



Asia/Pacific Group  
on Money Laundering

APG ANNUAL MEETING 2006

[Samoa ME2]

# **2<sup>nd</sup> Mutual Evaluation Report of Samoa**

**ANTI-MONEY LAUNDERING AND COMBATING THE  
FINANCING OF TERRORISM**

**Asia/Pacific Group on Money Laundering/  
Offshore Group of Banking Supervisors  
APG/OGBS**

**As adopted by APG members**

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## **PREFACE**

### **Information and methodology used for the APG/OGBS Mutual Evaluation of Samoa**

Samoa was the subject of a joint Mutual Evaluation by the Asia/Pacific Group on Money Laundering (APG) and the Offshore Group of Banking Supervisors (OGBS).

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Samoa<sup>1</sup> was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>2</sup>.

The evaluation was based on the laws, regulations and other materials supplied by Samoa, and information obtained by the evaluation team during its on-site visit to Samoa from 6 to 17 February 2006, and subsequently.

During the on-site the evaluation team met with officials and representatives of all relevant Samoan government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by an assessment team, which consisted of a member of the APG Secretariat and five experts (four APG experts and one OGBS expert) in criminal law, law enforcement and regulatory issues:

- Mr Evan Gallagher, Senior Legal Officer, Attorney-General's Department Australia (legal expert) - APG
- Mr Kong Io Sang, Bank Examiner, Banking Supervision Department, Monetary Authority of Macau (financial expert) - APG
- Ms Yotsna Lalji, Executive, Policy & Research Directorate, Financial Services Commission (FSC) Mauritius (financial expert) – OGBS
- Mr Ian Wong, Assistant Director, Financial Investigation, Commercial Affairs Department, Singapore Police Force (law enforcement expert) - APG
- Mr Alvin Koh Yong Kiat, Senior Investigator, Financial Investigation Division (FID), Commercial Affairs Department, Singapore Police Force (law enforcement expert) - APG
- Mr David Shannon, Executive Officer, APG Secretariat

The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Samoa as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Samoa levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

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<sup>1</sup> All references to country apply equally to territories or jurisdictions.

<sup>2</sup> As updated in October 2005

## **Executive Summary**

### **Samoa Mutual Evaluation Report**

This report provides a summary of the AML/CFT measures in place in Samoa as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Samoa's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

#### **1. Background Information**

1. Samoa is a small island country with a small economy and has significant capacity constraints across government and the private sector to frame and implement laws and regulations.
2. Samoa has not yet undertaken a comprehensive study of its money laundering (ML) and terrorist financing (TF) risks and vulnerabilities, although Samoan agencies are able to highlight specific risks and sources of illicit funds.
3. Samoa does not have major crime problems; but there has been a recent increase in the number of cases involving organized crime, narcotics and firearms. No terrorist activity or cases of terrorist financing have been detected within Samoa.
4. Samoa's financial services system is small and there are only a few banks and non-bank financial institutions. Designated non-financial businesses and professions are comprised of lawyers, accountants, trust and company service providers and a very small number of real estate agents. Samoa's international banking sector is also relatively small.
5. Following on from Samoa's first APG/OGBS Mutual Evaluation in 2001, Samoa has sought to substantially revise its anti-money laundering and combating the financing of terrorism (AML/CFT) regime. While progress has occurred with building regulatory capacity and establishment of the FIU, there has, however, been a lack of progress with revising the key legislation underpinning Samoa's AML regime. A Money Laundering Prevention (MLP) Amendment Bill to amend Samoa's AML law, a draft Proceeds of Crime Bill and a draft Mutual Legal Assistance Bill have been awaiting passage through the parliament since 2003. As such, Samoa continues to lack of a fully effective AML/CFT system that meets international standards.
6. There are weaknesses with capacity and resources for Samoan enforcement and regulatory agencies involved in AML/CFT prevention, supervision and investigation.
7. Globally, Samoa is one of the highest recipients of remittances as a share of GDP. Remittances accounted for approximately 24 percent of Samoa's GDP in 2004. The bulk of such remittances are sent through regulated channels, however implementation of AML/CFT controls in the remittance sector remains relatively weak.
8. Samoa's international financial services (offshore) sector may pose a money laundering risk, to the extent that such offshore business may be subject to vulnerability. However, the Samoan authorities are taking careful steps to effectively manage the risk and minimise vulnerabilities.

## **2. Legal Systems and Related Institutional Measures**

9. Samoa acceded to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 2005. Samoa is not a party to the UN Convention against Transnational Organized Crime (Palermo Convention).
10. Samoa's money laundering offence is set out in the *Money Laundering Prevention Act 2000* (MLP Act). Money laundering is currently criminalised under section 3 of the MLP Act, with the elements of the money laundering offence set out in the definition of 'money laundering' in section 2 of the MLP Act. The definition covers engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, as well as receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into Samoa any property that is the proceeds of crime. In each case the money laundering offence requires knowledge or reasonable grounds to believe that the property is proceeds of crime. The money laundering offence covers the physical and material elements set out in the Vienna and Palermo Conventions.
11. Predicate offences for money laundering are determined using a threshold approach, which is set out in the definition of 'unlawful activity'. The threshold requirement for crimes to be punishable for a maximum of more than five years' imprisonment is too high and the predicate offences for money laundering do not appear to cover all the designated categories of offences.
12. The MLP Bill 2003, when passed, should bring Samoa's money laundering offence into closer alignment with international standards.
13. Samoa signed the UN Convention on the Suppression of the Financing of Terrorism in November 2001 and ratified the Convention in September 2002. Financing of terrorist acts is criminalised under section 20 of the Prevention and Suppression of Terrorism Act 2002. The offence of terrorist financing extends to every person who, by any means, directly or indirectly, knowingly or without due inquiry, provides or collects funds or proceeds with the intention that such funds or proceeds be used, or in the knowledge that such funds or proceeds are to be used, in full or in part, to carry out:
  - (a) an act which constitutes an offence under the Prevention and Suppression of Terrorism Act, or
  - (b) any other act intended to cause death or bodily injury to any person not taking an active part in the hostilities of armed conflict, where the purpose of such act, by its nature or context, is intended to intimidate a population, or to compel a State or Government or an International Organization to do or to abstain from doing an act.'
14. Most of the terrorist acts listed in the Interpretative Note to Special Recommendation II are offences under the Prevention and Suppression of Terrorism Act, meaning that the financing of these terrorist acts is an offence.
15. The offence of terrorist financing does not criminalise the provision or collection of funds for use by a terrorist organisation or an individual terrorist where such funding is not connected to an actual or intended terrorist act.
16. Samoa does not have a general regime for freezing and confiscating the proceeds of crime. Samoa drafted a Proceeds of Crime Bill in 2003, which when enacted would introduce a general freezing and confiscation regime.
17. Part IV of the MLP Act allows for the confiscation of property derived from money laundering and the freezing of alleged proceeds of crime held by a person charged, or about to be charged, with the offence of money laundering. Part VII of the Prevention and Suppression of Terrorism Act allows for the forfeiture and freezing of funds or proceeds

collected for the purpose of committing a terrorist offence under that Act.

18. To date, the only freezing order that has been granted in Samoa was in 2000 under the MLP Act and was pursuant to a mutual legal assistance request from the United States.
19. Samoan authorities distribute copies of the UN Security Council 1267 list and other lists received from foreign governments to larger financial institutions and some DNFBPs. However, Samoa does not yet have laws in place allowing a competent authority to freeze terrorist funds and other assets of persons and entities designated by the UN Security Council 1267 Committee, without requiring that those funds were provided or collected for the purpose of carrying out a specific terrorist act.
20. Samoa has not yet enacted laws to allow the authorities to designate persons and entities in accordance with UN Security Council Resolution 1373 and to freeze the assets of such persons or entities.
21. Samoa's FIU is hosted by the Financial Institutions Department of the Central Bank of Samoa and is formally a unit within the Money Laundering Authority (MLA). The MLA receives suspicious transaction reports (STRs) and is empowered to send any such report to the Attorney General and the Commissioner of Police if there are reasonable grounds to suspect that the transaction involves proceeds of crime and/or is connected with a money laundering offence. The number of STRs received by the FIU has declined from 26 in 2003 to 13 in 2005. Eight of the 62 STRs received by the FIU since 2003 have been disseminated to the Attorney General, but no STRs have yet been disseminated to the Commissioner of Police. None of the eight STRs disseminated to the Attorney General were subsequently passed on to any investigative authority for action.
22. FIU staff have an appropriate level of expertise, but the resources available to the FIU are inadequate to effectively manage and conduct analysis of STRs and provide support to investigative agencies, while also performing its full AML/CFT training and supervision responsibilities.
23. The Samoan authorities have designated the police to investigate purely domestic money laundering cases and the trans-national crime unit (TCU), which includes the Police, Customs, Immigration and Attorney General's Office, to investigate money laundering and terrorist financing cases which have a trans-national element.
24. Adequate powers are available to the Samoan Police and Customs to gather evidence and compel the production of financial records and files from financial institutions, including DNFBPs. Generally, the Samoan authorities have sufficient powers to prosecute ML and TF offences; however the structures, staffing and resources to investigate these offences are also responsible for examining a range of crimes and have not yet taken adequate responsibility to ensure that ML offences are investigated. In practice in Samoa the process of dissemination of STRs has meant that no STRs have been received by any investigative agency, which is impeding the proper investigation of money laundering offences.

### **3. Preventive Measures – Financial Institutions**

25. Samoa's AML/CFT preventative measures are contained in the MLP Act 2000, the Money Laundering Prevention Regulations 2002 (Regulations) and the Money Laundering Prevention Guidelines for the Financial Sector 2002 (Guidelines). Samoa's AML law, Regulations and Guidelines were prepared prior to the revision of the FATF 40 Recommendations in 2003 and do not generally reflect the revised standards.
26. No guidelines have yet been issued to financial institutions to directly address CFT and the preventive measures required by financial institutions do not apply with respect to the financing of terrorism.

27. Section 12 of the MLP Act and sections 3, 4 and 5 of the Regulations impose some legal obligations on financial institutions to take a number of customer due diligence (CDD) measures. However, the bulk of the CDD requirements are included in the Guidelines. A number of essential criteria in Recommendation 5 are only contained in enforceable Guidelines, rather than laws or regulations.
28. Financial institutions are not specifically prohibited from opening or keeping anonymous accounts or accounts in fictitious names, however obligations to obtain satisfactory evidence of identity of account holders appear to be being implemented in practice by financial institutions.
29. There is no requirement for financial institutions to undertake CDD when there are doubts about the adequacy of previously obtained data or when there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds. On-going CDD or enhanced due diligence on high-risk customers, business or transactions are not required. There is also no requirement to understand the ownership and control structure of corporate customers. Financial institutions are not required to apply CDD requirements to existing customers. Financial institutions are not yet required to take enhanced CDD measures when establishing business relationships with respondent institutions.
30. There is no requirement for financial institutions to establish risk management systems to determine whether a customer is a politically exposed person (PEP) or to have policies and procedures in line with international standards to manage a business relationship with PEPs.
31. There is some guidance for financial institutions to address risks associated with non-face to face business relationships or transactions.
32. With respect to introduced business, there are shortcomings in the arrangement for allowing financial institutions to rely on another institution or third party to verify identity. In particular, there is no requirement for financial institutions to satisfy themselves that the introducer, when in another country, is regulated and supervised for AML/CFT purposes and has measures in place to comply with comparable CDD requirements.
33. Secrecy or confidentiality laws do not inhibit the implementation of the FATF Recommendations in Samoa as they apply to money laundering, however due to the lack of coverage of terrorist financing under the MLP Act, it does not appear that confidentiality laws would be overridden by the MLP Act with respect to terrorist financing.
34. Under the MLP Act there is a transaction threshold for record keeping. Additionally there is no obligation to retain business correspondence as part of record keeping.
35. Financial institutions are required to send and maintain originator information with wire transfers throughout the payment chain. However, the application of this requirement to intermediary financial institution in the payment chain is unclear.
36. Samoa has a transaction threshold of SAT30,000 (approximately \$US 8,400) for triggering identification procedure for one-off or occasional transactions, including wire transfers.
37. There are no explicit provisions that impose an obligation on financial institutions to detect and monitor complex or unusual transactions.
38. There are no requirements for financial institutions to give special attention to business relationships and transactions with clients from or in countries, which insufficiently apply the FATF Recommendations. There is also no mechanism for applying counter-measures in such cases.
39. Financial institutions are required to report suspicious transactions involving proceeds of crime committed anywhere. However, there is no specific obligation to make an STR for transactions suspected to be related to terrorist financing. The STR obligation does not apply to attempted transactions or to transactions involving tax matters. These

shortcomings are addressed in the MLP Amendment Bill 2003, which is yet to be passed.

