

**Samoa: Assessment of the Supervision and Regulation of the Financial Sector—
Review of Financial Sector Regulation and Supervision**

This review of financial sector regulation and supervision in **Samoa** in the context of the offshore financial center assessment program contains technical advice and recommendations given by the staff team of the International Monetary Fund in response to the **Samoa**n authorities request for technical assistance. It is based on the information available at the time it was completed in **May 2004**. The views expressed in these documents are those of the staff team and do not necessarily reflect the views of the government of **Samoa** or the Executive Board of the IMF.

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**ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE
FINANCIAL SECTOR**



**Review of Financial Sector Regulation
and Supervision**

Samoa

MAY 2004

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GLOSSARY

AML	Anti-Money Laundering
BCPs	Basel Core Principles for Effective Banking Supervision
CBS	Central Bank of Samoa
CBSA	Central Bank of Samoa Act
CFT	Combating the Financing of Terrorism
CIS	Collective Investment Scheme
CSP	Company Service Provider
DBS	Development Bank of Samoa
FIA	Financial Institutions Act
FID	Financial Institutions Department
FIU	Financial Intelligence Unit
FSF	Financial Stability Forum
IBA	International Banking Act
IBC	International Business Company
ICA	International Companies Act
LFI	Licensed Financial Institution
ML	Money Laundering
MLA	Money Laundering Authority
MLPA	Money Laundering Prevention Act
NCCTs	Non-Cooperative Countries and Territories
NPF	National Provident Fund
OBA	Offshore Banking Act
OFC	Offshore Financial Center
OGBS	Offshore Group of Banking Supervisors
PS	Prudential Statement
PSTA	Prevention and Suppression of Terrorism Act
SOFC	Samoa Offshore Finance Center
TCA	Trustee Companies Act

PREFACE

In July 2000, the IMF's Executive Board approved a program of assessments of how offshore financial centers (OFCs) observed international best practice with regard to the supervision and regulation of offshore financial services. The program of assessments is based on the paper presented to the Board "Offshore Financial Centers—The Role of the IMF."¹ In this context, the authorities of Samoa invited the IMF to carry out a stand-alone (Module 2) OFC assessment.

A mission from the IMF's Monetary and Financial Systems Department (MFD)² visited Apia from August 27 to September 11, 2002.³ The mission undertook an assessment of the extent to which the regulatory and supervisory arrangements for the Samoa's domestic and offshore banking sector complied with the internationally accepted standards. Since the domestic and offshore banking sectors are regulated under quite different statutes by different agencies and according to different standards, the sectors were assessed separately. The mission also assessed the compliance of Samoa's legal, institutional, and supervisory frameworks with international standards regarding anti-money laundering and combating of financing of terrorism.⁴

The mission held discussions with the Prime Minister, Mr. Tuilaepa Sailele Malielegaoi; the Governor of the Central Bank of Samoa (CBS), Mr. Papali'i T. Scanlan; the Deputy Governor, Mr. Philip Penn; officers from the Financial Institutions Department of the CBS;

¹ *Offshore Financial Centers—The Role of the IMF*, June 23, 2000, www.imf.org.

² The IMF's Monetary and Exchange Affairs Department was renamed the Monetary and Financial Systems Department as of May 1, 2003. The new name has been used throughout the report.

³ The mission was headed by Masayuki Tamagawa, and included Vassili Prokopenko and Harald Anderson (mission assistant), all from MFD; Cecilia Marian (Legal Department); John Bourbon (bank supervision expert, formerly Cayman Islands Monetary Authority and formerly Isle of Man Financial Supervision Commission), and David Prees (bank supervision expert, formerly Reserve Bank of Australia). The mission's visit coincided with the work of Pat O'Sullivan (anti-money laundering expert, formerly Head of Financial Intelligence Unit of New Zealand) who was assisting the authorities in setting up the Financial Intelligence Unit for Samoa. Ms. Rose-Marie Olaso (bank supervision adviser, Pacific Financial Technical Assistance Centre) assisted with the preparation of the Basel Core Principles assessment of the domestic banking sector.

⁴ For the review of anti-money laundering and combating the financing of terrorism practices, the mission was guided by the June 2002 version of the draft AML/CFT methodology prepared by the IMF and World Bank.

the regulatory authorities of the Samoa Offshore Finance Centre; officers from the Treasury Department and the Attorney General's office; certain government officials; and a broad cross-section of private sector practitioners.⁵ With some minor exceptions related to the constraints imposed by confidentiality provisions of the offshore sector, the mission was able to review all relevant documentation necessary to carry out the assessment, and the authorities were thoroughly cooperative in providing the full account of the Samoa Offshore Finance Centre, including its domestic financial sector.

The mission would like to express its gratitude to the Governor and officials of the CBS, the officers of the Samoa Offshore Finance Centre, and to the government officers and representatives of other financial institutions for their assistance, cooperation, and excellent hospitality during its stay in Apia. A special word of thanks goes to Ms. Erna Va'ai, Registrar of International and Foreign Companies, and Ms. Laura M. Dempsey, Legal Adviser to the Registrar of International and Foreign Companies, for their excellent preparation and coordination of the mission.

This report was completed in February 2003. Samoa's authorities agreed to publish it in December 2003. Appendix II (prepared by the Samoan authorities) reflects, as of December 2003, the actions the Samoan authorities have taken, or plan to take in response to the recommendations of the report.

⁵ The Minister of Finance, Mr. Telefoni, was abroad during the mission.

EXECUTIVE SUMMARY

This report contains the main findings and recommendations of the MFD mission which visited Apia from August 27 to September 11, 2002, to conduct a Module 2 assessment in the context of the IMF's Offshore Financial Centers (OFC) initiative. The assessment covers both offshore and domestic financial activities. The mission assessed Samoa's observance of the *Basel Core Principles for Effective Banking Supervision* (BCPs), as well as its legal, institutional, and supervisory aspects of anti-money laundering and combating the financing of terrorism (AML/CFT framework).⁶ In addition, the scope of the mission's work included an evaluation of the prudential oversight of nonbank financial institutions, including trustee companies (company service providers). This executive summary provides brief overviews of the findings of these assessments, focusing on major strengths and weaknesses, as well as offering recommendations to address weaknesses.

Overview of the Financial Sector

The operations of the offshore financial sector in Samoa, which began in October 1988, are legally separated from the domestic (onshore) financial sector. The size of the offshore business remains very small compared to major offshore centers. The registration of International Business Companies (IBCs) represents the largest offshore business for Samoa. As of August 2002, there were 7,553 IBCs registered in the Samoan islands. The number of offshore banks has declined recently as a result of the authorities enacting stricter regulatory controls, with eight offshore banks currently licensed. Besides the offshore banks, there are five international insurance companies, four of which are captives (meaning that they are established by corporations to ensure their own respective group business risks). IBCs are set up and represented by trustee companies (company service providers), six of which are licensed and have offices in Samoa. These company service providers also act as representative offices for offshore banks and international insurance companies.

The supervisory authority is commonly known as the Samoa Offshore Financial Center (SOFC), which assumes the role of Registrar of International and Foreign Companies, Inspector of Offshore Banks, and Registrar of International Insurance under relevant offshore legislations. Samoa Offshore Finance Center operates as a quasi-governmental department and is administered by the Central Bank of Samoa (CBS).

The domestic financial sector, although it is small, encompasses a wide range of financial institutions, including three commercial banks, 20 credit unions, and four insurance companies. The CBS licenses and supervises all commercial banks. Under the 2001 amendment of the Financial Institution Act, the CBS was also authorized to conduct prudential supervision of insurance companies.

⁶ The assessment of Samoa's AML/CFT framework was based on the June 2002 version of the draft AML/CFT methodology prepared by the IMF and World Bank.

Banking Supervision and Prudential Regulation

In applying the Basel Core Principle assessment, the mission identified that there are considerable differences in the supervisory treatment of domestic and offshore banks. For example, domestic commercial banks are licensed and supervised by the Central Bank of Samoa, whereas offshore banks are licensed by the Minister of Finance and supervised by the Inspector of Offshore Banks.

Domestic banks

For domestic commercial banks, a range of Prudential Statements have been developed in recent years, along with the introduction of the Financial Institutions Act 1996. The CBS's focus has been on establishing broad principles of prudent management. Prudential statements cover capital adequacy, asset concentration and risk exposures, liquidity, connected lending and direct ownership interest, asset quality and related issues, and foreign currency exposures, although most of these statements do not provide detailed requirements. Off-site supervision is basically in place but at present the CBS does not conduct on-site examinations, although the CBS plans to begin them soon. In order to strengthen the overall regulatory framework, the mission recommends the central bank take several steps:

(a) reinforce the legislative powers in relation to licensing and supervision to ensure that the supervisor's scope for action is not inhibited when remedial measures are required, all relevant matters are considered in license applications, and all changes in control are vetted by the supervisor; (b) develop more specific policies in a number of areas, including connected lending, fit and proper tests and risk management systems; (c) introduce new prudential regulations and other information requirements for connected lending, country exposures, maturity profile, credit grading, and interest rate exposures; (d) build up a capacity to undertake on-site examinations and more in depth off-site analysis; (e) develop a plan for more targeted use of external auditors; and (f) establish closer links with other supervisors. The mission also notes that additional staff will be needed in the Financial Institutions Department (FID) of the CBS, so as to provide greater supervision of nonbank financial institutions and anti-money laundering activities.

Offshore Banks

For offshore banks, the Samoan authorities have recently tightened regulatory controls following the amendment to the Offshore Banking Act in 1998, and as a result the number of offshore banks has been reduced significantly over the past years. Five of the eight licensed offshore banks are captive banks and have restricted "B2" licenses that allow acceptance of deposits only from related persons and entities and not from the general public.

In licensing offshore banks, the authorities do not require that banks maintain a physical presence. In fact, only two offshore banks maintain offices in Samoa which holds records and accounts. The remaining six offshore banks have offices that are registered with company service providers which also provide directorship to such banks. Prudential regulation for offshore banks is generally lacking. The Inspector of Offshore Banks relies heavily on the

reports provided by bank auditors to make an assessment of the conditions of offshore banks. To date, the Inspector has not undertaken any comprehensive reviews of the risk management process, internal control or accounting, and auditing system of offshore banks.

The BCP assessment underscores a number of major outstanding issues, including the limitation of the authorities' access to customer information, no explicit "fit-and-proper" requirements for management, and the absence of effective on-site supervision. Although, the SOFC authorities were addressing some of these issues in the preparation of the International Banking Bill 2002, the mission noted that the absence of any real presence by offshore banks makes it impossible to conduct proper supervision in accordance with the Basel Core Principles. Therefore, the mission recommends that all offshore banks be required to establish a real physical presence with mind and management within the jurisdiction or face having their offshore banking licenses removed.

Further, from a supervisory view point, it is recommended that the same supervisory standards should be applied to both domestic and offshore banks. Apart from tax treatment, the licensing of offshore and domestic banks could well be treated under the same banking legislation and same supervisory authorities. After addressing the shell bank issues, the mission recommends that the authorities reconsider the future form of the banking legislation and supervision.

Legal, Institutional, and Supervisory Aspects of Anti-Money Laundering and Combating the Financing of Terrorism

Samoan authorities have worked hard to develop an effective AMF/CFT framework. The passage of the Money Laundering Prevention Act in 2000 (MLPA) and the Governor's role as the Money Laundering Authority (MLA) and the drafting of the MLPA Regulations and Guidelines have been the first steps toward establishing an effective AML framework in Samoa. The Prevention and Suppression of Terrorism Act (PSTA) was adopted in 2002. Some progress has been made by the MLA and the Attorney General's Office toward fulfilling their roles, particularly with regard to the promulgation of regulations and the issuing of guidance notes to financial service providers. However, the Police and Customs Services, which are the principal agencies charged with investigating money laundering offenses, at this stage have little capacity to respond to money laundering issues in that they lack the expertise, skill, and experience to deal with such issues.

Although the MLA currently has the power to receive and disseminate suspicious transaction reports required to be made by financial service providers, which are two of the three fundamental powers of a financial intelligence unit (FIU), the MLA is not and has never been operational as an FIU in terms of exercising the power of an FIU or performing the full range of FIU functions. The mission welcomes the intention of Samoan authorities to broaden the powers and functions of the MLA to include the full range of powers and functions performed by an FIU and have these functions and powers exercised by the FID.

Based on its review of the legal framework for AML/CFT measures, the mission identified several areas of concern which will need to be addressed in order to bring Samoa in line with the international standards for anti-money laundering and combating the financing of terrorism. The mission acknowledges that several of these issues are already being addressed by the Samoan authorities. Overall, further modernization and review of the AML/CFT framework are desirable.

Company Service Providers

The trustee companies in Samoa primarily function as company service providers who deal with registration and administration of international business companies. The company service provider in Samoa operates under a relatively rigorous licensing system with supervision being generally effective. The Registrar under the Minister of Finance conducts vetting on “fit-and proper” of the management and ownership control. The Registrar has significant powers to gather information and conduct on-site inspection. The PSTA also applies to trustee companies, and the Registrar has worked closely with the Money Laundering Authorities and the trustee companies in the implementation of the MLPA. The mission recommends, however, that trustee companies should conduct an enhanced level of due diligence, especially with regard to all new business transferring to the jurisdiction under redomiciliation. Moreover, the authorities should conduct regular on-site visits to the trustee companies and consider entering into specific exchange of information agreements with host country supervisors.

Other Issues

Since domestic insurance supervision is in the process of early development and the business of offshore insurance in Samoa is as yet very small, the mission did not conduct an IAIS core principles assessment. The mission, however, supports the authorities’ intention to modernize insurance legislation which will establish the CBS as the licensing and supervisory entity of domestic insurance companies. It will also be necessary to expand the Financial Institutions Department so as to designate staff to specialize in insurance supervision.

Concerning offshore insurance companies, the licensing of general insurance companies, which sell insurance products in other countries, can potentially give rise to concerns involving unlicensed solicitation in other countries or causing problems with its customers. In order to prevent legal and reputational risk, it is recommended that the authorities—in licensing general insurance business—require that international insurance companies be in compliance with other country’s laws where insurance products are sold, and that close communication and information sharing with insurance regulators in other countries be established.

Regarding the securities business and collective investment schemes, there are currently no laws or regulations relating to this area in Samoa. It is possible that some IBCs are already conducting such business; however, it is impossible to know its scope and breadth because this business is not regulated. There is also a risk that Samoa may be used for covering up

fraudulent securities deals. The mission supported the authority's plan to introduce a legislation on collective investment schemes while prohibiting the establishment of unlisted collective investment schemes.

