prosecution of a serious offence, money laundering offence or financing of terrorism offence;
- (d) for the purposes of tracing the proceeds of crime; or
- (e) for purposes of enforcing the provisions of this Act.

(3) Any person who wilfully discloses information or matter in contravention of subsection (2) commits an offence.

114. Information about the Solomon Islands Financial Intelligence Unit can be found on the Central Bank of Solomon Islands website. [Contact details](#) of the FIU are also provided.

115. The Australian Government's Anti-Money Laundering Assistance Team (AMLAT) has worked closely with the Central Bank of Solomon Islands (CBSI) to implement anti-money laundering systems, including comprehensive support to establish what is now a fully operational Financial Intelligence Unit (FIU) within the CBSI. Future assistance priorities include building the FIU's capacity to supervise reporting entities, and supporting Customs authorities in preventing money laundering, including trade-based laundering.

116. Training to the FIU has been provided by AUSTRAC, AMLAT, APG and the World Bank. Prior to 2004, RAMSI Police heavily supported the Solomon Islands Police Force, with the local Force receiving training and development. RAMSI completed a strategic review of the Police Force that was considered by the Solomon Islands Government. Since 2005, RAMSI Police focused on identification, training and development of champions in the Police Force who would then take over the key roles and positions who have taken over to lead the Police Force into the future. This is still an ongoing process that is likely to continue for some time.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was in compliance with this provision of the Convention.

Article 59. Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

117. The Convention is not considered as a legal basis for mutual law enforcement cooperation in the Solomon Islands.
118. The Solomon Islands is considering agreements and arrangements in order to enhance its mutual legal assistance, in particular through the mutual legal assistance arrangement being considered by Member States of the Melanesian Spearhead Group.
119. The Solomon Islands FIU has entered into memoranda of understanding with the FIUs of the Philippines, Indonesia, China (Taiwan) and Sri Lanka. An example of a Police-to-Police arrangement is between the Police Force of Solomon Islands and Australian Federal Police.

(b) Observations on the implementation of the article

The reviewing experts observed that Solomon Islands was not fully in compliance with this provision of the Convention. During the country visit, it was reported that informal discussions have taken place to enhance and expedite communication and information sharing in the region. Reference was made to the Egmont Group and the Pacific Islands Prosecutors Network, through which the Islands and Pacific countries share human resources and information. Informal networks and sharing often is how things operate in this region. As a result, it was recommended that Solomon Islands take measures to ensure the required domestication process for the Convention as a legal basis for mutual legal assistance and international cooperation for purposes of confiscation and asset recovery.