40. There are adequate safe harbour and tipping off provisions to protect reporting institutions and those making use of STRs.
41. While the FIU has procedures in place for providing feedback to financial institutions on STRs due to resourcing problems, feedback has not been provided in some cases.
42. Internal controls, compliance and audit measures for CFT have not been sufficiently covered in the MLP Act, Regulations and Guidelines. In practice some financial institutions, particularly foreign banks, have policies, procedures and controls for both AML and CFT.
43. The authorities are yet to establish regular onsite supervision and other compliance tests to ensure that the existing obligations for internal controls, compliance and audit are being effectively implemented for all financial institutions. Three rounds of onsite inspections have been undertaken of banks and the major remittance agencies and trust and company service providers since early 2005. Discussions with financial institutions and remittance businesses raised doubts about whether AML/CFT obligations are fully understood and being complied with in practice. This is a weakness in Samoa's AML/CFT system.
44. As at the date of the on-site visit, the Samoan authorities were implementing transition arrangements to cease the continued operation of international banks with no physical presence (shell banks) in Samoa, and had taken actions to de-license two international banks for non-compliance. The Samoan authorities have taken legislative steps that require international banks to establish and maintain a physical presence in Samoa, under the *International Banking Act 2005*, however, transitional arrangements have been in place since May 2005 which allow the operation of a small number of shell banks in Samoa up until July 2006. Since the onsite visit, of the eight international banks three have received an extension of time in which to establish a physical presence, three have established a physical presence, while two have had their license revoked.
45. Onsite inspections to establish compliance with licensing requirement were conducted on the three international banks which had established a physical presence. An onsite inspection is scheduled to be conducted on the three remaining applicant international banks, to be conducted on the date of the conclusion of the transition period. The two international banks which failed to comply or apply for an extension under Section 11 of the IBA were de-licensed and were required to immediately cease conducting business for new clients and to submit a plan for dissolution and to cease operations.
46. The *Central Bank of Samoa Act 1984*, the *Financial Institutions Act 1996* and the MLP Act 2000 provide the legal framework for the Central Bank of Samoa to license and prudentially supervise financial institutions operating in Samoa. The MLA has authorised the FIU to carry out the functions of the competent authority to monitor and supervise compliance by financial institutions with the MLP Act.
47. Despite the MLP Act having been passed six years ago and Regulations issued four years ago, onsite supervision of AML/CFT implementation is new in Samoa, having commenced in early 2005. Therefore effective implementation of the AML/CFT requirements has not yet been adequately monitored.
48. Challenges have been identified with conducting regular AML/CFT supervision of all financial institutions, both in terms of scope and frequency, due to limited resources within the FIU. The FIU is comprised of four designated staff who are well trained in AML supervision, but are unable to perform all the duties and responsibilities of both AML supervisor and FIU with the current levels of staffing. There is a plan to recruit more qualified staff in the near future.
49. Supervisors lack powers to compel or obtain access to relevant records to monitor AML/CFT compliance under the MLP Act, except when they are undertaking onsite

inspections. Adequate offsite inspection powers are available to the Inspector of International Banks under the *International Banking Act 2005*.

50. Under the MLP Act, criminal and civil sanctions are available but administrative sanctions are unclear. Supervisors do not have any direct powers of enforcement or sanction for failure to implement or comply with national AML/CFT requirements. There has been only limited use of dissuasive sanctions against financial institutions that fail to comply with AML/CFT requirements.
51. There are very few self regulatory organizations (SROs) for financial institutions in Samoa and none that have a role at present in regulating the application of AML/CFT measures.
52. Given the lack of regulations and guidelines for CFT, no supervision has taken place to monitor implementation of CFT preventative measures.
53. Agents providing money transfer services (remittance) are licensed by the Central Bank and are supervised by the FIU for AML compliance. In recent years the Samoan authorities have issued greater numbers of remittance licenses to develop the sector and support the movement of remittance business in Samoa away from underground banking to formal regulated channels. It is clear, however, that there still remains an element, albeit a small element, of unlicensed alternative remittance operators in Samoa.
54. AML/CFT training and onsite inspections have thus far only occurred with the largest remittance agencies. Given the number and spread of remittance agencies across Samoa, there are significant resource challenges for the FIU to directly provide training to all players in the remittance market. Significant weaknesses remain with implementation of AML/CFT regulation across the remittance sector.

#### **4. Preventive Measures – Designated Non-Financial Businesses and Professions**

55. While Samoa's real estate agent sector is very small and there is just one significant business dealing in precious stones and metals, there are significant numbers of lawyers, accountants and trust and company service providers in Samoa. Gambling, which would include casinos, is specifically outlawed in Samoa.
56. The MLP Act treats most DNFBPs as financial institutions, as the definition of activities of financial institutions under Schedule 1 of the MLP Act includes real property transactions, bullion dealing, casinos and other gambling and betting services, certified public accountants, lawyers and trust and company service providers. Therefore these DNFBPs are considered financial institutions for the purposes of the MLP Act and are legally subject to all of the obligations under the MLP Act. While significant work has been done with trust and company service providers, most other DNFBP are largely unaware of their obligations under the MLP Act and Regulations and are not yet effectively covered for AML/CFT purposes.
57. Trustee companies operating in Samoa have put in place AML preventive measures in keeping with the MLP Act. Trustee companies have been subject to three AML focused on-site inspections conducted by the FIU and the SIFA.
58. Industry-specific guidelines are lacking to address compliance by all DNFBPs. The Guidelines cover fiduciary services of trust and company service providers. Training has been provided by the SIFA to trust and company service providers. No monitoring or supervision of lawyers, accountants, the sector has taken place.
59. Only one suspicious transaction has been reported by any DNFBPs.
60. Samoa has not yet undertaken a risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs, but given the small population, economy and consumer market, the risk of other non-financial businesses and professions vulnerable to money laundering is quite low.

61. Limited measures are in place for encouraging the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML or TF.

## **5. Legal Persons and Arrangements & Non-Profit Organisations**

62. In the domestic sector, the Samoan legal system recognises companies, incorporated societies, cooperative societies and boards of charitable trusts.
63. Companies in Samoa are registered under an amended version of the New Zealand Companies Act 1955. A modernised Companies Act was passed in 2001, but this legislation has yet to come into force as the translation of this legislation into Samoan has not been completed.
64. The Companies Act 1955 allows for information about the legal ownership and control of companies to be available to competent authorities in a timely fashion through the system of registration with the Registrar of Companies. However, this is not the case where companies have issued share warrants. No measures are in place to prevent the misuse of share warrants for money laundering. The Companies Act 2001, which is awaiting commencement, does not contain any provision for share warrants.
65. No information is maintained about beneficial owners where these differ from the legal owner. The Companies Act 2001 does not currently provide for notices of trusts to be entered in companies' share registers. No information is available about the control of companies where exercised through nominee directors or foreign company directors. Once implemented the Companies Act 2001 will require directors to be natural persons, which will provide greater certainty to competent authorities about the control of companies.
66. Trusts are a feature of the Samoan legal system, and are governed by a mix of the principles of equity and statute law. As with other common law jurisdiction, Samoa does not have a system of central registration of trusts. The Trustees Act 1975 sets out a range of measures relating to the administration of trusts but does not govern the creation of trusts.
67. The Guidelines require financial institutions to verify the identity of trustees, settlors, protectors and any persons having power to appoint and remove trustees and any person (other than the settlor) who has provided funds to the settlement as direct prospective clients. Fiduciary service providers, including businesses that establish or administer trusts, are required to take reasonable steps to identify the ultimate beneficial owners or beneficiaries. In addition to the standard requirements in relation to individual and corporations who are trustees, financial institutions are required to obtain evidence of the proper appointment of trustees, such as extracts from the Deed of Trust or a letter from a lawyer verifying the appointment, details of the nature and purpose of the trust and details of the source of funds. The Samoan authorities have access to trust information held by financial institutions.
68. An international trust may be registered under The International Trust Act 1987 and in respect of which -
- (a) at least one of the trustees, donors or holders of power of advancement is either:
    - (i) a trustee company
    - (ii) an international company or
    - (iii) a foreign company registered under the International Companies Act 1987;and
  - (b) the beneficiaries are at all times non-resident.
69. International Trusts are registered with the Registrar of International Trusts who keeps details of the name of the trust, the address of the registered office of the trust and the

date of registration in the register of international trusts. An international trust must maintain a registered office in Samoa which office shall be the registered office of the representative trustee. A representative trustee is the trustee company, international company or foreign company registered under the International Companies Act 1987 which has been authorised by other trustee of the trust to accept legal service and to sue and be sued in the name of each and every trustee.

70. There is no upfront disclosure of details on the settlors, trustees (other than the representative trustee) and protectors of international trusts to the Registrar of International Trusts. Trustee companies providing services to international trusts are subject to the requirement to identify ultimate beneficial owners and beneficiaries. However, as such information is only available to the FIU, information on the beneficial ownership and control of international trusts may not always be available in a timely manner to other law enforcement, regulatory, supervisory or other competent authorities in Samoa.
71. The ability of the MLA to obtain adequate, accurate and current information in a timely manner about the beneficiaries of both domestic and international trusts is undermined by the identification of beneficiaries being optional for businesses other than fiduciary service providers.
72. Samoa has yet to undertake a review of its non-profit organisations (NPO) sector and the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism. NPOs in Samoa are not yet involved in Samoa's AML/CFT regime and are subject to minimal supervision and monitoring.
73. The non-profit sector in Samoa consists primarily of incorporated societies or charitable trusts which are regulated by the Incorporated Societies Ordinance and the Charitable Trusts Act 1965. It is estimated that there are over 90 charities operating in Samoa. A large number of unincorporated associations also operate in Samoa, but estimates of numbers are unavailable.
74. NPOs may apply for tax exemption certificates from the Ministry of Revenue, following registration with the Registrar of Incorporated societies.
75. There are no laws in Samoa regulating fundraising or expenditure by NPOs. External funding of NPOs must be funnelled through the Ministry of Foreign Affairs that will, in consultation, direct it towards appropriate groups. Monitoring of fundraising or expenditure by authorities is limited to the requirements for incorporated societies to file annual audited statements of income and expenditure each financial year. The Registrar's role is to ensure that such statements are filed and have been audited.