Summary of Main Recommendations ^{1/}

Subject
A. Bank Supervision and Prudential Regulation
-- Domestic banks
<i>Develop more specific policies in a number of areas including connected lending, fitness and propriety tests, and risk management systems.</i>
<i>Build up a capacity to undertake on-site examinations and more in depth off-site analysis.</i>
Strengthen the legislative powers in relation to licensing and supervision to ensure that (i) the supervisor's scope for action is not inhibited when remedial measures are required, (ii) all relevant matters are considered in license applications, and (iii) all changes in control are vetted by the supervisor.
Introduce new prudential regulations and other information requirements for connected lending, country exposures, maturity profiles, credit grading, and interest rate exposures.
Develop a plan for more targeted use of external auditors.
Establish closer links with other supervisors.
-- Offshore banks
<i>Require all offshore banks to establish a real physical presence in Samoa with mind and management in place or face removal of banking license.</i>
Eliminate the limitation on the authorities' access to customer information.
Require "fit and proper" criteria for selecting management as a licensing condition.
Develop an ability to effectively implement the on-site visits at offshore banks or at registered offices within the company service providers.
Apply the same supervisory and regulatory standards to domestic and offshore banks.
B. Anti-Money Laundering Measures
<i>Amend the definition of financial institution so that all offshore entities—and specifically trustee companies—are included in the definition.</i>
<i>Broaden the scope of the MLPA to include comprehensive and all substantive requirements relating to customer identification and verification, record keeping and retention and suspicious transaction reporting.</i>
<i>Amend the MLPA to improve the framework for reporting suspicious transaction to include extending the tipping-off provisions and improving the protection for the information reported and the persons reporting.</i>
<i>Putting in place the administrative and operational steps toward establishing the FIU and providing for the governance and oversight structure for the FIU.</i>

Amend the MLPA to include comprehensive forfeiture of proceeds of crime and confiscation of benefits provisions, as well as the power to make penalty orders where forfeiture is not possible.
Introduce common provisions in all the regulatory laws requiring that shareholders and directors of financial service providers be “fit and proper” persons, thus preventing serious criminals from controlling financial service provider businesses.
Amend the MLPA to afford the MLA with the full range of powers and functions of an operational FIU, including the power to analyze information and to exchange information with foreign FIUs and law enforcement agencies.
Amend the MLPA to extend the scope of the mutual assistance provisions to cover all criminal offenses.
C. Company Service Providers
<i>Trustee companies should conduct an enhanced level of due diligence, especially with regard to all new business transferring to the jurisdiction under redomiciliation.</i>
Conduct regular on-site visits to the trustee companies and consider entering into specific exchange of information agreements with the host country supervisors.
D. Other Issues
Modernize the insurance legislation which will establish the CBS as the licensing and supervisory entity of the domestic insurance companies.
In licensing general insurance business, require that international insurance companies be in compliance with other country’s laws where the insurance products are sold.
Establish close communication, and information sharing with the insurance regulators in other countries.
Introduce a basic investment business and securities legislation to regulate fraudulent provision of financial advice and product sales to both domestic and international markets.
Introduce legislation on collective investment schemes while prohibiting the establishment of unlisted collective investment schemes.

^{1/} Priority recommendations are marked in bold and italic.

I. INTRODUCTION

1. Samoa is a small island economy in the South Pacific with a population of 176,848⁷ and a per capita annual income of approximately US\$1,350. Emigration has kept the population relatively stable in recent years, while economic growth has been supported by prudent macroeconomic policies and a wide-ranging program of structural reforms. Social indicators compare favorably with most other lower middle-income countries in the region. The political situation in Samoa has been stable and the ruling Human Rights Protection Party won re-election in March 2001.⁸
2. The Samoan economy has traditionally been based on agriculture and fishing. Since the early 1990s, the manufacturing, construction, and especially tourism sectors have also become significant contributors to GDP. The economy also remains heavily dependent on transfers from abroad. Private remittances, mostly from Samoan emigrants, are equivalent to about 19 percent of GDP, while official transfers, mainly from Australia, Japan, and New Zealand, were on average about 10 percent of GDP in recent years.
3. The contribution of the Samoan financial sector—which comprises both domestic and offshore financial institutions—to GDP and employment is not significant. It is estimated that the financial sector accounted for 6.7 percent of GDP in 2001, with the offshore financial sector accounting for roughly 3 percent of GDP. Nevertheless, the offshore sector is currently the fourth highest foreign exchange earner for the economy, after private remittances, tourism, and fishing.
4. Based on the latest National Accounts figures released by Treasury, real GDP is estimated to have grown by just over 1 percent in the fiscal year to end June 2002 (FY2001/02). This outcome is substantially lower than the originally projected real growth of 4.0 percent, although it should be noted that this slowdown is on the back of impressive growth rates of 8.7 percent in the FY2000/01 and 4.4 percent the year before. The large deviation of the (estimated) actual outcome from the original forecast reflects mainly the sharp decline of real output during the first quarter of 2002. Much of the reduction was due to the decline in tourism earnings (reflecting the impact of the September terrorist attacks on the United States), a slowdown in agriculture (due to adverse weather conditions), a downturn in construction activities, and lower exports of fish.
5. The annual average inflation rate rose to 7.4 percent in June 2002, from 1.9 percent last year, exceeding the CBS target of 3 percent. This increase in inflation reflected lower agricultural production and an increase in administered fuel prices. In early 2002, the CBS

⁷ Data from the 2001 census, released during the time of the mission.

⁸ Samoa is on a 24-month Article IV Consultation cycle with the Fund. The last Article IV Consultation discussions were held in Apia from January 16 to 29, 2001.

considered tightening monetary policy but decided to defer this because of the uncertain macroeconomic outlook.

6. The effective exchange rate has been broadly stable in both nominal and real terms in recent years, although the recent increase in inflation will likely result in a real appreciation or/and some pressures on the foreign exchange market.⁹ The authorities have relaxed exchange controls in recent years, and there are presently no restrictions on current account transactions. The balance of payments recorded an overall surplus of SAT 3.4 million in FY2001/02 reflecting a decline in the total value of imports, following macroeconomic slowdown, as well as large private remittances and net capital inflows.

II. OVERVIEW OF THE FINANCIAL SECTOR

7. Samoa has traditionally had a very small financial sector. A rapid expansion in numbers and type of financial businesses started in the late 1980s, triggered by the establishment of the offshore financial center in 1988. However, the size of the offshore financial business remains very small compared to major offshore centers.

A. Domestic Financial Sector

8. The small size of the economy and the long-lasting use of direct instruments of monetary policy (which were largely abolished and replaced by indirect instruments in 1998) have limited the depth of financial markets. Nevertheless, the domestic financial sector in Samoa encompasses a wide range of financial institutions. As of August 2002, these financial institutions included:

- Commercial banks (3);
- Credit unions (20);
- Insurance companies (4);
- Money changers (3);
- Money transfer agents (5);
- Money lenders (3);
- The National Provident Fund;
- The Development Bank of Samoa; and
- The Housing Corporation.

9. At the end of 2001, assets of commercial banks accounted for slightly more than 50 percent of the assets of all domestic financial institutions, excluding the central bank

⁹ The exchange rate of the tala is linked to a currency basket comprising the euro and the Australian, Fiji, New Zealand, and U.S. dollars. The currencies in the basket and their corresponding weights are revised annually (the last revision occurred in August 2002), based on the shares of these currencies in Samoa's trade and other international transactions.

(Table 1). This was also equivalent to roughly 45 percent of GDP.¹⁰ The commercial banking system is largely foreign owned. Two of the three existing commercial banks are subsidiaries of major Australian banks and the third one is a locally-owned institution. The foreign-owned institutions have a joint market share of over 90 percent. They are well capitalized and profitable. One of these institutions provides services to the offshore entities licensed in Samoa, primarily in the form of accounts for some international business companies. The domestically owned bank is also profitable and in compliance with Samoa's rather stringent 15 percent capital adequacy requirement.¹¹

Table 1. Structure of the Domestic Financial System, 1995–2001
(In millions of tala; end of period)

	1995	1996	1997	1998	1999	2000	2001
Balance Sheet totals	529.7	580.3	642.4	690.1	790.0	875.7	941.4
CBS	111.8	123.7	132.9	128.9	132.8	125.7	126.7
Commercial Banks	198.8	225.0	264.7	284.1	352.8	395.1	419.4
ANZ	136.4	152.6	185.8	188.7	226.5	250.2	258.7
Pacific Commercial Bank	57.7	60.5	62.3	71.7	103.2	113.3	121.9
National Bank of Samoa	4.7	11.9	16.6	23.7	23.1	31.6	38.8
Nonbank financial institutions	219.1	231.6	244.8	277.1	304.4	354.9	395.3
National Provident Fund	114.1	124.8	138.4	158.9	175.5	215.3	241.2
Development Bank of Samoa	53.3	54.1	50.1	55.7	59.5	65.3	72.6
Samoa Life Assurance Corporation	17.8	18.6	20.1	21.9	22.3	23.6	24.7
Public Trust Office	7.4	7.8	8.4	8.4	9.7	10.0	11.0
National Pacific Insurance Corporation	16.6	15.3	15.4	19.0	22.5	25.0	31.0
Housing Corporation	9.9	11.0	12.4	13.2	14.9	15.7	14.8

Source: CBS.

10. The vast majority of nonbank financial institutions, including insurance companies and credit unions, are very small (Table 1). Only two of institutions—the National Provident Fund (NPF) and the Development Bank of Samoa (DBS)—have relatively important market shares in the financial sector. The NPF is the only pension fund in Samoa, in which participation is compulsory for all public and registered private sector workers. The

¹⁰ Nominal GDP in 2001 was approximately SAT 900 million (or US\$290 million).

¹¹ The domestically-owned bank was established in 1995 by the sale of the postal savings bank to a group of private investors.

DBS is fully owned by the government with an objective of financing projects in selected priority sectors, like agriculture, fishing, and tourism industries.

B. Offshore Financial Sector

11. The offshore financial sector in Samoa is legally separated from the onshore sector. It was launched in October 1988 (see Box 1 for a discussion of the current legislation governing offshore business in Samoa). Lower taxation and fewer regulatory restrictions have stimulated the growth of the OFC sector, though it has always remained relatively small by international comparison.^{12, 13} At the end of August 2002, the Samoan offshore sector comprised the following:

Trustee companies (6);
International trusts (157); and
International business companies (IBCs) (7,553), of which there were:

- Long-term IBCs (141);¹⁴
- International (offshore) banks (8);
- Segregated fund international companies (3); and
- International insurance companies (5).

12. Trustee companies (company service providers) are the core of the offshore industry. They are primarily engaged in the incorporation and servicing of IBCs. Offshore banks and international insurance companies, which are also IBCs, are set up and are licensed through these trustee companies. In most cases, the trustee company also acts as the office through which the offshore banks conduct their business and as a manager of international insurance companies. The majority of the trustee companies are part of the active groups of company

¹²Precise figures on the importance of the offshore sector are difficult to estimate. According to the Samoa Offshore Finance Center, the offshore sector currently directly contributes to the employment of 32 people. There are also a number of derivative effects, largely from payment of wages, taxes, and purchases of local goods and services, by law, accounting, and some other companies that are involved in the offshore business. It is estimated that gross revenues from payments of fees by the offshore sector totaled SAT 7.4 million (approximately US\$2.5 million) in 2001. This brought about US\$2.0 million of annual revenue to the government.

¹³ In Samoa, there are 14 lawyer's offices and 4 accountants' and auditors' offices, several of these doing business with trustee companies and other offshore entities.

¹⁴ Long-term IBCs are companies registered for 5, 10, or 20 years (a standard IBC is registered for one year) at discount fees. The registration fee and annual maintenance fee for a standard IBC is US\$300.

service providers whose main offices are in Hong Kong, Singapore, or Bermuda, and have several affiliated offices in other offshore financial centers, principally in the Pacific Islands and Caribbean countries such as the British Virgin Islands.¹⁵

13. Concerning the international trusts,¹⁶ this area of offshore business has not been very attractive in recent years. Although Samoa still has 157 international trusts, the existing legislation does not provide for asset protection trusts and other innovative vehicles found in many other offshore jurisdictions (see Box 1).

14. As discussed above, the international business companies are set up and represented by trustee companies, and the overwhelming majority of them do not have a physical presence in the jurisdiction. As of end-August 2002, there were 7,553 active IBCs in Samoa, and their number continues to increase (Figure 1). Many of the registrations of the IBCs are driven by tax considerations, but also the fact that Samoa offers registration in foreign languages, particularly in Chinese characters, has proven to be an incentive, as well as the availability of new names due to relatively small number of registered companies.¹⁷ There is no minimum capital requirement for IBCs (apart from offshore banks and international insurance companies), and bearer instruments may be issued.¹⁸

¹⁵ See Section 4 of this report for more details on trustee companies.

¹⁶ An international trust is defined in the legislation as a trust in respect of which one trustee at least is either a trustee company or an international or foreign company and the beneficiaries are at all times nonresidents.

¹⁷ The fact that Samoa has full diplomatic relations with the People's Republic of China and has a Chinese Embassy is particularly helpful when legalizing or apostilling documents required for transactions and business in mainland China.

¹⁸ Amendments to the International Companies Act 1987 that are under preparation will impose stricter controls on all bearer instruments (bearer shares, share warrants to bearer and bearer debentures). All such instruments will be required to be physically lodged with the trustee company that provides the registered office for the international company. Any further dispositions or dealings in the beneficial interest in such instruments will require the prior approval of the trustee company that must first obtain satisfactory evidence of identity, pursuant to the Money Laundering Prevention Act 2000, of both the proposed transferor and transferee. There will be a transitional period of six months within which the existing bearer instruments must be so lodged. If the bearer instruments are not so lodged, all rights, privileges and benefits attaching to the bearer shares/debentures are suspended, until such time as they are surrendered into the custody of the trustee company.

Box 1. Legislation Governing the Offshore Business in Samoa

The laws of Samoa have their foundations in English and Commonwealth statutory and common law. Although the Acts that form the basis of the Offshore Finance Center are based on English law they include legislation adapted from other offshore financial centers—most notably the International Companies Act which is based on that in the British Virgin Islands. Recently, Samoa undertook a review of its offshore legislation with the intention of strengthening all the relevant laws so that they can act as a basis for the improvement of regulatory and supervisory standards to bring them up to international levels. The principal Acts governing offshore financial activities are:

International Companies Act 1987 (amended July 1998);
International Partnership and Limited Partnership Act 1998;
Offshore Banking Act 1987 (amended July 1998);
International Insurance Act 1988 (amended July 1998);
Trustee Companies Act 1987 (amended July 1998);
International Trust Act 1987 (amended March 1989);
Segregated Fund International Companies Act 2000;
Money Laundering Prevention Act 2000.

International Companies Act 1987

The Act, which is currently being reviewed, has been revised a number of times, most recently in 1998. The range of corporate vehicles available under the Act include international companies, limited life international companies, companies limited by guarantee, and companies limited by both guarantee and shares (hybrid companies).

To incorporate an international company is relatively simple. There is no prescribed application form. Application is made to the Registrar of International Companies through a licensed trustee company, accompanied by the company's Memorandum and Articles of Association, the incorporation fee, and notice of registered office. There need only be one subscriber and normally this would be a trustee company or a nominee company acting on behalf of the beneficial owner, whose name need not be disclosed. There is no minimum capital requirement for IBCs, and bearer instruments may be issued.

International Partnership and Limited Partnership 1998

This Act provides for exempt International Partnerships and Limited Partnerships. All partners must at all times be nonresidents of Samoa and the partnership does not carry on business or engage in trade in Samoa. Application for registration is made to the Registrar through a trustee company in the prescribed form.