## **6. National and International Co-operation**

76. The existing legislative regime provides some measures for co-operation and coordination among the relevant law enforcement agencies, supervisors and other competent authorities at both the national and international levels. However, it is noted that in practice there are significant gaps in national cooperation and coordination for AML/CFT.
77. Coordination is taking place between certain agencies involved in AML/CFT, but at an operational level a number of key AML/CFT agencies are not involved in coordination structures. This is resulting in relatively weak cooperation and inadequate sharing of information.
78. Problems have existed over a number of years with formal instruments to support information sharing and cooperation between domestic agencies. In particular there remains a need for a Memorandum of Understanding to support information sharing between the FIU, the Attorney General's Office and agencies involved in the TCU (Police, Immigration, and Customs).

79. Good cooperation between regulatory and enforcement agencies occurs in relation to AML/CFT training and awareness raising.
80. There are structures in place for regular consultation with the financial sector on various governance matters, including AML/CFT. The strong working relationship between the FIU and much of the private sector could be further enhanced with cooperative exchanges of information, staff and training.
81. The MLP Amendment Bill 2003, once enacted will provide for the establishment of a Task Force comprising heads of various government agencies which will be set up to ensure liaison, cooperation and coordination between FIU, Government departments and statutory authorities involved in AML/CFT policy and operations. The amended law will also provide greater powers for sharing information with domestic and international authorities.
82. Samoa does not currently have a general law relating to mutual legal assistance. Under Part V of the MLP Act mutual legal assistance is available for the investigation or prosecution of money laundering, but this does not extend to other predicate offences or the financing of terrorism. A Mutual Assistance in Criminal Matters Bill has been drafted and, if enacted and implemented, will provide a flexible framework in which to offer mutual legal assistance for any crime punishable by a maximum period of imprisonment of 12 months or more.
83. Despite the current lack of legal provisions, the Samoan authorities have demonstrated a strong commitment to international cooperation and have provided assistance informally in 6 cases over the past 5 years. Such informal international cooperation avoids the need for court process but relies on voluntary cooperation by the financial sector in providing information requested by foreign jurisdictions. Informal mutual legal assistance cannot be considered a substitute for formal, legally enforceable, mutual legal assistance arrangements.
84. Mutual legal assistance in money laundering matters is only available where Samoa has entered into mutual assistance arrangements on a bilateral or multilateral basis with the requesting state (see section 31 of the MLP Act). While no ongoing mutual assistance arrangements are in place, Samoan authorities indicated that such arrangements, including arrangements for coordinating seizure and confiscation and asset sharing, can be made on a case by case basis.
85. Mutual legal assistance is available for the investigation and prosecution of money laundering offences but not for other predicate offences or the financing of terrorism.
86. There is no provision for service of judicial documents pursuant to a mutual legal assistance request. There is no power in the MLP Act for the police take witness statements for use in investigations and prosecutions pursuant to a mutual legal assistance request. Dual criminality is required for all mutual legal assistance measures, including less intrusive and non compulsory measures.
87. Freezing and forfeiture orders pursuant to mutual legal assistance requests is subject to the same limitations as domestic freezing and forfeiture orders, ie they apply only to proceeds of crime/property derived from money laundering and not to instrumentalities used in, or intended for use in, the commission of an offence.
88. *The Extradition Act 1974* and the Prevention and Suppression of Terrorism Act set out Samoa's extradition regime. Extradition under the Extradition Act is only available to countries with which Samoa has an extradition treaty in force or, in the case of Commonwealth countries, where the Head of State has designated the country in the Samoa Gazette. While these requirements are not in and of themselves a problem, the Extradition Act has been rendered ineffective as Samoa has not entered into any extradition treaties with foreign countries or designated any Commonwealth countries under the Extradition Act. A simplified 'fast-track' procedure for extradition for terrorism

offences, including the financing of terrorism, is set out in Part VIII of the Prevention and Suppression of Terrorism Act. Section 23 of that Act states that Part VIII applies notwithstanding the provisions of the Extradition Act or any other Act or law.

89. Dual criminality is required for extradition under the Prevention and Suppression of Terrorism Act. Section 24 provides that extradition is available for any terrorist offence under the Prevention and Suppression of Terrorism Act (including the financing of terrorism) and any offence determined by the Supreme Court to be the equivalent of such an offence. The simplified extradition procedure for terrorist offences does not require a request from a foreign country and applies to all countries without the requirement for a treaty.
90. Police to police contact occurs regularly between Samoan police and other partner police agencies in the region. The TCU is involved in regional cooperation through the Pacific Transnational Crime Coordination Centre (PTCCC) which is a multi-jurisdictional team of officers drawn from Pacific law enforcement agencies. Customs to Customs contact occurs regularly through the Oceania Customs Organisation.
91. It should be noted that Samoa is committed to providing a wide range of international cooperation through its full participation in the APG. In addition to participation in Plenary meetings and Typologies Workshops, Samoa provided a financial sector expert as part of the Team to conduct the Mutual Evaluation of Nepal in 2005.

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation (if necessary)

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1 General information on Samoa

1. Samoa is a small island country located in the Pacific region with a land area of 2935 sq.km and a population of approximately 175,000, of which 35,000 live in the capital Apia. Samoa is divided into 11 districts. Emigration has kept the population relatively stable in recent years, with economic growth being supported by prudent macroeconomic policies and a wide-ranging program of structural reforms.
2. Samoa has a parliamentary government that incorporates certain traditional practices into its governmental system. Samoa gained independence in 1962, the first South Pacific island country to do so. The Constitution provides for a head of state; a unicameral legislature elected by universal suffrage and, in practice, composed primarily of the heads of extended families, or "matai"; the protection of land rights and traditional titles; and other fundamental rights and freedoms. There is a Cabinet of 12 Ministers who comprise the Executive Council, and a Legislative Assembly of 49 members. Members of Parliament sit for five-year terms.
3. The political situation in Samoa has been stable over a number of years and the ruling Human Rights Protection Party continues to dominate and hold Government since it won election in 1988. Samoa held a general election on 31 March 2006, returning the Human Rights Protection Party to government.
4. Fonos or village councils, which are formally recognised by the Village Fono Act 1990, deal exclusively with village affairs such as culture, customs and traditions and including all customary land matters.
5. Samoa's judicial system consists of the District Court, the Lands and Titles Court, the Supreme Court, and the Court of Appeals. The Court of Appeals is the highest court. It has appellate jurisdiction only and can review the rulings of any other court. It is composed of a panel of retired New Zealand judges and sits once a year for several weeks.
6. The Lands and Titles Court has jurisdiction over customary land titles and is composed of vice presidents who are all Samoan 'matais', Samoans experienced in traditional Samoan custom and practices. The Chief Justice is also President of the Lands and Titles Court, although he would only preside over the latter in very important cases and appeal cases. The Supreme Court may review decisions of the Land & Titles Court.
7. Samoa has a national police force but has no defence force.
8. Samoa has a relatively small open economy with real GDP totalling 698.6 million tala (SAT), approximately \$US252 million, in 2002 and total merchandise trade representing 60 percent of GDP. 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 contribution of the Samoan financial sector to GDP was just 6.7 percent of GDP in 2001, with the international financial services (offshore) financial sector accounting for roughly 3 percent of GDP. Nevertheless, the international financial services sector is currently the fourth highest foreign exchange earner for the economy, after private remittances, tourism, and fishing.
9. Private remittances, mostly from Samoan emigrants, are equivalent to about 24 percent of GDP, while official transfers, mainly from Australia, Japan and New Zealand, averaged at about 18 percent of GDP in recent years.
10. In the financial year 2004-05, domestic fiscal and monetary policies were focused on

facilitating recovery from Cyclone Heta, which struck the country in January 2004. Economic growth was driven largely by the relatively active construction sector, large inflows of foreign aids, private remittances and further expansion in the tourism sector. GDP grew by approximately 6 percent in the fiscal year to end June 2005. The annual average inflation was 7.8 percent in June 2005, after peaking at 16.3 percent in December 2004.

11. The effective exchange rate has been broadly stable in recent years. The Central Bank has relaxed exchange controls and there are no restrictions on current account transactions. The balance of payments recorded an overall surplus of SAT 36 million (approximately \$US10 million) in June 2005.
12. The bulk of Samoa's population is village-based, living mainly on the resources provide by subsistence and small cash crops, supplemented by remittances from overseas relatives. A significant portion of Samoa's population remains 'unbanked'.
13. Samoa is one of the world's highest recipients of remittances as a share of GDP. Samoan expatriates abroad tend to maintain very strong ties with their families, villages and churches, even in the case of second-generation migrants. These strong ties combined with the sustained flow of new migrants ensure the continuation of remittances to Samoa.
14. Remittances from Samoan expatriates mainly come from American Samoa, New Zealand, Australia and the US (Hawaii and California) and have strongly positive impact on the growth of the Samoan economy. Samoans are able to find higher paid work outside of Samoa, which translates into returns for the economy through their remittances.
15. Samoan authorities are working to establish a shared culture of AML/CFT compliance amongst reporting institutions, designated non-financial businesses and professions (DNFBPs). Samoa passed the Money Laundering Prevention Act (MLP Act) in June 2000. The Central Bank, the Money Laundering Authority (MLA), the Samoa International Finance Authority (SIFA) and commercial banks are working to build a culture of AML/CFT compliance. Whilst there has been some involvement of the designated non-financial businesses and professions (DNFBPs) through seminars and workshops conducted by the MLA, there is still a need to further promote educational programs to enhance awareness and understanding of the relevant sectors and financial institutions governed under the MLP Act to ensure a shared compliance culture.
16. Samoa has endorsed the ADB/OECD Anti-Corruption Initiative for Asia-Pacific, including its Action Plan and Implementation Plan. The Public Service Code of Ethics governs public servants in Samoa. Samoa has established an office of the Ombudsman to investigate complaints concerning administrative actions by government agencies, including allegations of corruption. There is not, as yet, a code of conduct for parliamentarians in relation to corruption although Parliamentary Standing Orders include a Code of Parliamentary Ethics.
17. Independent reports on conditions of transparency and good governance in Samoa prepared by Transparency International (TI) indicate that instances of corrupt activities surface from time to time in both the private and public sectors. Public sector corruption (ministries and corporations) was noted at a relatively low level. There have been a significant number of cases detected, and those involved punished, which points to some effective mechanisms to detect and deal with such crimes. TI noted that that the government has put in place laws, parliamentary standing orders, policies and guidelines to curb corruption, although there is a need for greater emphasis on the enforcement of these good governance measures. TI also noted a challenge for transparency in Samoa posed by traditional gift giving and conflicts of interest. The propensity to use public resource and misuse entrusted power has sometimes been associated with the pressure to contribute to cultural functions.
18. Samoa has a reasonably efficient court system, although resources are limited and

capacities to support the courts through the Ministry of Justice are in need of further development. There are some capacity constraints regarding the enforcement of judicial decisions relating to fines and pecuniary penalties.

19. There are registration and certifying systems in place for ensuring the ethical and professional behaviour on the part of accountants, auditors and lawyers through their professional associations/societies. These include measures to ensure compliance with good practice through registration, licensing, supervision, oversight and sanction. While these systems are in place, awareness raising and enforcement remain issues.

## **1.2 General Situation of Money Laundering and Financing of Terrorism**

### **1.2.1 Sources of illicit funds**

20. Samoa generally does not have major crime problems; however there has been a recent increase in the number of cases involving elements of organised crime related to narcotics and firearms. In addition to drugs the most common crimes that generate illicit revenue within Samoa are primarily fraud and low-level theft.
21. Samoa has not yet undertaken a comprehensive study of its money laundering and terrorist financing risks and vulnerabilities, however there have been a number of smaller studies and various enforcement and regulatory agencies in Samoa are able to highlight specific risks and sources of illicit funds.
22. No terrorist activity has been detected within Samoa or other Pacific Island states or involving Samoans and there have been no cases or attempts of terrorist financing, nor intelligence indications of such activities involving Samoa or Samoans.
23. While Samoa has been relatively free from the influence of organised crime, it is clear that there are elements undertaking profit driven crime in Samoa, particularly in relation to drug trafficking and firearms trafficking.
24. Recent cases clearly illustrate that there is a market for cannabis and an emerging market for harder drugs including methamphetamine and cocaine in Samoa. Joint Police and Trans-national Crime Unit (TCU) operations during February and March 2006 resulted in the seizure of suspected narcotics and firearms and the arrest of over 20 people. These operations involved amounts of suspected narcotics which were significant by Samoan standards and highlights connections between the domestic drug market and trans-national crime, producing proceeds of crime to be laundered in Samoa.
25. There have been a number of reported and prosecuted cases of both private and public sector fraud, and low-level corruption which have all involved proceeds of crime.
26. There have been cases of trade in illegal firearms, which generates proceeds of crime to be laundered. The Samoan authorities are taking active steps to combat this trade.

### **1.2.2 Risks and vulnerabilities**

27. Samoa in general is considered to be a safe country and not a major money laundering or terrorist financing centre. Within that broad context, Samoa does however have a range of money laundering risks and vulnerabilities. The government of Samoa has recognised its vulnerability to the influence of trans-national organised crime, including money laundering.
28. Factors which increase Samoa's money laundering and terrorist financing vulnerabilities include the cash economy, a relatively large 'un-banked' informal sector, a large and relatively poorly regulated remittance sector, a porous border with American Samoa, relatively weak regulatory and enforcement capacity to prevent, detect and investigate money laundering and terrorist financing and yet to be fully developed AML/CFT measures in all sectors.

29. A major vulnerability is the continuing lack of a fully effective AML/CFT system that meets international standards. In particular, the lack of progress since 2003 with passing key legislative amendments to revise the regime is a significant concern.
30. Samoa's domestic banking system is small, and there is a relatively low risk of large amounts of money laundering derived from domestic sources. There are only a small number of non-bank financial institutions. Designated non-financial businesses and professions are comprised of lawyers, accountants, a very small number of real estate agents and trust and company service providers. Samoa's offshore banking sector is also relatively small.
31. There are, however, weaknesses with capacity and resources for those enforcement and regulatory agencies involved in prevention, detection and investigation of money laundering and terrorist financing in Samoa. It should be noted that while there have been significant improvements in such capacities in recent years; there is still a long way to go to effectively implement the international standards.
32. Low level corruption remains an issue and there have been cases of investigation and prosecution of corruption of officials, including within police and border enforcement agencies. Samoan authorities have shown their determination to strongly combat such corruption cases, indicating improving capacity to combat corruption within AML/CFT agencies.
33. Samoa's geographic proximity and close cultural and economic connections to American Samoa have meant that Samoa is vulnerable to organised crime operating from American Samoa. Reports over a number of years have highlighted drugs and organised crime problems within American Samoa. Recent cases have highlighted weaknesses with border enforcement with American Samoa.
34. Samoa's geographic location has meant that it is relatively isolated, which in part has shielded Samoa from being attractive to money launderers. Samoa's small and relatively un-developed financial market has not seen it as a target for international money laundering. However, Samoa does have an international financial services sector, which although prudently governed and relatively small by international comparisons, does increase Samoa's potential for exploitation for international money laundering.
35. Samoa has, in general, been spared the experience of other comparable Pacific Island jurisdictions in being exploited use as a drug transshipment point. Until the very recent past there had not been recorded cases of Samoa being used as a drug transshipment point. In early 2006 Samoan authorities seized significant amounts of narcotics including methylamphetamine and cocaine.
36. Clearly the existence of such drug markets in Samoa indicates an ongoing vulnerability. The government of Samoa is responding to these threats through the Trans-national Crime Unit and the strengthening of various other structures, including trade security, port security, customs capacity and the like.
37. Samoa has very well developed remittance corridors with American Samoa, New Zealand, Australia and the United States. While the bulk of such remittance move through regulated formal remittance channels, there is clearly an element of underground banking / alternative remittance services operating in Samoa. These unregulated operators pose vulnerabilities for money laundering. Further, the slower pace of AML/CFT implementation across the remittance sector and lack of compliance culture, when compared to the banking sector, increases the vulnerability for use of remittance corridors for money laundering.
38. Samoa's offshore financial sector may pose a money laundering risk, to the extent that such offshore business may in general be subject to vulnerability. However, the Samoan authorities are taking careful steps to effectively manage the risk and to minimise vulnerabilities.

39. The opening up for Samoa's economy in recent years is beginning to see a diversification of business activity, further direct foreign investment and an increase in the financial sector. With this increasing size and diversity of economic activity there is likely to be increased vulnerabilities to money laundering.
40. An effective compliance culture is still being developed across Samoa's financial sector and designated businesses and professions. There is yet to be developed a sector-wide awareness of risks in the financial system, compliance obligation from the regulator and a full awareness of effective systems for reporting suspicion.
41. Samoan cultural elements may contribute to the AML/CFT environment as both a strength and potential vulnerability. The small size of Samoa and the closely knit social ties within Samoan society contribute to a culture in which Samoans tend to know or know of most other Samoans and their business, either directly or through family or church ties. This has been raised as a deterrent to money as it is explained that many people would know if a member of the community became wealthy without a valid explanation. It may also, however, pose a vulnerability as the strong levels of trust and inherent assumptions in such traditional settings may be abused and money laundering may go undetected due to an unwillingness to report suspicion on a personal acquaintance. Similarly, this has an impact on 'tipping off' in terms of reporting STRs and conducting covert investigations.

### **1.3 Overview of the Financial Sector and DNFBP**

42. Samoa has a small financial sector. A rapid expansion in numbers and type of financial businesses started in the late 1980s. The International Financial Services Centre (offshore centre) was established in 1988 however, the size of the international financial services business remains very small compared to other major 'offshore' centres.

#### *Domestic Financial Sector*

43. The domestic financial sector in Samoa encompasses a wide range of financial institutions as follows:

Commercial banks	4
Credit Unions	20
Insurance Companies	8
Money Changers	5
Money transfer agents	16
Money lenders	4
The Samoa National Provident Fund	
The Development Bank of Samoa; and	
The Samoa Housing Corporation	

44. At the end of June 2005, assets of commercial banks accounted for slightly more than 50 percent of the assets of all domestic financial institutions, excluding the Central Bank. The commercial banking system is made up of two foreign owned banks and two locally owned banks. The two foreign banks (ANZ and Westpac) own the bigger share of the banking market, with estimates of them accounting for over 85% of the market share in Samoa. All banks in Samoa are supervised by the Central Bank in accordance with minimum prudential standards and requirements in line with the Basle Committee standards.
45. The vast majority of non-bank financial institutions, including insurance companies and credit unions are very small. Only two of the 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 and participation is compulsory for all public and registered private sector entities. The DBS is fully owned by the Government with an objective of financing projects in selected priority sectors, like agriculture, fishing, and tourism industries.

46. Over recent years the numbers of money transfer agent licenses issued by the Central Bank has increased significantly. This reflects a policy to support the shift of all remittance in Samoa into formal regulated channels and supports widespread coverage by licensed remitters while minimising transaction costs.
47. Lawyers must be admitted by the Supreme Court of Samoa and hold a practising certificate issued by the Samoa Law Society under the *Law Practitioners Act 1976*. Accountants were previously registered and licensed under the *Public Accountants Act 1984*, however from 8 June 2006 accountants will be registered and licensed under the *Samoa Institute of Accountants Act 2006*.
48. Samoa has not licensed the operation of casinos and operating a casino is illegal.
49. There is at this stage only a small real estate market in Samoa and very few real estate agents serving as intermediaries in real estate transactions. There is no association of real estate agents. Only 20% of all land in Samoa is under freehold title. The balance of lands are predominantly customarily owned.
50. The market for gold and jewellery is very small, and there is only one significant dealer in precious metals operating in Samoa for the local market (predominantly low-value items). There is not yet a significant jewellery market to cater for tourists in Samoa.

#### *International Financial Services Sector*

51. Established in October 1988, the international financial services sector is legally separated from the onshore sector. The *Samoa International Finance Authority Act 2005* (SIFA Act), establishes the Samoa International Finance Authority (SIFA) -an independent Authority to monitor and supervise activities in the International Financial Services sector. The statutory mandate of the SIFA also includes the general administration of the international financial services legislation, namely-
  - the *International Companies Act 1987*,
  - the *Trustee Companies Act 1987*,
  - the *International Banking Act 2005*,
  - the *International Trusts Act 1987*,
  - the *International Insurance Act 1988*,
  - the *International Partnership and Limited Partnership Act 1998* and
  - the *Segregated Fund International Companies Act 1998*.
52. The SIFA is an overarching statutory body which oversees all international finance business. The regulatory and supervisory powers of the SIFA are dispersed through out the individual international financial services legislation and in some instances it would appear that there is an overlapping of functions between those of the SIFA and other offices established under the international financial services legislation, for instance, the Registrar of International and Foreign Companies, the Registrar of International Insurance and the Inspector of International Banks which sit under the 'umbrella' of the SIFA.
53. The Samoan international financial services sector is relatively small by international comparison. At the end of June 2005, the international financial services sector comprised the following:
 

Trustee companies	7
International trust	164
International business companies (IBCs)	14,638
International banks	8
International insurance companies	3
54. Trustee companies are primarily engaged in the formation, management or administration of international trusts and IBCs. International banks and international insurance

companies are set up and licensed through these trustee companies. Trustee companies provide services only to non-residents of Samoa. Most of the client relationships are established on the basis of referrals from the head office or third parties (mostly accountants and lawyers outside Samoa). The definition of financial institutions (as amended by the Public Notice dated 28 November 2002) under the MLP Act includes Trustee Company Business. Trustee companies are therefore explicitly required to comply with the requirements of MLP Act, the Regulations and the Guidelines. Trustee Companies operating in Samoa typically form part of a group structure with offices in a number of jurisdictions, including Hong Kong, Singapore and the Cook Islands. The Group of companies have their own AML standards with which all the group member companies must comply. Group AML standards of trust and company service provider businesses operating in Samoa also take account of the local AML requirements.