Offshore Banking Act 1987

The Act governs the licensing of international and foreign companies registered under the International Companies Act and other overseas companies that wish to carry on offshore banking business from Samoa. The Offshore Banking Amendment Act 1998 created the post of Inspector of Offshore Banks to be responsible for the day-to-day regulation and supervision of offshore banks. The licensing and disciplinary powers continue to reside with the Minister of Finance.

Application for a license is made through the Inspector of Offshore Banks to the Minister of Finance. A review is made of the applicant, including its financial standing, shareholding and management and ultimate beneficial ownership. There are three classes of license:

(Continued)

Box 1. Legislation Governing the Offshore Business in Samoa (Continued)

- An “A”-class license holder can establish a domestic company to transact onshore banking business but must apply to the CBS for approval. Licensees are required to have an aggregate capital of at least US\$10 million. The annual fee for an A class license holder is currently set at US\$17,500.
- A “B1”-class license holder can transact only such offshore banking business as is specified in its license. It must transact business through a registered trustee company unless authorized by the Minister of Finance to maintain and operate a business office in Samoa. Licensees are required to have an aggregate capital of at least US\$2 million. The annual fee for a B1 class license holder can be up to US\$10,000.
- A “B2”-class license holder is required to conduct what is effectively a treasury operation. It cannot accept or solicit deposits from the public and can transact only such offshore banking business as may be specified in its license and can accept deposits only from those persons or entities whose names are listed in the undertaking that accompanies the license application. The minimum capital requirement for B2 license holders is US\$250,000. The annual fee for that class license holder is currently US\$4,500.

International Insurance Act 1988

The Act regulates offshore insurance business carried on by international and foreign companies registered under the International Companies Act. Applications are made to the Registrar of International Insurance and the applicant is required to produce evidence as to its financial standing, share ownership, police clearances, and references.

The capital requirements vary. For general insurance (property and casualty) business and for long term (life) business, the minimum is US\$500,000; for reinsurance business US\$200,000 and for captive business US\$100,000.

Trustee Companies Act 1987

This Act provides for a company incorporated as a domestic company to be registered to carry on business as a trustee company which can provide services only to nonresidents of Samoa. Application for registration is made to the Minister of Finance through the Registrar of International and Foreign Companies. If the head office or registered office is outside Samoa, it must designate a principal office in Samoa and two authorized agents who are resident in Samoa. The required capital is approximately US\$170,000. Every international company that wants to be registered in Samoa must go through a trustee company.

International Trusts Act 1987

This Act provides for the registration of international trusts. The application must provide the name of the trust, and the name of the office of the trustee. The trust deed does not have to be produced. The law is very basic and has not been revised since 1987. Trusts for charitable purposes may be registered, but the legislation does not provide for asset protection trusts and the other innovative vehicles found in many other offshore jurisdictions. All trusts must be registered, but information requirements are minimal. The authorities of Samoa are currently considering modernizing this legislation.

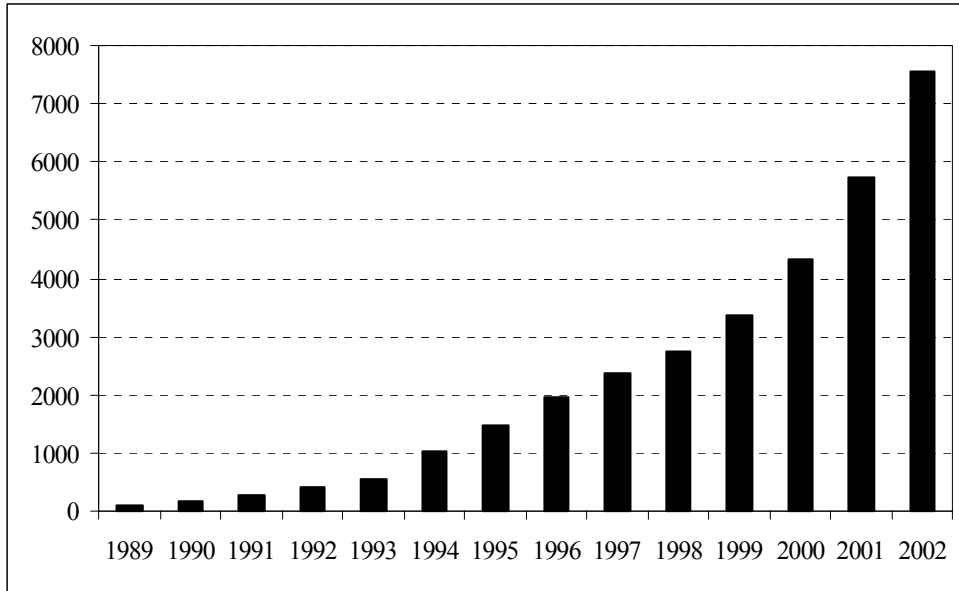
Segregated Fund International Companies Act 2000

This Act establishes a regime for the incorporation of segregated fund international companies (SFIC) that can establish segregated funds. Rights and interests, whether membership or creditor rights, of each fund are segregated from other segregated funds of the SFIC. An SFIC can be used for tax planning purposes or as part of a rent a captive arrangement.

Money Laundering Prevention Act 2000

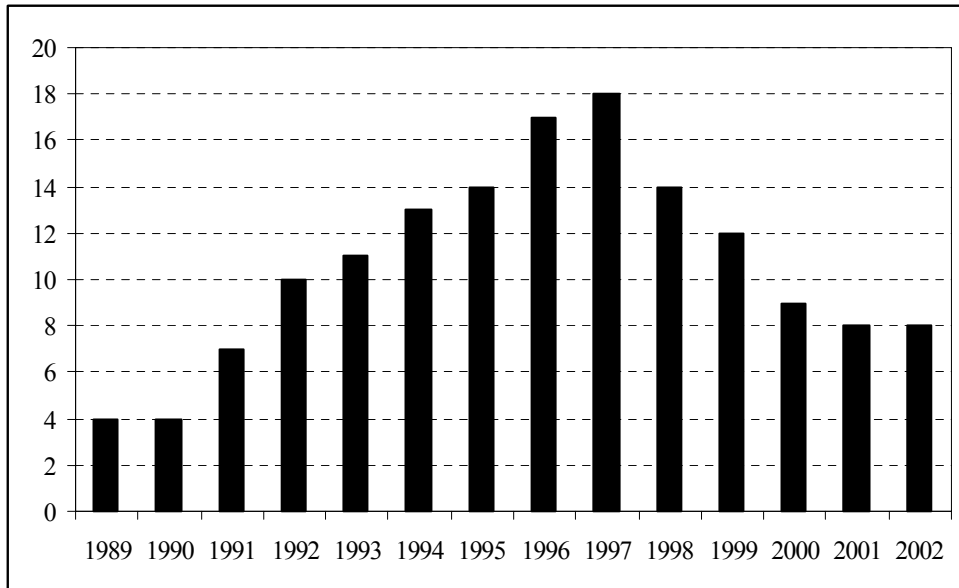
This Act governs anti-money laundering activities in Samoa. It is discussed in detail elsewhere in this report.

Figure 1. Number of Operating International Business Companies
(End of year 1/)



Source: Samoa Offshore Finance Center.
1/ Data for 2002 are for end-August.

Figure 2. Number of Operating Offshore Banks
(End of year 1/)



Source: Samoa Offshore Finance Center.
1/ Data for 2002 are for end-August.

15. The number of active offshore banks has been declining in recent years (Figure 2). Several licenses were cancelled partly due to tighter regulatory controls under the revised Offshore Banking Act in 1998. (Appendix 1 summarizes the 1998 amendments to Samoa offshore legislation.) At the end of 2001, assets of offshore banks accounted for roughly 40 percent of GDP. The majority of the existing eight offshore banks have a “B2” license, which means that they are restricted to such offshore banking business as may be specified in the license and can accept deposits only from those persons or entities whose names are listed in the undertaking that accompanies the license application (see Box 1). Among these eight banks, two maintain offices in Samoa. All other banks conduct their business through the representative trustee company.

16. Four of the five international insurance companies are captives, which means that they are established by corporations to insure their own group business risks. The remaining international insurance company is very small and is engaged in general insurance, assuming risks primarily in some South East Asian countries.

C. Regulatory and Supervisory Framework of the Financial Sector

Domestic financial sector

17. Under the Financial Institutions Act (FIA) of 1996, the CBS is responsible for the prudential supervision of all domestic commercial banks. Within the CBS, the Financial Institution Department has been allocated the task of supervision. It currently has six staff headed by a Manager. Recently, the CBS has taken steps to strengthen its supervisory capacities, including the introduction of on-site inspection of banks and efforts to comply with the Basel Core Principles for Effective Banking Supervision.

18. The January 2001 amendment to the FIA provided a new definition of financial services, which allowed the Minister of Finance to extend the prudential supervision of CBS to nonbank financial institutions.¹⁹ The Minister placed the NPF, the DBS, and insurance companies under the prudential supervision of the CBS. The Asian Development Bank has been assisting to set up standards and procedures. Insurance companies are licensed by the Ministry of Finance under the provisions of the Insurance Act (see Section III). The NPF and DBS are governed by their own acts.

Offshore financial sector

19. The Registrar of International and Foreign Companies, established in 1988, administers the offshore legislation and supervises all registered offshore entities. The Registrar regulates and supervises the activities of the trustee companies under the Trustee Companies Act 1987. The Registrar also deals with the registration of IBCs under the

¹⁹ Other objectives of the CBS include the maintenance of price stability and adequate foreign exchange reserves.

International Companies Act 1987, and fulfills the role of Inspector of Offshore Banks under the Offshore Banking Act 1987 and Registrar of International Insurance Companies under the International Insurance Act 1988.

20. The Office of the Registrar of International and Foreign Companies is a statutory position, with the appointment being made by the Minister of Finance, pursuant to the various offshore Acts. Similarly, the positions of Inspector of Offshore Banks, Registrar of International Trusts, and Registrar of International Insurance are all made by the Minister. The office is commonly known as the Samoa Offshore Finance Centre (SOFC).²⁰

21. The SOFC operates as a quasi-governmental department administered by CBS. It has currently nine staff members, which include the Registrar, two trained accountants who deal with supervisory issues, and companies registration staff. They are technically employees of the CBS, but the budget for maintaining and running the office is completely self-funded from the fee revenues. The SOFC is charged rent and administrative costs by the CBS.

22. In early 2002, Samoa was granted observer status in the Offshore Group of Banking Supervisors (OGBS), a precursor to full membership in this group. That status was granted as a result of the follow-up on the recommendations of the joint APG/OGBS (Asia Pacific Group/Offshore Group of Banking Supervisors) mutual evaluation report (see below). In early 2001, Samoa was also admitted as a full member of the Offshore Group of Insurance Supervisors.

Anti-money laundering measures

23. Samoa's primary anti-money laundering legislative regime is contained in the Money Laundering Prevention Act 2000 (MLPA), introduced in June 2000, and the Prevention and Suppression of Terrorism Act 2002. The MLPA requires record keeping; reporting of suspicious transactions; overrides all secrecy and confidentiality provisions for disclosures pursuant to the Act; criminalizes money laundering; and provides for forfeiture of the proceeds of crime and other provisional measures such as the freezing and seizure of assets, the issuance of property tracking and production orders, and international cooperation in money laundering offences. The MLPA also provides for the appointment of the Money Laundering Authority (MLA). Under this Act, the Governor of the CBS exercises the powers of the MLA. He has delegated this authority to the Deputy Governor, the Manager, and officers of the Financial Institutions Department (FID). The financial institutions covered under the MLPA include the domestic banks, offshore banks, money remitters, accountants, and lawyers.

²⁰ The present Registrar/Inspector is a qualified Samoan lawyer with over 13 years of legal experience who has held the present posts for over 10 years.

24. The Prevention and Suppression of Terrorism Act 2002 criminalizes the financing of terrorism and provides for the freezing and forfeiture of funds and proceeds used for the financing of terrorism.

25. The Financial Institutions Act 1996 also provides for the retention of checks, bank drafts, bills of exchange, or promissory notes for seven years.

D. Prior Assessments

26. Samoa has received three assessments of its financial sector in recent years. The main findings of these assessments are summarized below.

Financial Stability Forum

27. Subsequent to publication of its report on OFCs in relation to global financial stability (April 5, 2000), the Financial Stability Forum (FSF) published, on May 26, 2000, a categorization of OFCs “reflecting their perceived quality of supervision and perceived degree of cooperation.” The FSF included Samoa within Group III (along with the majority of other OFC jurisdictions), comprising jurisdictions that it considered fell significantly short of the standards adopted by countries in the other two groups.²¹ A number of initiatives have been undertaken to improve the country’s foreign perception in this area since then.

Financial Action Task Force

28. Samoa was subject to review by the FATF in May 2000 in the context of its exercise to identify Non-Cooperative Countries and Territories (NCCTs) in the fight against global money laundering. Samoa was not placed on the list of NCCTs.

Joint APG/OGBS mutual evaluation report

29. The Asia Pacific Group on Money Laundering and the Offshore Group of Banking Supervisors conducted a joint mutual evaluation of Samoa in February 2001. That report made a number of recommendations to strengthen the anti-money laundering framework. The recommendations are being actively followed up by the Samoan authorities.

²¹ The FSF stated in its press release of May 26, 2000: “it is important to stress that the categorization of OFCs into these three groupings is based on responses of OFC supervisors and the impressions of a wide range of onshore supervisors at a particular point in time. The categorization does not constitute judgments about any jurisdiction’s adherence to international standards.”

III. SUMMARY OF OBSERVANCE OF FINANCIAL SYSTEM STANDARDS AND CODES

A. Basel Core Principles for Effective Banking Supervision

General

30. With the concurrence of the CBS and the staff of the SOFC, the mission assessed compliance with the Basel Core Principles for Banking Supervision using the Core Principles Methodology. In the case of offshore banks, the assessment considered the SOFC's self-assessment of compliance with the Core Principles. For both domestic and offshore assessments, the mission reviewed the relevant laws and regulations; interviewed staff of the CBS, MLA, and SOFC; and held discussions with representatives from the trustee companies and onshore and offshore banks.

31. The laws reviewed for the purposes of this assessment include:

The Financial Institutions Act 1996;
Offshore Banking Act 1987;
International Insurance Act 1988;
International Companies Act 1987; and
The Central Bank of Samoa Act 1984.

Institutional framework

Domestic banking sector

32. There are three licensed banks operating in Samoa, all of which are locally incorporated. The two largest are subsidiaries of major Australian banks and the third is a locally owned institutions. Total assets of the commercial banks at end March 2002 were SAT 440 million of which SAT 290 million comprised loans and advances. Deposits at the same date were SAT 350 million giving a loan-to-deposit ratio of 83 percent. The average capital ratio for the commercial banks at end-March was 25.6 percent. Total past due loans represented 2.7 percent of the loan portfolio and past due loans less specific provisions 3.5 percent of capital. Liquid assets represented 10.9 percent of domestic deposits. The commercial banking system is very profitable with system profits in the six months to March representing an annual return on net worth of around 26 percent and 4.3 percent on assets.