55. The Samoan Authorities have brought a number of significant changes to the existing international financial services legislative framework. For instance, amendments to the *International Companies Act 1987* that are under preparation will impose stricter controls on all bearer instruments.
56. The International Banking sector has contracted significantly due to more rigorous regulatory controls. At the time of the onsite visit there were eight international banks registered in Samoa. The *International Banking Act 2005* provides a new framework for the licensing and supervision of international banks. International Banks are now required to establish and maintain a place of business, records and staff in Samoa. Existing international banks (previously licensed under the *Offshore Banking Act 1987*) are deemed to be licensed under the *International Banking Act 2005* and have been given a period of 270 days to comply with the above requirements. The SIFA has indicated that three out of the eight international banks have already established a physical presence in Samoa. The transitional period of 270 days which expired on 25 February 2006 has been extended to 25 July 2006 for 3 international banks while the remaining two international banks have been de-licensed. The *International Banking Act 2005* provides for the possibility for an international bank to operate in the domestic sector with the approval of the central bank. No international bank has yet been permitted to operate in the domestic sector.
57. There are only three international insurance companies licensed under the International Insurance Act 1988. International insurers have only a minimal presence in Samoa and are almost exclusively managed by the local trust companies. The international insurance companies are primarily engaged in captive insurance business.

#### **1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements**

##### ***Domestic Sector***

58. The Samoan legal system recognises companies, incorporated societies co-operative societies, and boards of registered charitable trusts as legal persons.
59. The majority of legal persons in Samoa are companies incorporated under an amended version of the *New Zealand Companies Act 1955*. Under the Companies Act, companies may be limited by share, limited by guarantee or unlimited. Legal persons may be members of companies, with the exception that a subsidiary company cannot ordinarily be a member of its holding company. Legal persons may also be directors of companies.
60. Companies fall into the categories of either public companies or private companies. Private companies are subject to lower requirements in some respects (eg minimum number of shareholders) than public companies but are prohibited from issuing prospectuses inviting subscriptions for shares. 2,021 companies are registered with the Registrar of Companies in the Ministry of Commerce, Industry and Labour. The Companies Act 2001 has not yet come into force.

61. There are 427 incorporated societies currently registered in Samoa under the Incorporated Societies Ordinance 1952. Incorporated societies comprise primarily non-profit organisations such as industry associations, religious organisations and social and sporting clubs. Legal persons may be members of incorporated societies. Statistics on Co-operative societies were not available.
62. Boards of charitable trusts may apply for incorporation in Samoa. Such incorporation is voluntary. There are 125 charitable trusts registered in Samoa.
63. The Central Bank of Samoa was established in 1984 to be responsible for licensing, supervising and regulating banking business and the extension of credit. The Financial Institutions Act (FIA) 1996 provides statutory powers for the Central Bank to license and supervise financial institutions in Samoa in order to meet its broad objective to maintain the health and stability of the financial system.
64. In January 2001 the FIA 1996 was amended to improve the supervisory framework of the CBS over the financial system and to extend supervision of the operations of non-bank persons and financial institutions with the approval of the Minister of Finance.
65. The Governor of the Central Bank is responsible for the carrying out of the functions of the Money Laundering Authority (MLA) as stipulated under the *MLP Act 2000*. A Financial Intelligence Unit (FIU) has been established within the MLA to receive, analyse and disseminate suspicious financial information it receives from the financial system.
66. Samoa has drafted further enhancements and amendments to its regulatory and enforcement framework, including drafting a new Insurance Bill, the Proceeds of Crime Bill and Mutual Legal Assistance in Criminal Matters Bill. These bills are still awaiting consideration by the Parliament.

## **1.5 Overview of strategy to prevent money laundering and terrorist financing**

### **a. AML/CFT Strategies and Priorities**

67. Samoa has had an overall priority to implement an effective AML and subsequently CFT regime since the late 1990s. Samoa is pursuing AML/CFT implementation as part of wider reforms to its private and public sectors.
68. Priority areas for Samoa include establishing effective legal and regulatory AML/CFT regimes; building the capacity of regulatory and enforcement institutions to implement the regime; and ensuring effective national and international cooperation.
69. Samoa is a small island country, with significant capacity constraints (limited resources and expertise) across government and the private sector to frame and implement laws and regulations.
70. Samoa passed comprehensive AML legislation, the MLP Act, in 2000 and legislation for the Prevention and Suppression of Terrorism in 2002. Up until now, many elements of these pieces of legislation have not been utilised, as there have not yet been any money laundering or terrorist financing offences prosecuted in Samoa. Significant progress has been made to implement the key regulatory elements of the MLP Act. Samoa is in the process of seeking to further update its AML legislation through the MLP Amendment Bill 2003, as the MLP Act does not reflect all elements of the current international standards for AML/CFT, which were themselves significantly revised by the FATF in 2001 (8 Special Recommendations), 2003 (revision of the 40 Recommendations) and 2004 (Special Recommendation IX).
71. Samoa issued AML regulations and comprehensive AML guidelines in 2002. Implementation of the guidelines has taken place across the banking sector, key NBFIs,

larger remittance businesses and trust and company service providers. As yet, however, the guidelines have not been implemented with other covered sectors, including most DNFBPs.

72. Samoa is pursuing a strategy of engagement with the international community on AML/CFT implementation through its membership of the APG and its cooperation with various bilateral and multilateral technical assistance donors and providers. Additionally, Samoa is pursuing membership of the OGBS. Samoa joined the APG in the late 1990s and was just the second country within the APG to undergo an APG Mutual Evaluation, done jointly with OGBS, to assess its compliance with the international AML/CFT standards. Samoa underwent an IMF Offshore Financial Sector assessment in 2002, which included consideration of AML/CFT. Samoa has been working to respond to the recommendations of both those assessments.
73. To strengthen Samoa's existing legislative framework on AML/CFT, four bills were prepared in 2003 and are awaiting approval by Samoa's parliament:
  - a) Money Laundering Prevention Amendment Bill
  - b) Proceeds of Crime Bill
  - c) Mutual Legal Assistance in Criminal Matters Bill; and
  - d) The Insurance Bill
74. These bills have been awaiting passage since 2003, which represents a significant delay with passage through the parliament to give effect to the national priority to legislate for a revised AML/CFT system in line with current international standards. Samoan authorities indicate that there is a strong expectation for these bills to be passed in the second half of 2006.
75. Samoa is working to establish and build the capacity of its key AML/CFT institutions. This is being done in cooperation with various international donors and providers including the IMF, Asian Development Bank (ADB), the Australian Federal Police, the New Zealand FIU and the Australian FIU.
76. Samoa's Financial Intelligence Unit (FIU) has been established within the Financial Institutions Department of the Central Bank to receive and analyse information regarding suspicious transactions and to disseminate suspicious reports to competent authorities for investigation and prosecution. The FIU is also serving to supervise financial institutions for AML/CFT.
77. Samoa has recently established the Samoa International Financial Authority (SIFA) to oversee Samoa's international financial services sector.
78. Samoa has established a Trans-national Crime Unit (TCU) within the Department of the Prime Minister consisting of Police, Customs, Ministry of Revenue and Immigration officers. The focus of this unit is the prevention of terrorism, people smuggling, illegal immigration, drug trafficking, money laundering, and cyber crime and human trafficking.
79. To date there have not been any investigations of money laundering or terrorist financing offences undertaken by the Samoan police or the TCU.
80. Samoa's police and customs have received training in AML/CFT to enhance detection and investigation capacity. Samoan prosecutors and the judiciary have received training in AML/CFT.
81. While effective national co-ordination between Samoan agencies involved in AML/CFT is a priority, realising this goal has remained problematic. The process to establish Memorandum of Understanding (MOU) for cooperation and exchange of information between the FIU and law enforcement agencies in Samoa such as the Police Service, Customs Service and Immigration Service commenced in 2003 but to date has not been finalised.

82. A number of relevant key agencies in Samoa have not as yet been involved in coordinated AML/CFT efforts. For example the regulator for non-profit organisations (NPOs) and the Public Trustees Office.
83. Samoa has undertaken awareness programs for the private sector and the general public aimed to highlight the need to combat money laundering.
84. There is improving cooperation on AML/CFT between the Samoan authorities and the covered institutions, reflected in increasing opportunities for shared training and consultation on implementing various reforms to Samoa's AML/CFT regime. A recent example of increasing private/public sector cooperation is the donation by Westpac Bank in March 2006 of six computers to support the police to investigate money laundering and financial crime.

**b. The institutional framework for combating money laundering and terrorist financing**

*Ministries*

85. The following Ministries, agencies and institutions are involved in decision making relating to AML/CFT policy formulation in Samoa:
  - The Ministry of Finance has responsibility for the overall policy and planning of Samoa's economy, including various preventative measures to combat money laundering and the financing of terrorism.
  - Ministry of Foreign Affairs, Trade and Commerce has responsibility for all mutual assistance agreements with other countries, the ratification of the international conventions as well as policy relating to registration of companies and other legal persons.
  - Ministry of the Prime Minister and Immigration is responsible for the Immigration department, chairing the National Border Management Committee and hosting the Trans National Crime Unit (TCU).
  - Ministry of Revenue is responsible for fiscal matters within Samoa as well as Customs.
  - Ministry of Justice is responsible for administration of Samoa's court systems.
  - Ministry of Police (inclusive of Prisons & Fire Services) is responsible for the national police force.
  - Ministry of Commerce, Industry and Labour is responsible for regulating trusts and non-profit organisations and for registration of companies and other legal persons.

*Government Departments, Agencies and Public Authorities*

The following departments, agencies and public authorities have a role to play in the implementation of Samoa's AML/CFT system:

- Central Bank of Samoa - An independent institution established to administer monetary policy functions including issuing currency and to license and supervise financial institutions and prudentially supervise non-bank financial institutions. More recently the Central Bank is also the Money Laundering Authority for Samoa.
- Money Laundering Authority (MLA) –established under the MLP Act is responsible for receiving and disseminating suspicious transaction reports as well as supervising covered institutions for AML/CFT. The Governor of the Central Bank is responsible for carrying out the functions of the MLA. The MLA includes the Samoa FIU.

- The Attorney General's office is independent, established under s.41 of the Constitution –the Attorney General is the chief legal officer in Samoa and is responsible for public prosecutions as well as providing legal advice to the CBS and other government departments and taking a lead role in any mutual legal assistance arrangements involving Samoa.
- Samoa International Finance Authority (SIFA) is an independent statutory authority established to oversee the governance of Samoa's international financial services (offshore) sector.
- The Police force is the principle law enforcement agency in Samoa.
- The Customs and Revenue department has dual roles of revenue collection and taxation as well as border management and investigation.
- Immigration Department has responsibility for border management, integrity of travel documents issue and management of compliance with entry permits
- The Ombudsman' Office is responsible for investigating complaints against public officials.
- Samoa Port Authority is an independent authority formed to manage Samoa's ports, including monitoring and security for all vessels and cargo.

#### *Associations and SROs*

The following agencies and associations have a role to play in providing support to AML/CFT implementation in Samoa:

- Samoa Bankers Association – an association of licensed commercial banks in Samoa formed to support and ensure the protection of the banking sector in Samoa.
- Samoa Law Society - is the professional body that coordinates activities relating to the professional conduct of lawyers in Samoa.
- Samoa Institute of Accountants - is the professional body that coordinates activities relating to the professional conduct of chartered accountants in Samoa.
- Samoa Umbrella for Non-Governmental Organisations (SUNGO) – an NGO association to represent and support the NGO sector in Samoa, by consulting with government, raising public awareness and build capacity of member NGOs.

#### **c. Approach concerning risk**

86. Samoa has not undertaken a comprehensive risk assessment of its money laundering or the financing of terrorism risks.
87. The authorities have not pursued the application a risk-based approach as an integral part of Samoa's regulatory framework for combating money laundering and terrorist financing.