33. Besides the commercial banks there is a development bank that does not take deposits. Its assets at end-March were SAT 75 million of which loans made up SAT 60 million. According to the bank, its risk-weighted capital ratio during the same period was 38 percent. Total past due loans, net of specific provisions, represented around 17 percent of capital. Another significant player in the financial sector is the National Provident Fund that had assets at end March of SAT 240 million. Investments, mainly in the domestic market, represented SAT 140 million with another SAT 40 million of claims on the domestic banking sector and SAT 50 million of fixed assets. There are between 20 and

30 credit unions registered with the Credit Union League and licensed with the domestic Registrar of Companies. Their assets at end-2001 were less than SAT 4 million. There are four insurance companies operating in Samoa, some of which make loans. In addition there are several foreign exchange dealers and money lenders. The Development Bank, National Provident Fund, and the insurance companies were brought under central bank supervision in 2001.

Offshore banking sector

34. There are eight offshore banks operating in Samoa. The majority of these have a B2 license, under which they may not accept deposits from the public. They are primarily used for tax planning purposes and to carry out in-house treasury functions for their parent companies.

35. Two offshore banks maintain offices in Samoa that hold records and accounts. The remaining six offshore banks just have offices that are registered with trustee companies (company service providers). The trustee companies also provide directorship to such banks.

36. At the end of 2001, assets of offshore banks accounted for roughly 40 percent of GDP.

General preconditions for effective banking supervision

37. The land tenure system in Samoa represents a constraint in terms of enterprise financing since the freehold land—which is the major type of collateral required by banks—account for only about 4 percent of the land, while the largest part, about 80 percent of the land, is customary land, and the rest is government-owned. The laws and the court system, however, allow banks to promptly take possession of real property security on defaulting loans. There is a system for the registration of banks' ownership interests in motor vehicles but there is a need for a register of encumbered vehicles. The court system is regarded as sound with legal firms of sufficient quality. The availability and reliability of financial data varies greatly but the new Companies Act is encouraging businesses to prepare statements within a specified time. There is an active professional body of accountants in Samoa and international accounting standards are generally the norm. There is no deposit insurance in Samoa and depositors are treated as general creditors.

Summary assessment

Objectives, Autonomy, Powers, and Resources (CP 1)

Domestic banking sector

- The FIA governs banking business in Samoa. This activity can be undertaken only by financial institutions, consisting of banks and credit institutions, licensed by the CBS, which is the sole supervising authority. The FIA and the Central Bank of Samoa Act

(CBSA) provide the CBS with a broad range of powers relating to the licensing of financial institutions, ongoing supervision, enforcement, and remedial action. A Board of Directors, which includes the Governor as Chairman, is responsible for the policy and general administration of the CBS.

- The FIA provides the CBS with operational independence and powers to carry out its mandate, including legal protection to staff while discharging their duties in good faith. There are five professional staff in FID headed by a manager who is an accountant with considerable experience in the job. Additional staff will be needed with the addition of responsibility for supervision of nonbanks and anti-money laundering activities.
- There is no explicit protection in relation to costs of supervisory staff in defending their actions. However, the CBS has obtained legal advice that staff costs are covered under the common law doctrine of vicarious liability.

Offshore banking sector

- Under the Offshore Banking Act (OBA), the Minister of Finance is responsible for the granting and renewal of offshore banking licenses. In addition, the Minister is empowered to take a series of corrective actions against licensed banks. The Inspector of Offshore Banks is charged with the responsibility of regulation and supervision.
- While not specifically provided in the offshore legislation, the Minister is in practice advised by the Steering Committee on all regulatory and supervisory matters. The committee comprises the Inspector/Registrar, the Governor of the CBS, the Financial Secretary, and the Attorney General.
- The OBA provides immunity to the Minister and other officials involved in offshore banking matters from any legal actions with respect to acts done in good faith. Under the common law principle of vicarious liability, the government as employer would ultimately be responsible for such acts.
- While the OBA allows the Inspector to exchange information with foreign banking supervisors for supervisory purposes, the current law limits access to customer information, which adversely restricts supervisory ability.

Licensing and Structure (CPs 2–5)

Domestic banking sector

- Permissible activities of licensed financial institutions, which consist of banks and credit institutions, are properly delineated. The use of the term “bank” is limited to those licensed by the CBS.

- General licensing requirements are outlined in the FIA. Guidelines issued by the CBS for establishing a bank and/or undertaking banking business in Samoa draw together and elaborate on the matters set out in legislation, such as the application of the fit and proper criteria to directors and management. This particular criterion for licensing, however, is not consistently applied to ongoing changes in directors and management. In addition, there is reason to doubt whether the CBS is permitted under the FIA to consider matters it deems relevant in relation to applications that are not specified in the legislation.
- Prior approval of the CBS is required for acquisition/transfer of control (defined as ownership of 20 percent or more of the voting shares in a licensed financial institution—LFI). There are no similar provisions in relation to dispersion of control which results in the holding of less than 20 percent of the voting stock.

Offshore banking sector

- The definition of banking business under the OBA is broadly defined and covers not only the acceptance of deposits but also treasury functions and in-house banking operations carried out by B2 banks. Unlicensed offshore banking is prohibited.
- The criteria for issuing licenses are clear. The current OBA does not provide for fit and proper criteria to be applied in the management selection process, although they are a factor considered in the licensing process.
- Banks are not required to maintain a physical presence.
- The minimum capital required is US\$10 million for an A-class bank, US\$2 million for a B-class bank and US\$250,000 for a B2-class bank.
- At present, no review is done of major bank acquisitions or investments.

Prudential Regulations and Requirements (CPs 6–15)

Domestic banking sector

- A set of nine prudential statements outlines the CBS approach to banking supervision. These indicate that the ultimate responsibility for the affairs of a bank resides solely with the board of directors and management of the bank. The CBS focus has been on establishing broad principles of prudent management and, in most cases, the prudential statements do not provide detailed minimum requirements. Prudential statements cover capital adequacy, asset concentration and risk exposures, liquidity, connected lending and direct ownership interests, asset quality and related issues (including provisioning for losses) and foreign currency exposures. There are no specific requirements in relation to interest rate and operational risks.

- Reflecting the conditions and risk environment in small developing economies like Samoa, a minimum risk-weighted capital adequacy ratio of 15 percent has been set, which is well above the 8 percent minimum established in the Basel Capital Accord. The 25 percent limit on large exposure, including connected lending, is within international standards. While the CBS does not set a reporting threshold for exposures of 10 percent of capital, the smallest of the top ten exposures reported each quarter is currently well below this level. As an additional safeguard, more stringent limits could be considered in relation to unsecured loans to connected parties as well as aggregate ceilings on the overall level of large exposures and connected lending.
- The CBS has lifted liquidity requirements, but active monitoring of positions would be beneficial. After a review of banks' internal foreign currency net open position limits, the CBS has agreed with banks that they will observe these limits.
- Significant progress has been made on anti-money laundering and related issues although regulations and guidelines still have to be finalized and issued to fully implement the Money Laundering Prevention Act.

Offshore banking sector

- Prudential regulations are generally lacking. This reflects the fact that the majority of offshore banks are B2-class banks that do not accept deposits from the public and are primarily used for tax planning purposes and/or to carry out in-house treasury functions for their parent companies. The Inspector has not undertaken any comprehensive review of the individual bank's risk management process.
- The OBA prohibits unsecured advances or loans in aggregate amounts in excess of US\$5,000 or 1 percent of the paid-in capital, whichever is greater, to connected borrowers.
- In the supervision of the offshore banks, the Inspector relies heavily on the bank auditors and has not undertaken comprehensive review of the internal control or accounting and auditing systems of offshore banks.
- Although A- and B1-class banks that can accept deposits from the public are required to file their customer due diligence policies and procedures, there is no effective mechanism in place for securing implementation of anti-money laundering (AML) measures for offshore banks that have no physical presence.

Methods of On-going Supervision (CPs 16–20)

Domestic banking sector

- The FIA enables the CBS to supervise banks using on-site and off-site supervision techniques. Off-site supervision in FID is basically in place but upgrading of staff

skills in this regard, through training and introduction of a few extra returns, would enable a more comprehensive and in-depth review of the risks assumed by banks. Write-ups and reports on the results of off-site supervision are submitted to management on a quarterly basis and as required. Aggregate data/information on the industry is published in the Central Bank Bulletin and annual report.

- At present, the FID does not conduct on-site examinations to complement off-site supervision. On a number of occasions, external auditors have been used to independently confirm the reliability of data. The Governor recognizes the merits of on-site supervision and plans are under way for FID staff to be trained in this regard with the assistance of banking supervision experts from donor agencies/countries.

Offshore banking sector

- The Inspector has the power to inspect accounting records, registers of shares, records of transactions, and any other records kept by offshore banks. In conjunction with the external auditors, the Inspector has to date carried out two on-site inspections of offshore banks to verify supervisory information; however, the on-site visits at offshore banks or at registered offices within the company service providers may not be effective, since the mind and management are not located in the jurisdiction.
- Similarly, regular communication with officers of the licensed trustee companies, who are directors of many of the offshore banks, may not be effective bank management contact.
- The Inspector relies heavily on external auditors to validate supervisory information.
- The inability to access customer information without a court order also limits the effectiveness of supervisory procedures.

Information Requirements (CP 21)

Domestic banking sector

- Maintenance of adequate and effective accounting systems are a requirement of FIA and PS as well as the Companies Act. Annually, the CBS obtains audited financial statements from LFIs, along with any notes thereon. These must be published within four months of balance date in a newspaper circulating in Samoa. In the absence of a prescribed format, the presentation and information content of published statements vary.
- Prudential Statement No. 10, which has been drafted and sent to banks for comment, expands on the relationship between banks, their external auditors, and the CBS. This PS outlines the approach of the CBS to the role of external auditors and requires, among other things, confirmation of the accuracy and reliability of reports submitted

to the CBS, as well as assessment of compliance with prudential requirements, including minimum capital adequacy ratio, large exposures, asset quality and performing loans and net open positions in foreign exchange. Compliance with requirements for connected lending, are not specifically mentioned in PS 10.

- Other PSs require that financial information be based on generally accepted international accounting standards and provide valuation rules for loans, including minimum provisioning levels. Communication lines between the CBS and external auditors work both ways, as needed. However, the external auditor is required to inform the licensed financial institution (LFI) before disclosing information to the CBS. Secrecy and confidentiality rules are in place in relation to information obtained by the CBS and its staff but there is scope to share information on a consolidated basis with other supervision authorities outside Samoa.

Offshore banking sector

- Offshore banks must prepare audited accounts, although there is no explicit requirement that banks comply with international accounting standards.
- Offshore banks are not required to publish annual accounts or reports. The only information publicly available is the banks' names and their registered offices.²²

Formal Powers of Supervisors (CP 22)

Domestic banking sector

- Where remedial action needs to be taken, the CBS has a broad range of powers, including revocation of a banking license. In addition, the Attorney General is empowered to institute proceedings to prevent and restrain any breach of the Act and to prosecute offenses. These powers, however, do not include taking control of an LFI, which requires a court order. This procedure could hinder timely implementation of remedial action.

Offshore banking sector

- The authorities have adequate formal powers and the authority to take action against a bank, if deemed necessary. Remedial actions that can be taken by the authorities range from directions and the appointment of an advisor to the appointment of a

²² The International Companies Act 1987 requires that trustee companies display at their principal offices the names of the international business companies that are registered office at their address. The Registrar can also make available an index of international business companies and their registered offices.

manager or the cancellation of a license. With the exception of the cancellation of a license, the lack of a physical presence may render these ineffective in practice.

Cross Border Banking (CP 23–25)

Domestic banking sector

- Consolidated supervision and arrangements with host country supervisors are not relevant to Samoa at this time as LFIs have no branches or subsidiaries outside Samoa. All offshore offices require prior approval from the CBS.
- Samoan operations of foreign banks are carried out through subsidiaries which are subject to the same supervisory regime as domestically owned banks. Licensing criteria include a requirement that a parent bank be subject to consolidated supervision and that a written confirmation be obtained.

Offshore banking sector

- There are no subsidiaries of offshore banks operating within Samoa. In the case of offshore banks, where mind and management is located outside Samoa, it is essentially impossible to determine what may be occurring in other jurisdictions.

Recommendations

Domestic banking sector

38. Samoa has been undertaking off-site supervision of domestic banks for over a decade and has developed a range of Prudential Statements that support the legislative framework. The supervisory approach should be further developed to ensure that all risk areas of banking are covered and appropriate benchmarks established. The mission recommends the following:

- Strengthening of legislative powers in relation to licensing and supervision to ensure that the supervisor's scope for action is not inhibited when remedial measures are required, that all relevant matters are considered in license applications, and finally that all changes in control are vetted by the supervisor;
- Development of more specific policies in a number of areas including connected lending, fit and proper tests and risk management systems;
- Introduction of new prudential returns and other information requirements for connected lending, country exposures, maturity profile, credit grading and interest rate exposures;

- Building up a capacity to undertake on-site examinations and conducting more in-depth off-site analysis;
- Development of a plan for more targeted use of external auditors; and
- Establishment of closer links with other supervisors.

Offshore banking sector

39. The mission has the following key recommendations:

- Do away with the limitation on the authorities' access to customer information.²³
- Require explicit fit and proper criteria for selecting management as a licensing condition.
- Develop an ability to effectively implement the on-site visits at offshore banks or at registered offices within the company service providers.
- Require all offshore banks to establish a real presence with mind and management within the jurisdiction or face removal of banking license. There is an emerging consensus that such banks cannot be supervised properly in accordance with the Basel Core Principles or from an AML perspective. See Section III.B.
- Require the same supervisory and regulatory standards for offshore banks as those applicable to domestic banks.

²³ The mission notes that the International Banking Bill, which has just received Cabinet approval, contains a number of measures to strengthen the supervision of the offshore banks. In particular, these include: (1) additional powers of the inspector to conduct on-site examinations and to access all bank records, including customer account information; (2) additional gateways to foreign and domestic banking supervisory authorities, to a domestic or foreign agency responsible for the prevention and suppression of terrorism, to the MLA, and to any other like regulatory authority; (3) requirement that every director, controller, or manager of a company meet the fit-and-proper criteria necessary to hold that position; (4) requirement to obtain Inspector's approval for the appointment of a chief executive, as well as any director; (5) requirement that every bank should have at no time fewer than two directors; (6) empowering the Inspector with the responsibility of conducting on-site and off-site supervision by way of the receipt of regular returns or in such manner as he deems necessary; (7) requirement for auditors to report any criminal offence involving money laundering to the inspector; (8) empowering the Minister of Finance to present a petition to the court for the winding-up of a licensee, in appropriate circumstances.

- To aid transparency, have the SOFC list the names of all banks and preferably also the IBCs operating in or from the jurisdiction on the SOFC website (<http://www.samoaoafc.ws>), since there is already a legal requirement for all IBCs' names to be listed by trustee companies.