**d. Progress since the last mutual evaluation**

88. Samoa underwent a joint APG/OGBS Mutual Evaluation in 2001 during the First Round of APG Mutual Evaluations. The 2001 Joint evaluation made recommendations to address the deficiencies identified by the evaluation team at that time.
89. Samoa has taken steps to meet each of those recommendations, although significant delays in the passage of key bills to give effect to these steps has meant that in a number of areas, effective progress has not been made.
90. Summary points regarding progress with each of the fifteen recommendations from the 2001 APG/OGBS Mutual Evaluation Report are included below:

**1. *Take steps to sign, ratify and implement the Vienna Convention and Palermo Conventions at the earliest opportunity.***

Samoa acceded to the Vienna Convention in 2005, but has not yet signed or ratified the Palermo Convention on Trans-national Organised Crime.

**2. *Issue regulations and/or guidelines to the financial sector in order to provide clear guidance on how financial organisations can fulfil their obligations under the MLP Act.***

Samoa issued the Money Laundering Prevention Regulations and Guidelines in 2002, which provide clear guidance to financial institutions regarding obligations under the MLP Act. The guidelines do not, however, directly address practical steps for all covered institutions (for example lawyers and trust and company service providers).

**3. *In relation to customer identification:***

- *introduce statutory customer identification requirements for all financial institutions, with relevant provisions to be included in both the money laundering and regulatory laws;*
- *ensure that the customer identification requirements relate to the opening of all account and to on-going relationships;*
- *require trustee companies to maintain records of beneficial ownership and directors of IBCs, as well as other relevant information to support the bona fides of the parties for whom they are acting;*
- *Introduce a standard form for cross-border cash reporting.*

Samoa issued the Money Laundering Prevention Regulations in 2002, which addressed customer identification requirements and record keeping.

Samoa has introduced a standard form for cross-border cash reporting.

**4. *In relation to suspicious transactions:***

- *remove the \$30,000 threshold for record-keeping of information related to transactions and the reporting of suspicious transactions contained in section 12 of the MLP Act;*
- *introduce a standard suspicious transactions reporting form to be used by all reporting institutions;*
- *add a specific indemnity clause, in section 12 of the MLP Act, covering financial institutions and their employees when making suspicious transactions reports under the Act;*
- *Introduce explicit provisions in the MLP Act permitting the regulatory agencies and auditors to report suspicious activity and granting immunity for*

***making such reports.***

These changes will be addressed by the passage of the MLP Amendment Bill 2003.

A standard suspicious transaction reporting form has been issued to all financial institutions (see Annex 3).

**5. *In relation to sharing of information:***

- ***remove all remaining constraints in the regulatory laws that prevent access by the regulators to all records maintained by financial institutions, including customer records.***
- ***remove any statutory impediments to the sharing of information between the domestic regulatory bodies, and between these authorities and the MLA;***
- ***introduce statutory protection against breach of confidentiality for the sharing of information by the domestic agencies.***

Remaining constraints preventing full access to records kept by financial institutions have been removed. Not all constraints on sharing information between government agencies have been removed.

**6. *In relation to international co-operation and mutual assistance:***

- ***introduce specific provisions in the MLP Act to permit the MLA, as part of its powers and duties, to co-operate and exchange information with foreign counterpart FIUs;***
- ***enable judicial co-operation to take place without the prior condition of entering into a mutual assistance arrangement;***
- ***remove the remaining constraints on the type of information (including details of the affairs of individual customers) that the offshore regulator may share with foreign counterparts;***
- ***ensure that the Central bank and the Registrar of International and Foreign Companies have the ability to exchange information with foreign regulators in cases involving money laundering;***
- ***introduce powers under the regulatory laws to permit the regulatory agencies to obtain information by compulsion from financial institutions on behalf of foreign counterparts.***

While some progress has been made through legislative changes to the regime governing international finance in Samoa, the pending passage of the MLP Amendment Bill 2003 will address the remaining items.

**7. *Take measures to ensure a clear distinction in operational terms between the role of the Central Bank as the MLA and its role as supervisor of the banking system.***

Some steps have been taken to ensure a clearer distinction between the role of the Central Bank in its role as the MLA and its role as prudential supervisor of the financial system. Amendments contained in the MLP Amendment Bill 2003 will assist in making this functional distinction.

**8. *In relation to auditors:***

- ***remove the obligation on the auditors (contained in some of the regulatory laws) to forewarn financial institutions of the intention to report suspicious activity or evidence of criminal activity and malpractice to the regulatory***

- authorities;*
- *extend across all the regulatory laws the duty of the auditors to report to the authorities any evidence of financial malpractice or criminal activity;*
- *introduce procedures under which the auditors would be required to verify compliance by financial institutions with their obligations under the MLP Act; and*
- *review the system of “approved” auditors to ensure that the criteria being use are sufficient to restrict approval only to competent individuals with relevant experience in auditing financial services.*

Clause 34 of the MLP Amendment Bill 2003, which is yet to be passed, has provisions addressing the third point above. Section 35 of the International Banking Act (2005) requires auditors to report to the authorities information of financial malpractice or criminal activity.

**9. *In relation to the need for shareholders and directors to be ‘fit and proper’:***

- *introduce common provisions in all the regulatory laws requiring that shareholders and directors of financial institutions are fit and proper;*
- *review the background of all existing shareholders and directors of offshore financial institutions to establish whether they meet fit and proper criteria.*

Relevant provisions were introduced through the Money Laundering Prevention Guidelines introduced in 2002.

**10. *In relation to on-site examinations:***

- *extend the current system of on-site examinations of the domestic banks by the Central Bank to include specific attention to the banks’ compliance with their obligations under the MLP Act;*
- *implement a routine and regular system of on-site examination of the operations of the trustee companies to focus particularly on the customer identification and record-keeping procedures;*
- *make provisions for the Registrar of International and Foreign Companies to be able to accompany the Central Bank of Samoa staff on on-site examinations of the domestic bank with offshore customers.*

On-site inspections of domestic banks now focus specifically on AML/CFT obligations. Provisions were implemented to include the Registrar of International and Foreign Companies as part of the MLA to take part in onsite inspections for AML/CFT.

**11. *Implement measures in the short term to “immobilise” bearer shares issued by IBCs, by requiring their safekeeping by licensed financial institutions; and in the longer-term to remove the ability for any company to issue bearer shares.***

This recommendation will be met through the passage of the MLP Amendment Bill 2003.

**12. *Amend Section 19 of the MLP Act to allow the MLA to delegate the authority to collect the reports required under Section 19(1) to an authorised officer as defined in Section 19(2).***

This is awaiting passage of the MLP Amendment Bill 2003.

**13. *Develop the capacity and expertise of the police to enable them to assist with money laundering investigations.***

Training has been provided to police to develop their capacity to enable them to assist with money laundering investigations, although further training is need.

***14. Provide training to the agencies with powers conferred by section 19 of the MLP Act, to assist them in the exercise of those powers.***

Training has been provided to Customs officials to support their work to implement powers in relation to enforcement with cross border cash reporting requirements.

***15. Recruit additional staff into the Office of the Registrar of International and Foreign Companies to improve the depth of regulatory and accounting skills and resources. (Work in progress)***

The Samoa International Finance Authority has recruited a number of additional staff and now has adequate staff resources.

## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **Laws and Regulations**

#### **2.1 Criminalisation of Money Laundering (R.1, 2 & 32)**

##### **2.1.1 Description and Analysis**

###### *Criminalisation of money laundering*

91. Samoa's anti-money laundering measures, including the offence of money laundering, are set out in the *Money Laundering Prevention Act 2000* (MLP Act) which was based, in part, on the 1996 Commonwealth Model Law for the Prohibition of Money Laundering. The MLP Amendment Bill was drafted in 2003 to amend, among other things, the money laundering offence provisions. If the draft legislation were enacted and implemented, it would bring the money laundering offence into closer alignment with international standards.
92. Money laundering is currently criminalised under section 3 of the MLP Act, with the elements of the money laundering offence set out in the definition of 'money laundering' in section 2 of the Act. The definition covers engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, as well as receiving, possessing, concealing, disguising, transferring, converting, disposing of, removing from or bringing into Samoa any property that is the proceeds of crime. In each case the money laundering offence requires knowledge or reasonable grounds to believe that the property is proceeds of crime.
93. However, where a person suspects or believes that funds are derived from or used in connection with the proceeds of crime, they do not commit the offence of money laundering where the suspicion or knowledge is disclosed to the Money Laundering Authority before or as soon as possible after doing the act that would otherwise be money laundering.
94. Together with section 5 of the MLP Act, which criminalises attempts, aiding, abetting and conspiracy to commit money laundering, the money laundering offence in section 3 covers the physical and material elements set out in the Vienna and Palermo Conventions.
95. The definition of 'property' that can be the subject of money laundering is broad and inclusive. Section 2 of the MLP Act defines property to include money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, and includes any interest in such property. The Samoan authorities indicated that this definition is intended to capture all forms of property. The money laundering offence can be committed in relation to property of any value.
96. The definition of 'proceeds of crime' in section 2 of the MLP Act as the proceeds of 'unlawful activity', extends to the proceeds of unlawful activity committed outside Samoa and proceeds derived or obtained directly or indirectly through unlawful activity. The definition also includes property that is mingled with property that is the proceeds of unlawful activity.

###### *Predicate offences for money laundering*

97. Predicate offences for money laundering are determined using a threshold approach, which is set out in the definition of 'unlawful activity'. Unlawful activity is any act which is a crime 'under any law anywhere', other than crimes related to taxation or exchange control,

and which is punishable by death or imprisonment for a maximum period of not less than five years. It is not necessary for a person to be convicted of a predicate offence to establish the commission of an unlawful activity.

98. The requirement for a maximum penalty of 5 years' imprisonment or more is higher than the 12 months' imprisonment threshold provided for in Recommendation 1 and potentially excludes offences that should be predicate offences for money laundering, for example, at the time of the on-site evaluation, the importation of narcotics was not a predicate offence due to the penalty being 2 years' imprisonment or a fine of SAT 400 (approximately \$US112). This has subsequently been increased by the *Narcotics Amendment Act 2006* which was assented by the Head of State on 1st March 2006.
99. It is not clear that all the designated categories of predicate offences in the glossary to the FATF 40 Recommendations are covered under Samoan law. In relation to human trafficking, one of the designated categories of offences required by the Forty Recommendations, Samoa is in the process drafting legislation on transnational organised crime which will address this issue.

#### *Foreign predicate offences*

100. Conduct that occurred outside Samoa can constitute a predicate offence for money laundering in Samoa. The definition of 'unlawful activity' extends to actions which 'under any law anywhere are punishable', meaning that even an action that is not an offence in Samoa but which is an offence overseas can be a predicate offence for money laundering in Samoa.
101. In 2003, section 3 of the Crimes Ordinance 1961 was amended to give extraterritorial effect to all offences in the Ordinance, regardless of whether the act or omission occurs in Samoa or any other place. As a consequence, a number of predicate offences committed outside Samoa will also be domestic offences and, where punishable by 5 years' imprisonment or more under the Crimes Ordinance, predicate offences for money laundering in Samoa.

#### *Self-laundering and ancillary offences*

102. There is nothing under Samoan law to prevent a person being convicted for both the predicate offence and the offence of money laundering in relation to the proceeds of that offence.
103. Section 5 of the MLP Act provides a range of ancillary offences for money laundering, i.e. aiding, abetting, counselling, procuring and conspiracy to commit money laundering.

#### *Proof of intentional element*

104. Section 2 of the MLP Act provides that the offence of money laundering is committed where a person engages in a transaction involving property or deals with property 'knowing' or 'having reasonable grounds to believe' the property is the proceeds of crime. The requirement for 'reasonable grounds to believe' seems to be an objective test based on the information available to the defendant. The common law test applies in Samoa to proving intent in relation to the elements of the money laundering offence. This test allows intent to be inferred from evidence.

#### *Extension to legal persons*

105. The money laundering offence extends to legal persons and arrangements through the definition of 'person' in section 2 of the MLP Act. This definition covers any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group, capable of acquiring rights or entering into obligations.
106. Section 4 of the MLP Act also reverses the onus of proof for officers of bodies

corporate and unincorporated bodies that have been convicted of money laundering, ie the officers are also guilty of money laundering unless they can prove the offence was committed without their knowledge, consent or connivance.

107. The MLP Act provides proportionate and dissuasive criminal sanctions for money laundering by natural persons or legal persons and arrangements of a fine of SAT 1 million (approximately \$US280,000), 7 years' imprisonment or both. Samoan law does not impose civil or administrative penalties for money laundering.
108. It is not possible to assess the effectiveness of the criminalisation of money laundering Samoa as there have been no money laundering investigations or prosecutions to date. However, no issues were raised with the evaluation team about any difficulties with the framing of the money laundering offence. The lack of prosecutions may be attributed, in large part, to the need for greater expertise, capacity and coordination in the investigation of financial crimes amongst Samoan law enforcement authorities. The Samoa Police, in particular, expressed a need for further training and assistance in improving their capacity to investigate such crimes.

### 2.1.2 Recommendations and Comments

109. Samoa should enact and implement the MLP Amendment Bill and the Proceeds of Crime Bill to:
- reduce the threshold requirement for predicate offences for money laundering to cover all offences punishable by a maximum period of imprisonment of 12 months or more.
  - expressly state that knowledge, intent or purpose for an element of the offence may be inferred from objective factual circumstances.
110. Samoa should consider reviewing its criminal laws to ensure that offences in each of the designated categories of offences in the glossary to the FATF Recommendations are criminalised and, in cases of appropriate severity, carry penalties that meet the threshold for predicate offences for money laundering.
111. Law enforcement authorities would benefit from further training and capacity building in the investigation of financial crimes.

### 2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> <li>• The threshold requirement for crimes to be punishable for a maximum of more than five years' imprisonment is too high.</li> <li>• The predicate offences for money laundering do not appear to cover all the designated categories of offences, due to penalties for such offences being lower than the five year imprisonment threshold or the offences not existing under Samoan law.</li> </ul>
R.2	LC	<ul style="list-style-type: none"> <li>• While Samoan law addresses the essential criteria of Recommendation 2, effectiveness has been weakened by the need for more capacity amongst law enforcement authorities to investigate financial crimes.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>• Comprehensive statistics on the number of money laundering investigations undertaken were not given</li> </ul>

## 2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

### 2.2.1 Description and Analysis

112. Financing of terrorist acts is criminalised under section 20 of the Prevention and Suppression of Terrorism Act 2002. The offence closely follows Article 2 of the International Convention on the Suppression of the Financing of Terrorism and extends to every person who, by any means, directly or indirectly, knowingly or without due inquiry, provides or collects funds or proceeds with the intention that such funds or proceeds be used, or in the knowledge that such funds or proceeds are to be used, in full or in part, to:
- a) carry out an act which constitutes an offence under the Prevention and Suppression of Terrorism Act, or
  - b) carry out any other act intended to cause death or bodily injury to any person not taking an active part in the hostilities of armed conflict, where the purpose of such act, by its nature or context, is intended to intimidate a population, or to compel a State or Government or an International Organization to do or to abstain from doing an act.
113. Most of the terrorist acts listed in the Interpretative Note to Special Recommendation II are offences under the Prevention and Suppression of Terrorism Act, meaning that the financing of these terrorist acts is an offence. However, the offences required to be enacted under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are set out in a separate statute, ie Part X of the Civil Aviation Act 1998, and therefore financing of such acts does not expressly fall within the financing of terrorist acts offence. The offences in the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf have not been implemented and therefore financing such acts also falls outside the scope of Samoa's terrorist financing offence.
114. The Prevention and Suppression of Terrorism Act adopts the definition of 'funds' used in the International Convention on the Suppression of the Financing of Terrorism. The Act also extends the offence of financing of terrorism to provision or collection of 'proceeds', which are defined as any funds derived from or obtained, directly or indirectly, through the commission of a terrorist offence under the Prevention and Suppression of Terrorism Act.
115. While the offence in section 20 of the Prevention and Suppression of Terrorism Act satisfies the criminalisation of the collection or provision of funds for most of the terrorist acts set out in the Interpretative Note to Special Recommendation II, it does not criminalise the provision or collection of funds for use by a terrorist organisation or an individual terrorist where such funding is not connected to an actual or intended terrorist act.
116. Attempting to commit the offence of financing of terrorist acts is criminalised under section 27 of the Crimes Ordinance 1961, which makes it an offence to attempt to commit any other statutory offence under Samoan law.
117. The Prevention and Suppression of Terrorism Act also criminalises assisting the financing of terrorist acts. The offence is framed in very broad terms and covers every person who knowingly or with due inquiry [sic] assists in any way the provision of or collection of funds or proceeds where such funds or proceeds are to be used to carry out an act which constitutes an offence under the Prevention and Suppression of Terrorism Act.
118. Financing of terrorist acts carries a penalty of a maximum 15 years' imprisonment and is therefore a predicate offence for money laundering. Assisting the financing of a terrorist act, with a maximum penalty of 5 years' imprisonment, also meets the threshold requirement for a money laundering predicate offence.
119. The offences in the Prevention and Suppression of Terrorism Act have extra-territorial effect. Under section 25, the Supreme Court of Samoa has jurisdiction to hear and

determine any matter under the act 'irrespective of whether any act or event takes place inside or outside Samoa'. The extra-territorial effect of the Act seems to cover the provision or collection of funds or assets for terrorist acts regardless of whether they were provided or collected in a different country from the terrorist act.

120. Samoan authorities indicated that under Samoan law, legal persons can be convicted for the offence of financing of terrorist acts. Section 4 of the Acts Interpretation Act 1974 extends the meaning of the term 'person' in all legislation to include bodies of persons whether corporate or unincorporate. It is not clear, however, how the penalty of 15 years' imprisonment would be applied to a body of persons. And in contrast to the provisions relating to the assisting the financing of terrorist acts, there is no provision for making the management or officers of a legal person that has committed the primary offence of financing of terrorist acts personally liable.
121. The penalty of a maximum sentence of 15 years imprisonment for financing of terrorist acts seems proportionate and dissuasive as does the maximum penalty of 5 years imprisonment and/or a SAT 100,000 (approximately \$US 36,000) fine for assisting the financing of terrorist acts. However, as there have been no investigations or prosecutions for financing of terrorist acts or assisting the financing of terrorist acts in Samoa, the effectiveness of these penalties cannot yet be gauged.

### 2.2.2 Recommendations and Comments

122. Samoa should criminalise the collection and provision of funds or proceeds for use by a terrorist organisation or an individual terrorist, without the requirement that the funds or proceeds be linked to a specific terrorist act.
123. Samoa should criminalise the provision or collection of funds with the intention that such funds or proceeds be used, or in the knowledge that they are to be used, to carry out an offence under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
124. Samoa should amend the Prevention and Suppression of Terrorism Act to expressly provide for the liability of legal persons under the financing of terrorist acts and adopt appropriate penalties for corporate liability.
125. Samoa should also include a provision, along the lines of that relating to assisting the financing of terrorist acts, stating that where a legal person is found guilty of the financing of terrorist act, managers, company directors or other persons with authority over funds or proceeds are also personally liable unless proven otherwise.

### 2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> <li>The financing of terrorist acts offence does not effectively criminalise the collection or provision of funds for use by terrorist organisations or individual terrorists.</li> <li>Samoa does not expressly criminalise providing or collecting funds with the intention that such funds or proceeds be used, or in the knowledge that they are to be used, to carry out an act that constitutes an offence under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.</li> <li>The financing of terrorist acts offence appears difficult to apply to</li> </ul>

		legal persons due to a lack of penalties other than imprisonment.
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>There have been no financing of terrorism investigations, prosecutions or convictions in Samoa.</li> </ul>

## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

### 2.3.1 Description and Analysis

126. Samoa does not have a general regime for freezing and confiscating the proceeds of crime. The draft Proceeds of Crime Bill, if enacted and implemented, would introduce a general freezing and confiscation regime. However, this Bill has not yet been passed by the Parliament.
127. Several laws allow for the forfeiture and freezing of the proceeds of specific offences. Part IV of the Money Laundering Prevention Act allows for the confiscation of property derived from money laundering and the freezing of alleged proceeds of crime held by a person charged, or about to be charged, with the offence of money laundering. Part VII of the Prevention and Suppression of Terrorism Act allows for the forfeiture and freezing of funds or proceeds collected for the purpose of committing a terrorist offence under that Act.
128. The *Narcotics Amendment Act 2006* and *Arms Amendment Act 2006* came into force on 1 March 2006. These Acts bring forward some elements of the draft Proceeds of Crime Bill for offences ‘involving a narcotic’ and offences ‘involving the use of a firearm’ respectively.

#### *Proceeds of money laundering*

129. The freezing and forfeiture provisions of the MLP Act apply primarily to the proceeds of money laundering. The forfeiture provisions are set out in section 21 of the Act, which allows a Supreme Court Judge to order that any property of or in the possession or under the control of a person convicted of money laundering, and which is derived from money laundering, to be forfeited. The onus of proof is reversed for establishing whether such property is derived from money laundering.
130. This forfeiture power is subject to a number of restrictions that limit the capacity of the Samoan authorities to confiscate the proceeds and instrumentalities of money laundering. The restriction of the forfeiture power to ‘property derived from money laundering’, while it allows the forfeiture of the proceeds of a money laundering offence, precludes the forfeiture of instrumentalities used in, or intended for use in the commission of the offence of money laundering. Property of corresponding value cannot be confiscated under the MLP Act where the property derived from money laundering is unavailable. The forfeiture provisions also only relate to property of or in the possession or under the control of a person convicted of money laundering and do not extend to property held and controlled by third parties.
131. The MLP Act does not specify whether property derived from money laundering includes property that is indirectly derived from money laundering, but Samoan authorities indicated that the word ‘derived’ was intended to be as broad as possible.
132. The freezing mechanism related to this forfeiture power is set out in section 20 of the MLP Act. Property of a person charged with, or about to be charged with, a money laundering offence, that is alleged to be the proceeds of crime may be frozen by order of a Supreme Court Judge under section 20 of the Money Laundering Prevention Act.
133. The Attorney General is expressly given power in the Act to make an application to the Supreme Court for a freezing order ex parte. The one application made by the Attorney General for a freezing order under the MLP Act was made ex parte but was heard inter partes due to the presence of the other party at the Court for related

proceedings.