B. Assessment of Anti-Money Laundering Measures

General

40. The laws reviewed for the purposes of this assessment include:

The Money Laundering Prevention Act 2000;
The Financial Institutions Act 1996;
Offshore Banking Act 1987;
International Insurance Act 1988;
International Companies Act 1987;
Prevention and Suppression of Terrorism Act 2002;
Trustee Companies Act 1987;
Criminal Procedure Code; and
Extradition Act.

41. Regulations under the Money Laundering Prevention Act 2000 have been drafted and are in the final stages of approval. Guidelines under the Act have also been drafted and await the approval of the Regulations before they are issued.²⁴

Institutional framework

42. Section 10 of the MLPA creates the MLA. The Act provides that until such time as the Minister of Finance makes an alternative designation, this function is fulfilled by the Governor of the CBS or any person so authorized by him. (From discussions with the Governor, there is currently no prospect that the Minister will make an alternative designation.) The Governor has delegated the powers and functions of the MLA to the Deputy Governor, the head of the FID, and the staff of that department.

43. The powers of the MLA include the power to receive suspicious transaction reports issued by financial service providers and to send any such reports to the Attorney General and the Commissioner of Police if, having considered the report, the MLA has reasonable grounds to suspect that the business transaction involves proceeds of crime or that a money laundering offense is being, has been or is about to be committed. However, the MLA has no specific power to analyze suspicious transaction reports received.

²⁴ The mission was subsequently informed that Money Laundering Regulations 2002 were signed by the Head of State of Samoa and became effective on October 15, 2002.

44. Although the MLA currently has the power to receive and disseminate suspicious transaction reports required to be made by financial service providers, which are two of the three fundamental powers of a financial intelligence unit (FIU), the MLA is not and has never been operational as an FIU in terms of exercising the power of an FIU or performing the full range of FIU functions. It is the current intention of Samoan authorities to widen the powers and functions of the MLA to include the full range of powers and functions performed by an FIU and have these functions and powers exercised by the FID of the CBS.

45. The Police Department is responsible for investigating money laundering offences while the Attorney General is responsible for the prosecution of such offenses as well as being the authority having responsibility for international cooperation on money laundering matters. The Customs Department enforces the control of the carriage of cash and negotiable instruments into and out of Samoa.

Legislative framework

46. Samoa's primary anti-money laundering legislative regime is contained in the MLPA, introduced in June 2000 and the Prevention and Suppression of Terrorism Act 2002. The MLPA requires record keeping; the reporting of suspicious transactions; overrides all secrecy and confidentiality provisions for disclosures pursuant to the Act, criminalizes money laundering; and provides for forfeiture of the proceeds of crime and other provisional measures such as the freezing and seizure of assets, the issuance of property tracking and production orders and international cooperation in money laundering offenses. The MLPA also provides for the appointment of a Money Laundering Authority that is empowered to exercise some of the powers of an FIU.

47. The financial service providers covered under the MLPA include the domestic banks, offshore banks, money remitters, accountants, and lawyers.

48. The Prevention and Suppression of Terrorism Act 2002 criminalizes the financing of terrorist acts and provides for the freezing and forfeiture of funds and proceeds used for the financing of terrorist acts. The Extradition Act provides for extradition of criminals.

49. The Financial Institutions Act 1996 also provides for the retention of checks, bank drafts, bills of exchange, or promissory notes by domestic banks for a period of seven years.

50. The passage of the MLPA and the Governor's role as the MLA and the drafting of the Regulations and the Guidelines have been the first steps toward establishing an AML regime in Samoa. Some efforts have been made by the MLA toward creating an awareness of the provisions of the MLPA since its enactment in 2000. Since the passage of the MLPA, some progress has been made by the MLA and the Attorney General's Office toward fulfilling their roles, particularly with regard to the promulgation of regulations and the issuing of guidance notes to financial service providers, but the Police and Customs Services, which are the principal agencies charged with investigating money laundering offenses, at this stage have little capacity to respond to money laundering issues in that they lack the expertise,

skill, and experience to deal with such issues. Considerable further effort by the authorities is needed for the effective implementation of the MLPA.

51. The MLPA is based on an old model and parts of it now fall short of currently acceptable international standards. The AML legislative regime is fragmented in that the substantive provisions for the AML legal framework are spread across the MLPA the draft Regulations and the draft Guidelines for Financial Institutions. Some of the provisions of the draft Guidelines are inconsistent with the MLPA and the draft Regulations, some of the provisions in the draft Regulations are substantive provisions that need to be in the MLPA, while other provisions in the draft Regulations go beyond the scope of the MLPA. There is a need for consolidation into an enabling Act with process, interpretative and clarification issues being dealt with in the Regulations and Guidelines.

52. Samoa has strengthened its AML framework by the passage of the Prevention and Suppression of Terrorism Act 2002.

Criminalizing money laundering and the financing of terrorism

53. Money laundering is criminalized as a separate offense in Section 3 of the MLPA. The offense is committed when a person engages directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime, or by receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into Samoa any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime.

54. It is not necessary that a person be convicted of a predicate offense to convict any person of laundering the proceeds of such offenses. Money laundering extends to all serious offenses where the punishment is death or imprisonment of not less than 5 years but excludes tax and exchange control offenses.

55. The offense of ML applies to knowing or having reasonable grounds for believing the same to be the proceeds of crime. The concept that knowledge may be inferred from objective factual circumstances is not specifically included. In addition to physical persons, entities (e.g., companies, foundations) are held legally accountable for money laundering.

56. The financing of terrorism is dealt with in the Prevention and Suppression of Terrorism Act 2002. This Act criminalizes various specific acts including terrorist bombing, hostage taking, attacks against Internationally Protected Persons, unlawful seizure of aircraft, violence at airports and seizure of ships. The financing of such terrorist acts is also an offense. The Act provides for the seizure of funds intended or used to finance terrorist acts, creates an offence of assisting the financing of terrorist acts, and allows for the arrest and extradition of suspected foreign terrorists.

57. The Act does not specifically define general terrorist acts or terrorist organizations nor does it criminalize the financing of terrorist organizations.

58. The Vienna Convention, the Convention for the Suppression of the Financing of Terrorism and the Palermo Convention have not been signed and ratified.²⁵

Recommendation

- Amend the MLPA so that the standard in the money laundering offense includes that of “ought reasonably to have known” and to include the concept that knowledge of the offense can be derived from objective factual circumstances.
- Ratify the Vienna Convention, Suppression of Financing of Terrorism and Palermo Conventions.²⁶

Confiscation and Other Provisional Measures

59. Section 21 of the MLPA provides for the forfeiture of any property of, or in the possession or under the control of, a person convicted of money laundering. There is no provision for the forfeiture of instrumentalities of the offense. In determining whether or not any property is derived from money laundering the standard of proof required in civil proceedings is applied.

60. The power to forfeit property is limited to forfeiting property that is owned by or in the possession of any person convicted of a money laundering offense or any property which is the property of, or in the possession or under the control of that person and alleged to be the proceeds of crime. There is no power to directly forfeit proceeds where a person is convicted of a predicate offense or property that is used in the commission of the offense, or property that is derived from the unlawful activity that had not been frozen.

61. There is also no provision for the confiscation of benefits and no specific provision allowing the confiscation of property of equivalent value where the property to be forfeited is not available.

62. The MLPA provides for other provisional measures such as freezing, property tracking, and monitoring orders.

63. Adequate legal safeguards are provided to protect the property and due process rights of owners of frozen or seized assets and other third parties who have an interest in the property.

²⁵ The mission was subsequently informed that in October 2002, the Samoan authorities approved the ratification of 1988 Vienna Convention.

²⁶ See the previous footnote.

Recommendations

- Amend the MLPA so that the power to issue a search warrant extends to all predicate offenses.
- Amend the MLPA to include a general forfeiture provision that would include the power to forfeit instrumentalities used in the commission of the offense; proceeds of predicate offenses as well as property that is derived from a money laundering or predicate offense whether or not it has been frozen.
- Introduce provisions for confiscation of benefits by means of a pecuniary penalty order.
- Amend the MLPA to include the power to make a penalty order equivalent to the value of the property to be forfeited where the property to be forfeited is not available.

Financial service providers

64. The term “financial institution” is broadly defined²⁷ and covers most financial service providers active in Samoa, however it is not particularly specific as to the coverage of offshore entities (such as offshore trusts and insurance companies) other than offshore banks. Trust business is covered but as trustee companies are company service providers, they may not be covered within the ambit of the MLPA. Money remitters are covered but not money changers.

²⁷ Financial service providers are defined as financial institutions in the MLPA. Financial institutions are those that carry on the following activities: “banking business” as defined in the CBSA 1984 and the Offshore Banking Act 1987; “Offshore banking business” as defined in the Offshore Banking Act 1987; finance leasing; venture risk capital; money transmission services; issuing and administering means of payment (e.g., credit cards, traveler’s checks and bankers’ drafts); guarantees and commitments; trading for own account or account of customers in:- money market instruments (checks, bills, certificates of deposit, etc.); foreign exchange; financial and commodity based derivative instruments (e.g., futures, options, interest rate and foreign exchange instruments, etc.); exchange and interest rate instruments; and transferable or negotiable instruments; underwriting share issues and the participation in such issues; money broking; investment business; insurance business transactions; real property business transactions; bullion dealing; casinos and other gambling and betting services; acting as a financial intermediary; trust business; certified public accountants; lawyers (barristers and solicitors). The definition also includes any other activity determined by the Minister of Finance.

65. Lawyers and Certified Public Accountants are defined as “financial institutions” in the MLPA. However there is no clarification of what part of a lawyer’s or accountant’s practice is covered and there are no provisions dealing with the issue of legal professional privilege.

Recommendations

- Amend the definition of financial institution so that all offshore entities—and specifically trustee companies—are included in the definition.²⁸

Customer Identification

66. The only customer identification provision in the MLPA is in Section 42 which provides for the making of regulations in relation to identification procedures and systems in financial institutions covered by the Act. There is no legal requirement in the MLPA for general customer identification and verification. There are requirements for financial service providers to develop internal policies; procedures and controls to combat money laundering and develop audit functions to evaluate such policies.

67. There is no prohibition on false name or anonymous accounts in the legislation.

68. The implementation of customer identification requirements for offshore entities that do not maintain records within Samoa will be difficult.

69. Financial service providers are not required to include originator information and related messages on funds transfers.

Recommendations

- Widen the scope of the MLPA to require customer identification and verification requirements for all new business relationships and remove the SAT 30,000 threshold (about US\$9,000).
- Amend the MLPA to prohibit anonymous and false name accounts in the legislation.
- Introduce enabling provisions into the MLPA so the main substantive provisions relating to customer identification and verification, record keeping and retention and suspicious transaction reporting are included.

²⁸ An amendment to the Schedule of “financial institutions” under the MLPA, which would specifically include trustee companies, has been drafted and is expected to be promulgated shortly by the Minister of Finance.

- Include a requirement in the MLPA that financial institutions should include originator information on funds transfers that should remain throughout the payment chain and that funds transfers without originator information should be refused and reported as suspicious transactions

Record keeping

70. The requirement to retain records of business transactions by financial service providers is subject to a threshold of an amount exceeding SAT 30,000 (about US\$9,000). Such records are to be retained for seven years after the transaction has terminated. Section 22 of the Financial Institutions Act 1996 requires that all checks, bank drafts, bills of exchange or promissory notes in the possession of a bank shall be retained for a period of seven years from the date in the case of documents payable on demand and from due date for all other documents, these records can be kept on microfilm, microfiche, tape or disc or electronic or photographic storage media.

Recommendation

- Amend the MLPA to impose record keeping requirements for all transactions and remove the SAT 30,000 threshold.

Compliance process

71. Currently, the power to enforce compliance with the MLPA rests with the MLA. The Registrar of International and Foreign Companies supervises offshore entities and the FID of the CBS supervises domestic banks. To date the MLA and the supervisors have not undertaken any on-site verification of compliance with AML requirements.

72. The authorities plan to widen the membership of the MLA to include the Registrar of International and Foreign Companies and have the compliance aspects of the MLPA enforced by the Registrar in relation to offshore entities and by the FID in the case of domestic banks. The MLA would have the responsibility to ensure compliance by all other financial service providers.

73. The current lack of on-site verification of compliance with AML requirements will be improved with the adoption of the above measures in conjunction with the issuing of the Guidelines for Financial Institutions and the Regulations, which set out in greater detail the responsibilities of financial service providers, provided the Guidelines and Regulations are issued as currently drafted.

Integrity Standards

74. Pursuant to the Offshore Banking Amendment Act 1998, the Office of the Inspector of Offshore Banks has to ensure that any prospective director is a fit and proper person before providing written approval of their appointment. The approval of a director may be subsequently revoked by the Inspector with the Minister's approval. These provisions are not

reflected in the Trustee Companies Act 1987 and the International Insurance Act 1988. There are also provisions requiring prior written approval of the Regulator for the transfer of shareholdings in offshore banks, insurance and trustee companies. There are no common provisions in all the regulatory laws for fit and proper tests for controlling shareholders, management, and directors.

75. There are no requirements in the law preventing shell companies, charitable, or not-for-profit organizations from being used for criminal purposes.

Recommendations

- Introduce common provisions in all the regulatory laws requiring that shareholders and directors of financial service providers comply with “fit and proper” requirements and preventing serious criminals from controlling financial service provider businesses.
- Introduce provisions to prevent the use of shell corporations, trust businesses, charitable or not-for-profit foundations or other similar entities being used for criminal purposes.

Process of collecting, analyzing, and disseminating financial information and intelligence

76. Financial service providers are required to report to the MLA any business transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that business transaction give any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves the proceeds of crime. However the MLPA takes no account of attempted transactions.

77. The MLPA provides protection from both civil and criminal liability for disclosures relating to potential money laundering offenses to the MLA provided that such reports are made in good faith.

78. There is no provision for the making of suspicious transaction reports by external auditors or financial regulators.

79. No confidentiality or secrecy law or agreement prevents effective transaction reporting or monitoring by competent authorities, and financial service providers (including, where relevant, their directors, officers, and employees).

80. Financial service providers (including where relevant their directors, officers and employees) are prohibited from warning (tipping off) their customers when information relating to them is being reported to the MLA.

81. The MLA is not yet performing the full functions of an FIU.

Recommendations

- Widen the “tipping-off” provisions of the MLPA to clarify how suspicious transaction information can be dealt with prior to and subsequent to a report being made in a similar fashion as stipulated in the guidance notes.
- Amend the MLPA to require the reporting of attempted suspicious transactions.
- Widen protections to include identity of persons making suspicious transaction reports and of the reports themselves particularly relating to their possible production in judicial proceedings.
- Introduce explicit provisions in the MLPA permitting or requiring the regulatory agencies and auditors to report suspicious activity and granting immunities and protections for making such reports.
- Amend the MLPA to afford protection from compulsory legal process and suits for the FIU (when established) and others dealing with financial information reported to the MLA/FIU. The same protections should also extend to the information itself. The MLPA should provide immunity for the MLA, the FIU (when established) and their employees against civil suit.
- Amend the MLPA to remove the requirement for reports to be referred to the Attorney General and the Commissioner of Police and allow the FIU to forward them directly to the appropriate enforcement agency.
- The investigative powers relating to property tracking and monitoring orders in the MLPA that are currently vested in the MLA should be transferred to the Police or the Attorney General.
- Amend the MLPA to afford the MLA with the full range of powers and functions of an operational FIU, including the power to analyze information and to exchange information with foreign FIUs and law enforcement agencies.
- Once the legal basis for the FIU is in place or simultaneously with the process of putting the legal basis in place the following administrative and operational steps should be taken toward properly establishing the FIU.
- Provide a governance structure and establish clear reporting lines for administrative purposes and identify an officer or officers within the FID who will carry out the FIU functions.
- The compilation of a set of standard operating procedures, an operations manual, or at least a desk file setting forth the routine operation of the unit. This should include as a minimum:
 - Procedures for recording incoming information;
 - A basic analytical process to be applied to incoming information;
 - Confidentiality procedures for handling information;

- Procedures for handling incoming inquiries and requests for assistance;
- Procedures for dissemination of information from the FIU;
- The establishment and maintenance of relationships with client organizations including regular feedback to reporting institutions, filing system, and secure filing facilities;
- Procedures for database use, control, and security;
- The provision of secure office space and appropriate office equipment;
- The provision of suitable computer equipment and operating software;
- The provision of a suitable database with at least basic analytical capability;
- The provision of access to appropriate law enforcement databases/records;
- Where possible, the provision of access to commercial “due diligence” type databases such as Dunn and Bradstreet, Baynet, etc.;
- The provision of training for the FIU staff; and
- The compilation of an action plan setting timely dates for achieving goals, in addition to a financial plan for achieving the above.

International cooperation

82. The competent authority for overseas requests for assistance is the Attorney General.

83. There are provisions for mutual assistance for the obtaining of search warrants, property tracking, and monitoring orders, freezing and forfeiture of property and evidence orders. There are no provisions for informal or “ad hoc” mutual assistance.²⁹ The circumstances in which mutual assistance is given is solely dependent on what is agreed upon in any treaties or arrangements signed.

84. International cooperation is limited to cooperation in relation to money laundering offences.

85. The sharing with other countries of confiscated property is allowed.

86. There are provisions enabling extradition for money laundering purposes and for financing of terrorism.

²⁹ In 2001, however, the Samoan Government, through the Attorney General’s Department and the MLA, assisted the US authorities in freezing and repatriating over 14 million USD, which were the proceeds of crime.

87. In terms of financial regulators' ability to co-operate with foreign counterparts the legal provisions are varied. Under the Financial Institutions Act, the CBS may exchange information "in confidence" with foreign regulators without further restriction. Under the Offshore Banking Act, the Registrar of International and Foreign Companies, acting in his/her capacity as the Inspector of Offshore Banks, may also exchange information, but with the proviso that no details may be provided of the affairs of individual customers. In the other offshore regulatory laws (with an exception of the International Insurance Act 1988) the Registrar has no gateway for international co-operation.

Recommendations

- Enable ad hoc judicial cooperation to take place without the prior condition of entering into a mutual assistance arrangement.
- Introduce procedures dealing with the extradition of individuals charged with money laundering or a related offense and to permit prosecution domestically when the individual is not extraditable.
- Extend the scope of the mutual assistance provisions to cover all criminal offenses.

Monitoring and controlling cash transactions

88. Matters relating to international wire transfers transactions are not provided for.

89. Reports of domestic cash transactions over SAT 30,000 (about US\$9,000) are required by Samoa's Foreign Exchange Regulations, also all cross border transactions over SAT 30,000 (about US\$9,000) are required to be reported on weekly basis by onshore banks. These reports are not sent to the MLA. Authorities are considering extending this requirement to money remittance businesses as well.

90. The MLPA imposes a requirement that all imports and exports by travelers of SAT 10,000 (about US\$3,000) or the equivalent in foreign currency or negotiable instruments be reported.

Other issues

91. Regulations to be issued pursuant the MPLA and Guidelines for financial institutions have been drafted but are not yet in effect.

92. There is currently no general Asset Forfeiture (Proceeds of Crime) or Mutual Legal Assistance legislation in Samoa. There are limited provisions in the MLPA only. Samoa should consider a separate Financial Transactions Reporting Act and move the money laundering offense into a Proceeds of Crime Act or Crimes Act. The passage of a Financial Transactions Reporting Act, or amendments to the MLPA as well as comprehensive proceeds of crime and mutual assistance in criminal matters legislation would provide Samoa with a comprehensive AML/combating of financing of terrorism (CFT) legislative framework.

Recommendation

- Amend the MLPA to ensure that the FIU, once established, receives weekly reports regarding cash transactions involving over SAT 30,000 and cross border transactions.

IV. OTHER RELEVANT ISSUES

A. Company Service Providers

Background

93. As discussed in Section I of this report, the business of company registration and administration is an important part of offshore business in Samoa. The company service provider (CSP) sector is governed for the most part by the Trustee Companies Act 1987 (TCA)³⁰ and Trustee Companies Regulations 1992. Only a registered trustee company can (a) act as a company formation agent; (b) provide registered offices or directors, officers, or nominee shareholders for international companies; (c) act as a trustee of an international trust; and (d) register or file documents with the Registrar of International and Foreign Companies.

94. There are currently six registered trustee companies in Samoa, which have incorporated and provide services to 7,553 IBCs. Five of them are subsidiaries of established trustee/financial services companies, whose parent companies are located in Hong Kong, Singapore, or Bermuda and have additional subsidiary trustee/financial services companies in other major offshore centers. One trustee company is locally owned as a subsidiary of a government body. It was formed to promote the registration of international companies owning vessels registered on the Samoa Bareboat Registry. With one exception, each trustee company has an office in Samoa with at least one manager with a legal/accounting background and up to ten local staff members.³¹

Key features of the regulation and supervision of trustee companies

Licensing regime

95. According to Section 5 of the TCA, in order to set up a trustee company, an investor is required to submit an application form to the Minister of Finance through the Registrar of International and Foreign Companies with the prescribed fee. If its head office or registered office is outside Samoa, it must designate a principal office in Samoa and two authorized agents who are subject, in their personal capacity, to the jurisdiction of Samoa.

³⁰ Amended in 1988, 1990, and 1998.

³¹ One trustee company does not maintain a physical office in Samoa but uses the offices of another trustee company to provide services.

96. Although the legislation uses the word “registration,” the licensing regime for CSPs is relatively rigorous. In fact, the Minister of Finance may grant registration to a company to carry on business as a trustee company “subject to such terms and conditions, if any, as he may deem fit” (Section 6 of the TCA). The license must be renewed annually.

Fit-and-proper criteria

97. There is no specific requirement to assess directors, officers, managers, controllers, shareholders, and beneficial shareholders by the “fit and proper” criteria in the TCA. However, the application form for registration to carry on business as a trustee company requires the directors of the company, its officers, managers, shareholders, and beneficial shareholders to notify whether any of these persons: (i) have been declared bankrupt; (ii) have been or are about to be put into receivership or liquidation; (iii) have been an officer or manager of a company that has been or is about to be put into receivership or liquidation; or (iv) have been convicted of any criminal offence involving fraud or dishonesty for which a full pardon has not yet been granted. Also, curriculum vitae and certified copies of any professional qualifications claimed are required to be filed for all individual directors, officers, managers, shareholders, beneficial shareholders, and controllers. All submitted items are subject to vetting and investigation by the Registrar.

98. In addition, Question 19 of the Application form requires references from three independent parties as to the reputation, professional experience, personal and financial good standing of the applicant company, its major shareholders or beneficial owners, officers, managers, and controllers.

Ownership change

99. Section 11 of the TCA provides that any transfer or issue of shares or other securities whatsoever of a trustee company require the written approval of the Minister of Finance. Any such changes are subject to the same due diligence procedure as on an initial application for registration. The TCA also prohibits a trustee company from issuing bearer shares or share warrants to bearer.

On-going supervision

100. Section 8 of the TCA provides the Registrar of International and Foreign Companies with substantial powers to obtain information on the activities of each trustee company. Specifically, the Registrar is entitled to inspect all books, records, vouchers, cash, and securities of any trustee company. The Registrar may also require every trustee company to submit “such information, data, and returns as may be prescribed at such times as may be prescribed.”

101. Despite the significant powers to gather information, the Registrar is relying essentially on off-site analysis of the activities of trustee companies as revealed in the annual audited accounts and the annual reports of these companies. Until August 2002, it has conducted only one on-site inspection of the trustee company’s business.

Enforcement measures

102. Sections 8 (7) and 8 (8) of the TCA set forth a variety of enforcement measures. A trustee company that fails to comply with information requirements or provides false information on its activities is liable on conviction to monetary penalties. Furthermore, if, in the opinion of the Minister of Finance, a trustee company is carrying on business in a manner detrimental to the public interest, he may require the trustee company “to take such steps as the Minister of Finance considers necessary to rectify the matter” or even to cancel the registration of the trustee company.

103. According to Section 9 of the TCA, a trustee company’s license may be cancelled if it (a) has contravened or failed to comply with any condition of registration; (b) is in breach of any provisions of the TCA; (c) has contravened any other law which imposes duties or obligations upon it; or (d) has committed a criminal offence anywhere, and the Minister of Finance considers that it is undesirable that it should continue to be registered. The company has a right to appeal to the Court against a decision to cancel its license.

Financial soundness

104. Section 5 of the TCA requires a trustee company to have capital issued and paid up in cash or unimpaired reserves of not less than SAT 500,000 (approximately US\$170,000) or its equivalent in any approved currency. In addition, every trustee company incorporated outside Samoa shall maintain such minimum level of capital and reserves within Samoa as may be prescribed.

105. According to Section 26 of the TCA, money paid or given to a trustee company pursuant to an instrument creating a trust, shall be held by the trustee company separate from its own moneys in trust for the purposes for which it was paid.

106. Trustee companies are also required to file annual audited accounts, which must be prepared according to international standards by an approved auditor. The auditor’s report and the Annual Report of a trustee company must be submitted to the Registrar.

Anti-money laundering concerns

107. Under the Prevention and Suppression of Terrorism Act 2002 (PSTA), terrorist financing and assisting in the financing of terrorist acts have been made a crime. The PSTA applies to the trustee companies and any Samoan entities that they form. The authorities are of the view that trustee companies are also covered by the obligations and responsibilities—including reporting any suspicious transactions to the MLA—under the MLPA.³² The

³² Trustee companies are included in the list of “financial institutions” covered by the MLPA because the trust business is included in this list. However, the business of CSP is not explicitly included in this list. The definition of “financial institutions” under the MLPA is

(continued...)

Registrar has worked closely with the MLA and the trustee companies themselves in the implementation of the MLPA.

108. As part of the registration process, a trustee company applicant must file a copy of its due diligence procedures to be adopted in screening prospective clients.

109. Each trustee company is in the process of establishing its own policies and procedures to comply with the MLPA Regulations and Guidelines. Pending the formal issuance of the Regulations and Guidelines, some trustee companies have already implemented the recommendations contained in the initial draft Guidance Notes circulated in 2001 or adopted the existing practice of customer due diligence required in the other jurisdictions in which the Group operates (notably the British Virgin Islands, the Cayman Islands, and Mauritius).

Evaluation and recommendations

110. The provision of company services is a major feature of OFC markets. However, since the company formation agents or company service providers do not involve funds of the general public, but rather the activities of wealthy individuals or corporations, assumed to have the resources and information to make independent decisions, these institutions have only relatively recently come under scrutiny for supervisory purposes. The discussions of the appropriate supervisory framework for CSPs have arisen from the fact that the lack of information about activities of these companies could permit them to be used for fraudulent purposes or for money laundering activities.

111. There are no internationally accepted standards for the assessment of practices concerning the regulation of CSPs. A working group of the Offshore Group of Banking Supervisors (OGBS) has recently prepared the Statement of Best Practices for Trust and Company Service Providers.³³ Although the majority of key elements of the legislation and arrangements for prudential oversight of CSPs have long been addressed in Samoa, the mission has the following recommendations as to how the regulation and supervision of the CSPs could be strengthened to minimize the possibility of their being used for any illegitimate purpose:³⁴

expected to be expanded in November 2002, to specifically include the business of trustee companies to include the business of CSP.

³³ The working group also includes representatives from other international bodies such as the FATF and IOSCO.

³⁴ The SOFC is currently preparing amendments to the Trustee Companies Act that will codify the present practice of applying the “fit and proper” test in licensing applications for all directors, managers, shareholders, and controllers. In addition, any changes in directors or management will require regulatory approval. The Act will be strengthened further by requiring on-site inspections by the Registrar of Trustee Companies to monitor compliance
(continued...)

- Trustee companies should require copies of all due diligence material be provided by the introducer when the business is accepted. Currently, trustee companies rely heavily on the concept of eligible introducer with their sister organizations giving undertakings to provide information if it is requested. This is a concept that is under pressure internationally.
- Trustee companies should not accept business from jurisdictions where there is doubt regarding the supervision of the introducer unless the trustee company performs its own independent due diligence. This is especially the case when the introductions come from the legal or accounting profession, where the introducer is not directly subject to anti-money laundering provisions and where they are not subject to formal disciplinary action in the home jurisdiction.
- Trustee companies should conduct an enhanced level of due diligence for all new business transferring to the jurisdiction under redomiciliation. It is not appropriate to consider an organization suitable only because it is currently in good standing with its previous jurisdiction, as good standing may merely mean that the current year's fee has been paid. More detailed enquiries with the regulatory and law enforcement bodies should be made.
- Given that the majority of the trustee companies operating within Samoa are parts of much larger international groupings, the SOFC should consider entering into specific exchange of information agreements with the host country supervisors. In addition, where due diligence is undertaken in other jurisdictions, consideration should be given to on-site visits to those jurisdictions to check compliance with standards from both a supervisory and anti-money laundering perspective.
- Consideration should be given to the adoption of models of corporate governance that include the appointment of experienced nonexecutive directors within the trustee companies in order for them to provide an independent oversight of the operations. This latter element would be seen as particularly important where a trustee company is providing services to banks.
- The Registrar should conduct regular on-site visits to the trustee companies to inspect record keeping, accounting records, due diligence processes, training records, the complaints book, policy and procedures manuals, and application and minute books. In addition, the question of security of records and their back-up and disaster recovery should be reviewed.

with the Act and the provisions of the MLPA 2000. The authorities envision that a Code of Practice for trustee companies—encompassing the recommendations contained in the OGBS Statement of Best Practices for Trust and Company Service Providers—will also be made part of the regulatory regime.

- Consideration should be given to the mandatory introduction of Professional Indemnity cover for all trustee companies.

B. The Future of Banking Regulation

112. There are eight offshore banks operating in Samoa, two of which have offices in Samoa. The remaining six banks do not have physical offices and company service providers provide directorship and registered office for them. Without meaningful mind and management in Samoa, these banks are regarded as shell banks, as they have no physical presence in the country where they are incorporated and licensed. They are not affiliated with any financial service group that is subject to effective consolidated supervision.

113. Currently, the Working Group on Cross-Border Banking is working on supervisory issues for shell banks. There is an emerging consensus that shell banks cannot be supervised in accordance with the Core Principles and that supervisors should no longer approve the establishment of shell banks or accept their continued operation. Shell banks often have no base of operation in a particular jurisdiction and mind and management may be constantly moving. Some books and records are held by trust companies, but it is impossible to determine whether these reflect all of the activities of the shell bank or what may be occurring in other jurisdictions.

114. The Basel Committee's Customer Due Diligence for Banks (2001) paper also recommends that banks should refuse to enter into or continue a correspondent banking relationship with shell banks located in foreign jurisdictions. There are already several instances in the Pacific islands in which major banks have terminated correspondent relationships with shell banks, as well as domestic banks.

115. In Samoa, the authorities have made various efforts to upgrade the regulatory standards including the preparation of the new International Banking Bill, and the number of offshore banks has been reduced recently. In order to keep up to the evolving international best practices, a major policy decision will be needed to require offshore banks to establish a real presence with mind and management within the jurisdiction.

116. In order to achieve real physical presence, those who run the bank need to be resident on a permanent basis within the jurisdiction. There needs to be at least a "four eyes" control in place, which may need several core staff plus administrative support. The books and records need to be fully maintained and audited within the jurisdiction. The full range of supervisory tools in accordance to the Core Principles should be applied.

117. There is also growing consensus that there is no reason, from a supervisory view point, to treat international banking activities differently from domestic banking activities and that same supervisory standards should be applied to banks that are located in a jurisdiction. Apart from tax treatment, the licensing of offshore and domestic banks could well be treated under the same banking legislation.

118. After addressing the shell bank issues, it is recommended that the authorities reconsider the future form of the banking legislation and supervision. It is noted that some parts of the International Banking Bill that are under preparation contain elements that are applicable to domestic banking legislation.

C. Supervision of Insurance Companies

Domestic insurance companies

119. At the end of August 2002, there were four domestic insurance companies operating in Samoa. One of these companies is majority state-owned and only carries out life insurance business. It was established in 1976 through the introduction of the Insurance Act and the Life Insurance Corporation Act. Another insurance company provides both life and nonlife (general) insurance services, including health insurance. It is majority owned by an Australian bank. The remaining two companies provide only general insurance (mainly property and motor insurance). Of these two general insurers, one is majority owned by an insurance company from New Zealand, while the other one has local and American Samoan owners. In addition, there are four insurance agents and one insurance broker, which primarily sell foreign insurance products. The size of the insurance sector is very small in relation to banking.

120. Under the current Insurance Act, the Minister of Finance is responsible for the licensing of insurance companies, which must pay a license fee and lodge a deposit with the Government. The Minister of Finance is also responsible for supervision of insurance companies. Although there are some reporting requirements to the Minister of Finance, insurance companies are not subject to detailed supervisory requirements. The cancellation of an insurance company's license is the privilege of the Supreme Court.

121. Domestic insurance supervision in Samoa is currently in a period of change. Following the amendment of the Financial Institutions Act in January 2001, the Minister of Finance placed the domestic insurance companies under the prudential supervision of CBS in October 2001. The CBS started to communicate with the insurance companies and to obtain the necessary information. With the assistance of the Asian Development Bank, it is currently in the process of formulating prudential statements which will be stipulated as prudential regulations. The idea of this approach is to apply some of the principles of banking supervision to insurance companies. However, the authorities recognize that this is only a temporary solution, and the CBS should be empowered with licensing, removal of licenses, and regulatory authority. The Treasury Department and the CBS are now preparing a new insurance law, which will replace the Insurance Act of 1976. The envisaged system will confirm the CBS as the licensing and supervisory authority of the domestic insurance companies.

122. The mission supports the authorities' intention to modernize the legislation governing the domestic insurance sector, which will conform to the IAIS Core Principles of insurance supervision.

123. Once the authorities prepare the draft law on regulation and supervision of the domestic insurance sector, the Fund will be pleased to review it and to provide comments. At this stage, the mission would only like to point out the need to ensure adequate staffing of the insurance supervision. Since the CBS is expected to remain responsible for licensing, regulation, and supervision of domestic insurance companies, it will be necessary to expand the Financial Institutions Department to be able to assume this responsibility. Since insurance supervision requires special professional skills, it will be necessary to designate staff to specialize in insurance supervision, who can learn from experiences of other countries and training conducted under the auspice of the IAIS and other international organizations.

Offshore insurance companies

124. At the end of August 2002, there were only five registered international insurance companies, of which four were captives. The captive insurance companies should not cause major problems in relation to financial soundness and policy holder protection. This business is still in its infancy, due in part to the lack of any international insurance managers operating within Samoa. In particular, the successful development of a captive industry also requires the jurisdiction to have an effective segregated portfolio company legislation and advisors who are conversant with its use, as well as services provided by the international auditors.

125. The only existing general insurance company, which sells insurance products in other countries, can potentially give rise to concerns with its customers. The principle area of difficulty tends to be in the area of claims experience. The policy holder expects claims to be paid in full, the insurance company will wish to qualify settlements and any brokers interposed within the transaction may have misled or missold on either side. In addition an adverse claims experience can quickly eat into reserves as can poor underwriting.

126. The legal framework on insurance supervision also differs from country to country and some countries prohibit cross border or unlicensed solicitation of insurance products. In order to prevent legal and reputation risks, it is recommended that the authorities, in licensing general insurance business, require that international insurance companies be in compliance with other countries' laws where the insurance products are sold and that close communication and information sharing with the insurance regulators in other countries be established.

D. Investment Business and Collective Investment Schemes

127. At the present time, there are no laws or regulations relating to this area in Samoa. It is possible that some IBC's are already conducting such business as a mutual fund, collective investment scheme, or other entity. Equally there is always a risk that operators might use a jurisdiction which does not have any comprehensive legal provisions to conduct fraudulent activities, particularly within the investment business and securities area.

128. In Samoa, the Investment Business and Securities area would primarily deal with the provision of financial advice and product sales to both the domestic and international markets. Some OFC's have been used by unscrupulous share dealers to place stock, at

inflated prices, to the innocent public using “boiler room telephone sales techniques.” The jurisdiction of choice for such operations is one where no Securities or Investment business Law exists. This is currently the position in Samoa, although it should be stressed that there is no suggestion that such operations currently exist, or have ever existed within Samoa.

129. The authorities plan to introduce new legislation on collective investment schemes (CISs) in the near future. It would be a reasonable approach to introduce a regulatory framework in this area while simultaneously prohibiting the establishment of unlisted collective investment schemes. In this regard, the mission recommends that the following should be taken into consideration:

- Within the area of Collective Investment Schemes, a number of models of legislation exist (within other offshore financial centers) that could be introduced to provide a framework for the development of an industry within Samoa. The history of offshore collective investment scheme supervision traces its origins to the Isle of Man Financial Supervision Act of 1988. This model has been refined by subsequent developments in jurisdictions such as the British Virgin Islands and the Cayman Islands.
- CISs, in offshore terms, tends to be split into public and private and this relates to the underlying investors. Public offerings are, as the name suggests, made to members of the general public and are subject to very high levels of regulation and supervision. The best examples are publicly quoted unit trusts that are the subject of investor protection schemes and where amounts to be invested can be very small indeed.
- The most common offshore fund is the private fund, which is subject to much lower levels of regulatory oversight and is intended for a small group of investors who are experienced or professional investors. A variety of criteria define these investor groups, often based on personal net worth. The principles adopted here are “buyer beware.” Regulators look for full disclosure of the terms of the offering, charges and performance fees, the nature of the investment and the details, and the background of the investment manager and promoter.
- It is recognized that in order for a successful Collective Investment Scheme jurisdiction to be set up it would require the establishment of a credible regulatory function with appropriately trained and qualified staff. Regulators tend to concentrate on the fund documentation to ensure full transparency, i.e., a full disclosure regime and on the background and professional qualifications of the directors and investment manager. In the case of the latter, there would be a check that he or she is regulated and in good standing with that regulatory body.
- The private sector would also need to have suitably qualified attorneys with international contacts. The contacts are important because there are in fact only a small group of international attorneys who develop CISs and they tend to adhere to their established connections when putting a CIS together. There should be a least one

local body able to provide rudimentary custodian services (invariably connected to a global banking group) and links to major global custodians worldwide.

- Finally, the jurisdiction and its regulator has to have sufficient credibility to be accepted by at least one of the major stock markets for the quotation of the fund as many investors prefer only to deal with quoted CISs. One of the qualifications here will be legislation that permits a full set of remedies if and when a fund needs to be wound up.

E. Information Sharing and Secrecy Obligations

130. The CBS, the Inspector of Offshore Banks, the Registrar of International Insurance, the Registrar of International and Foreign Companies are all subject to secrecy requirements under various laws. However, the CBS and the Inspector of Offshore Banks are allowed to share information with foreign banking supervisors or like supervisory authorities on a confidential basis. The Registrar of International Insurance is similarly permitted to share information with foreign supervisory authorities, but as with the Inspector of Offshore Banks, this does not extend to information on specific customers.

131. For purposes of AML, secrecy obligations are specifically overridden by the MLPA if such disclosures are made pursuant to the MLPA. However, the CBS, the Inspector of Offshore Banks, Registrar of International Insurance, and Registrar of International and Foreign Companies are not permitted to exchange information with the MLA or to report suspicious transactions which means that the restrictions on sharing of information that are present in Section 25(3) of Offshore Banking Act, Section 26 of the International Insurance Act, Section 31 of the Trustee Company Act 1987, Section 24 of the Financial Institutions Act and Section 17 of the CBSA are not overridden.

132. To provide a more robust regulatory framework as well as to enhance the AML framework, it is imperative the all supervisory authorities be allowed by law to exchange information with domestic and foreign supervisory authorities, the MLA, and other foreign financial intelligence units through the MLA. In addition, all the supervisory authorities should be allowed by law to share information— through an appropriate domestic agency— on suspected criminal activity to law enforcement agencies, both foreign and domestic.

133. In addition, whistle-blowing provisions, similar to those contained in the domestic and offshore banking law, should be imposed on auditors of all offshore entities. Both domestic and offshore whistle-blowing information should include reporting of all suspected criminal activity. Auditors of both domestic and offshore should also be required to report suspicious transactions to the MLA.

134. It is also important to have complete and unfettered access to information from licensees and to implement gateways for the regulator to talk directly to the auditors.

F. Organizational Issues

135. Samoa became an independent state in 1962. The CBS was established in 1984.³⁵ The CBS is entrusted with the authority to issue currencies, promote internal and external monetary stability, promote credit and exchange conditions conducive to orderly and balanced economic development, and supervise and regulate the domestic financial system. Currently, the CBS has 85 staff, including those in the office of the Registrar of International and Foreign Companies. Under the Governor and Deputy Governor, it has six departments which are headed by managers. The FID is responsible for the supervision of financial institutions. It was originally called the Bank Supervision Department (Division) and changed its name in 1996, when the Financial Institutions Act was enacted.

136. The CBS maintains a close relationship and communication with the Treasury Department and shares various tasks in the administration of financial issues of the country. The Treasury Department has approximately 118 staff and is headed by the Financial Secretary. It is located in the CBS Building, while the Office of the Minister of Finance is in the Central Government Building, as he is also the Deputy Prime Minister. The area of shared responsibilities between the CBS and the Ministry of Finance includes the licensing and supervision of various financial institutions.

137. The SOFC has been an institutional arrangement which performs various administrative roles as Registrar of International and Foreign Companies, including offshore banks and international insurance companies, and supervisory role of trustee companies (company service providers) in a relatively efficient manner given the limited resources of a small country. Following the legal changes in 1998, which included creation of the position of Inspector of Offshore Banking, the supervisory role of the SOFC has become increasingly important. The Office is no longer performing a promotional role beyond an ordinal public affairs function as registrar and supervisor.

138. The formal licensing authority of all entities involved in the offshore business (except international insurance companies) is the Minister of Finance, as is the case for all domestic nonbank financial institutions.³⁶ In practice, the Minister of Finance is advised by a Steering Committee, composed of the Governor of the CBS, as chairman, the Financial Secretary, the Attorney General, and the Registrar of International and Foreign Companies, on all licensing and regulatory matters. This practice, while not explicitly formalized in the legislation, has been followed as a matter of custom, since the inception of the SOFC in 1988. It has served well to effectively limit the possibility of the decision being affected by specific

³⁵ The CBS was enacted by the Central Bank of Samoa Act 1984 as the successor of the Monetary Board of Western Samoa.

³⁶ The Registrar of Insurance is the ultimate licensing authority of international insurance companies.

private/political interests, as well as to document and record properly the licensing and regulatory procedures.

139. In performing regulatory and supervisory functions, the work under the office of Registrar/Inspector has been closely interrelated with those of the FID. During the mission, the Governor decided to appoint the Registrar as part of the MLA in order to supervise AML measures adopted by company service providers. The task of the MLA, which is currently managed under the Deputy Governor, and that of the FID need close coordination with the Office of Registrar/Inspector. Policy and regulatory issues on banking and insurance should always take into account both offshore and domestic aspects.

140. From the perspective of financial sector regulation and supervision, the mission suggests that a functional approach to supervision be taken and supervision be divided into categories, such as banking, insurance, other nonbanking services (including trustee companies), a Registrar of International and Foreign Companies, and an FIU, would be more relevant than separation of domestic and offshore financial sector. Efforts need to be concentrated to ensure that these functions are performed properly. Although the mission does not find serious problem with the current structure for the time being and is not in a position to propose a certain organization structure, the enhancement of the current organizations and staffing should be addressed to support and strengthen these functions so that each of them can keep up with evolving international best practices.

141. At present, the CBS relies almost solely on the Attorney General's office to draft all legislation and subsidiary regulations regarding the domestic financial sector.³⁷ As the demand for new and specialized financial and central banking legislation increases, consideration could be given to equipping the CBS with a lawyer who could specialize in financial sector and central banking legislation. This could be addressed by setting up, for example, the position of general counsel. Further technical assistance in this area would be warranted.

³⁷ The SOFC is responsible for the drafting and preparation of all offshore legislation, which is then reviewed and approved by the Attorney General's office.

Summary of 1998 Legislative Amendments to Samoa Offshore Legislation

I. Offshore Banking Act 1987

The purpose of the 1998 Amendment Act was to protect the reputation and integrity of the Samoa Offshore Financial Centre by increasing the powers of the Banking Regulator to supervise the offshore banking sector and to adopt internationally accepted prudential supervision guidelines.

1. Creation of post of Inspector of Offshore Banking

Under Section 3(a), the post of Inspector of Offshore Banks was created to supervise and regulate offshore banking practice in Samoa.

To carry out his functions, the Inspector was given broad powers to obtain and compel information from licensees, including the power of search under Section 22(a) and the supply of information under Section 22.

In addition, the Inspector was required to examine audited accounts, statements and returns filed by the licensees and examine all license applications and make recommendations to the Minister.

2. Stricter controls over ownership of offshore banks

The approval of the Inspector was now required under Section 12A for the issue or transfer of any beneficial interest in an offshore bank, other than where shares or securities were issued to existing shareholders on a pro-rata basis. Issuing of bearer shares by licensees was also prohibited.

3. Controls over the appointment of new directors

Under Section 12(b), all new directors of an offshore bank must first be approved by the Inspector as a “fit and proper director of the licensee.”

4. Stricter controls over the operations of offshore banks

Under Section 12 C, Government approval is required for opening a subsidiary bank, branch office, agency, or representative office.

Under 12(d), the Government can require a licensee to effect a policy of insurance against certain risks, such as the dishonesty of employees, loss of documents or other specified risks.

5. Gateways for sharing of information with foreign banking regulators

Section 25 was amended to add Subsection (3) which allowed the Inspector to share information about a licensee with foreign banking regulators, subject to adequate protections on confidentiality.

6. Corrective and disciplinary actions by the Minister

Section 33 was amended to strengthen the powers of the Minister of Finance to take appropriate enforcement measures, including:

- Applying to the Court for a court ordered liquidation;
- Imposing conditions;
- Requiring the removal and replacement of any director or officer;
- Appointing an adviser;
- Appointing a receiver or manager; and
- Cancellation of the license.

7. Reducing duration of an A class license from 5 years to 2 years.

8. Filing of quarterly/half yearly returns by licensees

Provision was made in Section 20 for the filing of quarterly returns for all A and B1 class banks and half-yearly returns for all B2 banks.

The form of the returns was to be prescribed by the Inspector in order to allow flexibility in changing the forms as circumstances required.

9. Audit Provisions

Changes were also made to Section 24, dealing with the responsibilities of the auditor. Auditors were now required as part of their audit to report on the licensee's compliance with the terms of its license and whether the quarterly/half-yearly returns were completed correctly.

Under Section 25, the auditor was also required to report to the Inspector any irregularities or evidence of wrongdoing. Legal protection was provided to the auditors, in making such a disclosure to the Inspector, under Subsection (6).

10. Immunity for Government officials

Section 44(a) provided immunity from any action for all Government agencies and employees for any act or omission done in good faith in the exercise of their functions under the Act.

11. Offences and penalties

New offences were created to enforce the provisions of the Act, including failure to comply with any request for information by the Inspector (Section 3(a)(6) or providing false or misleading information under Section 22(b).

II. International Companies Act 1987

The 1998 amendment Bill introduced new products to the Samoa OFC, such as companies limited by guarantee and hybrid companies, facilitated the redomiciliation of companies registered overseas on the Samoan register and strengthened the powers of the Registrar in striking companies off the Register.

1. Registration and annual fees for liquidators

Section 11 was amended to provide for registration of company liquidators and to provide for payment of an annual registration fee.

2. Companies limited by guarantee and companies limited by shares and guarantee (hybrid companies)

Section 13 was amended to provide for registration of companies limited by guarantee and companies limited by shares and guarantee (hybrid companies).

Other consequential amendments were made to other Sections to reflect the membership interest of guarantee members. (See Sections 18, 18(a), 18(b), 18(c), 18(d), 25, 26, 209, and 210.)

3. Redomiciliation provisions

Section 16 was amended to provide a simplified procedure whereby companies incorporated in other jurisdictions could be redomiciled to the Samoan international company register.

4. Company names

Section 22 was amended to delete the words “Public limited company” or “PLC” from forming part of an international company’s name.

5. Striking off and restoration powers of Registrar

Section 197 of the Act was amended to strengthen the powers of the Registrar to strike companies off the Register for noncompliance with the Act. It also allowed the Registrar greater discretion in restoring struck-off companies to the Register.

6. Filing of documents by electronic means

A new section (216(a)) was introduced that would allow filing of documents with the Registry by electronic means.

7. Retention of records by trustee companies

Section 216(d) was introduced to require that a trustee company must maintain the records of a company struck off the register for a minimum period of seven years.

8. Strengthening the powers of the Minister to prohibit certain companies from registering or doing business in Samoa

Section 225 was amended to increase and strengthen the powers of the Minister to prohibit certain companies or classes of companies from registering or continuing to carry on business in Samoa.

9. Exceptions to secrecy provisions

Section 227 was amended to provide a statutory exemption for the Registrar or any public officer in vetting and investigating license applicants.

The section was further amended to allow the Registrar to make available for inspection an index of company names and their registered offices.

10. Maintaining company records in electronic form

A new section (228(a)) was enacted to allow the Registrar to maintain the company registry records in electronic form.

11. Prohibitions on carrying on banking or insurance business unless licensed

Section 249 was amended to prohibit international companies from carrying on banking or trust business or the business of an insurance or reinsurance company or an insurance manager, unless licensed under the appropriate legislation.

III. International Insurance Act 1988

The purpose of the 1998 amendments was to increase the powers of the Insurance Regulator to supervise the offshore insurance sector and to adopt internationally accepted prudential supervision guidelines.

1. Restrictions on companies using words that connote insurance business

A new section (4(a)) was enacted that prohibited the use of words such as “insurance, assurance, underwriting, reinsurance, surety, indemnity, or guarantee” or any other words that connote insurance business by any person without the approval of the Registrar of Insurance.

2. Offence for failure to notify of changes by registered insurer

Section 12 was amended to provide that any registered insurer, who fails to notify the Regulator of any material change, as defined in the Act, would commit an offence.

3. Approval of company auditor

Section 14 was amended to provide that all auditors of registered insurers must be approved by the Minister.

4. Actuarial valuation

A new section (14(a)) was enacted that provided for actuarial valuations every two years of the assets and liabilities of all registered insurers carrying on long term business.

5. Offence created for contravening restrictions on business

An offence was created under Section 20(6) for any licensee who contravened the provisions of the Section, which dealt with specific restrictions on the offshore insurance license.

6. Restrictions on transfer of ownership and control

A new section (20(a)) was enacted that provided that any change in beneficial ownership of a registered insurer would require the prior written approval of the Registrar. In addition, no bearer shares could be issued by a registered insurer.

7. Gateways

A new section (26) was enacted to create gateways for exchange of information between the Registrar of Insurance and foreign insurance regulators.

Section 32 was also amended to allow disclosures by the external auditors or actuaries of a registered insurer to the Registrar.

8. Penalty provisions

Section 40 was amended to provide penalties for the new offences created under the 1998 amending legislation.

IV. Trustee Companies Act 1987

The purpose of the 1998 amendments was to enhance and protect the reputation and integrity of the Samoa OFC by requiring stricter controls on the licensed trustee companies.

1. Restrictions on transfer of ownership and control

Section 11 was amended to include a similar provision to that contained in the Offshore Banking and International Insurance Act amendments to provide that any change in beneficial ownership of a registered trustee company would require the prior written approval of the Minister. In addition, no bearer shares could be issued by a registered trustee company.

2. Immunity for Government officials

A new section (37) was enacted, which provided immunity for legal actions against the Government, the Minister or any public official for all acts or omissions done in good faith in the exercise of their functions under the Act.

Authorities' Response and Action Plan (prepared by the Samoan authorities)

The Government of Samoa wishes to express its appreciation for the efforts of the IMF and the IMF mission team in conducting its review of the Samoa OFC, including the domestic and offshore banking sectors and its AML/CFT regime.

The assessment exercise and the specific recommendations set out in the report are invaluable in assisting the center to ensure the adoption of international regulatory and AML standards to maintain the reputation and integrity of the Samoa OFC and the Samoan financial sector.

The recommendations proposed in the Assessment Report are in the process of implementation as set out in the following table.

A. BANK SUPERVISION and PRUDENTIAL REGULATION	
DOMESTIC BANKS	
Recommendation	Response
Develop more specific policies in a number of areas including connected lending, fitness and proprietary tests and risk management systems.	a) Policy initiatives have been under consideration for banks risk management systems following on-site examinations of banks by the Central Bank; and b) current policies and requirements for the licensing of financial institutions expressly state Central Bank's approach regarding fit and proper person(s) to be a director or principal officer of a bank.
Build up a capacity to undertake on-site examinations and more in depth off-site analysis.	a) On-site inspections of banks have been conducted with the assistance of ADB Consultant who provided guidance for examiners on proper procedures and key areas of examinations; and b) also, training programs and attachments of examiners to other Reserve Banks with more developed bank supervision capacity have been very useful in enhancing examiners knowledge and experience in this area.
Strengthen the legislative powers in relation to licensing and supervision to ensure that (i) the supervisor's scope for action is not inhibited when remedial measures are required; (ii) all relevant matters are considered in license applications; and (iii) all changes in control are vetted by the supervisor.	Amendments to the Financial Institutions Act 1996 have been under consideration, which shall further strengthen the Bank's supervisory powers in these areas.
Introduce new prudential regulations and other information requirements for connected lending, country exposures, maturity profiles, credit grading, and interest rate exposures.	Appropriate prudential policies are being considered in view of current circumstances and in line with international best practices.
Develop a plan for more targeted use of external auditors.	a) Section 10 of the FI Act 1996 specifies the statutory duties of external auditors in relation to

	prudential supervision issues, including required reporting and discussions with the Central Bank of audit findings; and b) Furthermore, closer relationships have developed between auditors and supervisors in undertaking on-site examinations of banks.
Establish closer links with other supervisors.	Samoa is a full member of the regional Association of Supervisors of Pacific Countries (ASPC). The Association meets regularly to discuss and share financial supervisory issues. Closer links have also been developed with supervisory agents in more developed countries through seminars and attachment programs.
OFFSHORE BANKS	
Recommendation	Response
Require all offshore banks to establish a real physical presence in Samoa with mind and management in place or face removal of banking license.	International Banking Bill (IBA) 2003 has been approved by Cabinet and will be introduced in Parliament in mid-2004. The Bill specifically outlaws “shell banks” and requires all licensees to establish a real physical presence in Samoa with mind and management in place.
Eliminate the limitation on the authorities’ access to customer information.	The IBA Bill allows the regulator access to all relevant information for the purposes of banking supervision- including customer account information.
Require “fit and proper” criteria for selecting management as a licensing condition.	The IBA Bill codifies the existing practice of the OFC in applying “fit and proper” criteria for approval of directors, controllers, shareholders, and managers.
Develop an ability to effectively implement the on-site visits at offshore banks or at registered offices within the company service providers.	The Samoa OFC has implemented preparatory training sessions, with the assistance of the IMF, for conducting such on-site inspections. Subject to capacity and resource constraints, the authorities intend to conduct such inspections on an annual basis with each licensee, commencing in 2004.
Apply the same supervisory and regulatory standards to domestic and offshore banks.	The IBA Bill makes provision for Regulatory Codes to introduce similar prudential requirements and standards for international and domestic banks.

B. ANTI-MONEY LAUNDERING MEASURES	
Recommendation	Response
Amend the definition of financial institution so that all offshore entities and specifically trustee companies are included in the definition.	In November 2002, the definition of “financial institution” was amended to specifically include trustee companies.
Broaden the scope of the MLPA to include comprehensive and all substantive requirements relating to customer identification and verification, record keeping and retention and suspicious transaction reporting.	In October 2002, the Money Laundering Prevention Regulations were enacted with effect from December 4, 2002. The Regulations provide for customer identification, verification, record keeping and retention and suspicious transaction reporting. Draft legislation to amend the MLPA to include those provisions in the substantive legislation has been prepared and is expected to be enacted in early 2004.
Amend the MLPA to improve the framework for reporting suspicious transactions to include extending the tipping-off provisions and improving the protection for the information reported and the persons reporting.	The Money Laundering Prevention Amendment Bill (MLAB) includes provisions to improve the framework for the reporting of suspicious transactions and extending the tipping-off provisions and improving the protection for the information reported and the persons reporting.
Putting in place the administrative and operational steps toward establishing the FIU and providing for the governance and oversight structure for the FIU.	The MLAB will formally establish the governance and oversight structure for the FIU.
Amend the MLPA to include comprehensive forfeiture of proceeds of crime and confiscation of benefits provisions, as well as the power to make penalty orders where forfeiture is not possible.	A draft Proceeds of Crime Bill has been prepared and is expected to be enacted in early 2004. The Bill will provide a comprehensive regime for the forfeiture and confiscation of the proceeds of crime, including pecuniary penalty orders.
Introduce common provisions in all the regulatory laws requiring that shareholders and directors of financial service providers be “fit and proper” persons, thus preventing serious criminals from controlling financial service providers.	Legislation to amend the Financial Institutions Act and all of the offshore legislation to codify the existing practice of applying “fit and proper” criteria in assessing license applications will be introduced in 2004.
Amend the MLA with the full range of powers and functions of an operational FIU, including the power to analyze information and to exchange information with foreign FIU’s and law enforcement agencies.	The MLAB will provide the Samoa FIU with the full range of powers and functions of an operational FIU- including the power to analyze information and to exchange information with domestic and overseas FIU’s and law enforcement agencies.
Amend the MLPA to extend the scope of the mutual assistance provisions to cover all criminal offences.	A draft Mutual Legal Assistance Bill has been prepared and is expected to be enacted in early 2004 to provide a comprehensive regime for providing mutual legal assistance for all serious offences.

C. COMPANY SERVICE PROVIDERS	
Recommendation	Response
Trustee companies should conduct an enhanced level of due diligence, especially with regard to all new business transferring to the jurisdiction under redomiciliation.	The Samoan authorities have conducted training sessions with all trustee companies regarding due diligence requirements under the MLPA and have stressed the need for enhanced due diligence for new business transferring to the jurisdiction. These provisions will be included in the new MLPA Guidelines to be issued to the private sector upon enactment of the MLPAB.
Conduct regular on-site visits to the trustee companies and consider entering into specific exchange of information agreements with the host country supervisors.	The Samoa OFC has implemented preparatory training sessions, with the assistance of the IMF, for conducting such on-site inspections. Subject to capacity and resource constraints, the authorities intend to conduct such inspections on an annual basis with each licensee commencing in 2004.
D. OTHER ISSUES	
Recommendation	Response
Modernize the insurance legislation which will establish the CBS as the licensing and supervisory entity of the domestic insurance companies.	A draft Insurance Bill has been prepared to establish CBS as the licensing and supervisory entity of the domestic insurance companies. Consultations with the stakeholders in the domestic insurance industry were held in late 2003 and the Bill will be enacted in 2004.
In licensing general insurance business, require that international insurance companies be in compliance with other country's laws where the insurance products are sold.	The Samoan authorities have adopted the recommended policy in dealing with all future international insurance applications. The license application form will be amended to reflect this change.
Establish close communication and information sharing with the insurance regulators in other countries.	As a member of the Offshore Group of Insurance Supervisors (OGIS) and the International Association of Insurance Supervisors (IAIS), the Samoa OFC has established close communication with other insurance regulators. Provision is made in the International Insurance Act 1988 for sharing of information between regulators.
Introduce a basic investment business and securities legislation to regulate fraudulent provision of financial advice and product sales to both domestic and international markets.	Amendments to the Financial Institutions Act have been prepared to regulate investment and securities business under the CBS.

<p>Introduce legislation on collective investment schemes while prohibiting the establishment of unlisted collective investment schemes.</p>	<p>An International Mutual Funds Bill has been drafted and is expected to be enacted in early 2004 that will regulate collective investment schemes.</p>
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