134. A range of powers to identify and trace property is available under section 22 of the MLP Act, including the power for the Supreme Court to order the production of documents, and search and seizure powers. There is some protection for bona fide third parties in relation to freezing orders under subsection 22(4) of the MLP Act including a power for the Supreme Court to make orders for disposing of property to determine any dispute as to ownership of or other interests in the property and the payment of debts incurred in good faith to creditors prior to the making of the freezing order.
135. Knowingly acting in contravention of a freezing order, or failing to comply with a freezing order is an offence and any such action taken is void. However, the MLP Act does not void actions in situations where a person should have known that as a result of their actions, authorities would be prejudiced in their ability to recover the frozen property.
136. To date, the only freezing order that has been granted under the MLP Act was pursuant to a mutual legal assistance request from the United States (see *Attorney General v Pacific International Development Bank of American Samoa* [2000] WSC 47 (6th October, 2000)). The case involved US\$14 million being frozen pursuant to a Samoan Supreme Court order. Ultimately the frozen monies were handed over to US authorities under a bilateral arrangement between the US Department of Justice and the Attorney General of Samoa. The lack of domestic freezing actions may be attributed to the need for greater capacity in pursuing financial crimes amongst law enforcement agencies.
137. Capacity and expertise constraints amongst Samoan law enforcement authorities to investigate financial crimes limits the opportunities to make use of the MLP Act freezing provisions, particularly as the power is specific to money laundering only and does not extend to a general power to freeze the proceeds of predicate offences.

#### *Terrorist funds*

138. Part VII of the Prevention and Suppression of Terrorism Act establishes a freezing and forfeiture regime for funds or proceeds provided or collected for the purpose of committing a terrorist act. Where the Supreme Court finds that any funds or proceeds have been provided or collected for the purpose of committing a terrorist offence the Court must order the funds to be forfeited under section 21 of the Prevention and Suppression of Terrorism Act. 'Proceeds' are funds derived or obtained, directly or indirectly, through the commission of a terrorist offence under that Act.
139. The Prevention and Suppression of Terrorism Act does not include explicit provision for the forfeiture of instrumentalities used in the commission of the financing of terrorist acts offence. The definition of 'funds' in section 2 of the Prevention and Suppression of Terrorism Act is in substance identical to the definition in Article 1 of the International Convention on the Suppression of the Financing of Terrorism, and potentially covers instrumentalities where the 'funds' are 'provided or collected for the purpose of committing [a terrorist offence]'. However, this could be made explicit to remove any doubt.
140. The forfeiture provisions attach to the funds or proceeds and do not require the funds or proceeds be held or owned by the defendant to be forfeited. There is no protection of bona fide third parties when funds provided or collected for terrorist acts are forfeited.
141. The freezing mechanism in the Prevention and Suppression of Terrorism Act allows for funds or proceeds suspected on reasonable grounds to have been collected or provided for the commission of a terrorist offence to be frozen by the Supreme Court upon an application by the Attorney General. Samoan authorities indicated that the Attorney-General could apply for a freezing order ex parte.
142. There are no powers in the Prevention and Suppression of Terrorism Act for competent authorities to identify and trace property that may be terrorist finances. It is an offence punishable by up to five years imprisonment or a fine of SAT 100,000 (approximately \$US

36,000) or both for a person to fail to comply with a freezing order under the Prevention and Suppression of Terrorism Act. However, there are no mechanisms to take steps to void actions taken in contravention of a freezing order.

*Proceeds of offences involving a narcotic or the use of firearms*

143. The newly enacted Narcotics Amendment Act and Arms Amendment Act establish a new mechanism for seizing and forfeiting the proceeds of predicate offences involving a narcotic or the use of a firearm. These Acts came into force in March 2006 in response to ongoing investigations of drug and weapons offences taking place in Samoa.. The evaluation team understands that both pieces of legislation are interim measures aimed at bringing forward implementation of elements of the Proceeds of Crime Bill with respect to narcotics and arms offences.
144. The seizure and forfeiture provisions in the new section 25A of the *Narcotics Act 1967* and the new section 21A of the *Arms Ordinance 1960* are substantially identical. These sections provide for the police to seize and detain tainted property. Tainted property covers instrumentalities used in or intended for use in the commission of an offence involving narcotics or the use of a firearm, property derived either wholly or in part by anyone from the commission of such an offence, and property derived by anyone from other tainted property. Amounts credited, directly or indirectly, to accounts with financial institutions which represent the value of tainted property may also be seized. There is no requirement for a court order for seizure of property.
145. The onus of proof in relation to tainted property is reversed and any property found in the possession of an offender at the time of or immediately after the commission of an offence is presumed to be tainted property unless proved otherwise. There are, however, no powers given to police or another competent authority to identify and trace tainted property. The rights of bona fide third parties are not protected, nor are there any provisions for voiding actions where people knew or should have known that as a result of those actions authorities would be prejudiced in their ability to recover tainted property.
146. Under the new sections, frozen property will be automatically forfeited to the Samoan Government upon a conviction for an offence. It remains to be seen how these provisions will operate in practice.

### **2.3.2 Recommendations and Comments**

147. Samoa should enact and implement the Proceeds of Crime Bill as a matter of priority to:
- introduce a general freezing and confiscation regime for the proceeds of all offences punishable by a maximum period of 12 months or more ('serious offences'), extending the scope of these measures to predicate offences beyond those involving narcotics or the use of a firearm
  - allow for the freezing and forfeiture of instrumentalities used in, or intended for use in, the commission of a money laundering, financing of terrorism or other predicate offence
  - allow for the imposition of pecuniary penalty orders of corresponding value to the proceeds of money laundering, financing of terrorism or other predicate offences
  - clarify that property derived both directly or indirectly from a serious offence is proceeds of crime and subject to confiscation, and
  - extend powers to identify and trace property to proceeds of all serious offences, and extend the power to void actions taken to avoid confiscation measures to the proceeds of all serious offences.
148. Samoan authorities should implement existing and, when passed, enhanced provisions to trace, freeze, seize and confiscate proceeds of profit driven crime.

149. The Prevention and Suppression of Terrorism Act should be amended to:

- clarify the application of the freezing and forfeiture provisions in the Prevention and Suppression of Terrorism Act to the instrumentalities of financing of terrorism
- introduce powers to identify and trace funds and proceeds covered by the financing of terrorist act offence, and
- provide that actions taken in contravention of a freezing or confiscation order under the Prevention and Suppression of Terrorism Act are void.

### 2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	NC	<ul style="list-style-type: none"> <li>• There are specific freezing and forfeiture measures for the proceeds of money laundering, financing of terrorist acts and for predicate offences involving narcotics or the use of a firearm, but no general freezing and forfeiture regime for other predicate offences.</li> <li>• There is no power to freeze or forfeit instrumentalities used in, or intended for use in, money laundering, nor the proceeds of money laundering held by third parties.</li> <li>• There is no power to confiscate property of corresponding value to the proceeds of money laundering, the financing of terrorism or predicate offences other than offences involving narcotics or the use of a firearm.</li> <li>• There is no power to void actions taken in contravention of a freezing order under the Prevention and Suppression of Terrorism Act.</li> <li>• The powers to identify and trace property derived from money laundering do not extend to property that is the proceeds of the financing of a terrorist act or a predicate offence for money laundering.</li> <li>• There is no protection of bona fide third parties for seizure, freezing and forfeiture of terrorist funds or the proceeds of an offence involving narcotics or the use of a firearm.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>• One freezing order has been granted under the Money Laundering Prevention Act pursuant to a mutual legal assistance request from the United States</li> </ul>

## 2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

### 2.4.1 Description and Analysis

150. The Ministry for Foreign Affairs, Trade and Commerce receives designations under UN Security Council Resolution 1267 and its successor resolutions, as well as lists of terrorists and terrorist organisations prepared by foreign governments, and distributes them to other Samoan Government agencies including the Central Bank.

151. The Samoa FIU within the Central Bank maintains a consolidated list of individuals and entities listed pursuant to UNSCR 1267 and by foreign governments, based on the lists it receives, and forwards amendments to the lists to the four commercial banks, the two major money transfer businesses and six trustee companies. All lists and updates forwarded from foreign governments appear to be distributed as a matter of course.

152. Lists of designations and updates are received by the FIU as a hard copy. The FIU distributes the designations and updates to financial institutions by letter with a request

that the financial institutions check their records and advise on whether they have had any dealings with listed individuals. In the example seen by the evaluation team, the process took about one month between listing by the UNSCR 1267 Committee and the receipt of notice of the designation by the financial institutions. The FIU does not distribute the list of designated entities to financial institutions beyond those listed above or to designated non-financial businesses and professions.

153. Despite the efforts made by the Samoan authorities to distribute lists of designated terrorists and terrorist organisations, there does not appear to be any legislative basis for freezing assets of listed individuals and entities other than the freezing procedure available under the Prevention and Suppression of Terrorism Act. This procedure is unsuitable for the implementation of UNSCR 1267, requiring an application by the Attorney General for a Court order freezing the funds or proceeds, and being restricted to those funds that have been provided or collected for the purpose of committing a terrorist offence.
154. Samoa has not made any local designations of terrorists under UN Security Council Resolution 1373 and does not have laws and procedures in place for doing this. Guidelines for financial institutions about combating the financing of terrorism have yet to be developed, although the Samoa FIU has plans to do this.

#### 2.4.2 Recommendations and Comments

155. Samoa should enact and implement laws allowing a competent authority to freeze without delay the terrorist funds and other assets of persons and entities designated by the UN Security Council 1267 Committee, without requiring that those funds provided or collected for the purpose of carrying out a specific terrorist act.
156. Samoa should also enact and implement laws allowing Samoan authorities to designate persons and entities in accordance with UN Security Council Resolution 1373 and to freeze without delay the terrorist funds and other assets of such persons or entities.
157. Samoan authorities should consider options for providing more timely communication to the financial sector and other relevant businesses of designations pursuant to UN Security Council Resolution 1267 and 1373, such as receiving and distributing changes to the lists of designations in electronic form where possible.

#### 2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
<b>SR.III</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Lists of entities designated by the UN and foreign governments are only distributed to major financial institutions and trustee companies</li> <li>• Samoa does not have laws and procedures in place to freeze without delay terrorist funds or other assets of person designated by the UN Security Council Resolution 1267 Committee.</li> <li>• Samoa does not have laws and procedures in place to designate persons or entities in accordance with UN Security Council Resolution 1373 or freeze without delay terrorist funds or other assets of such people.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No funds or other assets have been frozen pursuant to UN Security Council Resolutions 1267 or 1373.</li> <li>• Records are kept of distributions of UN lists of designated entities.</li> </ul>

## **Authorities**

### **2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)**

#### **2.5.1 Description and Analysis**

##### ***Recommendation 26***

158. The Samoa Financial Intelligence Unit (FIU) is a unit within the Money Laundering Authority (MLA), which was established pursuant to the MLP Act<sup>3</sup>. The functions of the MLA are exercised by the Governor of the Central Bank of Samoa, and those whom he has authorised in writing. The MLA currently comprises nine officers, including the Governor of the Central Bank of Samoa who is the Director of the MLA. All officers of the MLA are employees of the Central Bank of Samoa, and in such capacity have other roles and responsibilities (eg banking supervision).
159. The MLP Act empowers the MLA<sup>4</sup> to (a) receive suspicious transaction reports (STRs) issued by financial institutions; and (b) send any such report to the Attorney General and the Commissioner of Police if there are reasonable grounds to suspect that the business transaction involves proceeds of crime and/or is connected with a money laundering offence. The MLP Act also empowers the MLA to supervise financial institutions in accordance with the Act.
160. The MLA has powers of investigation for the purposes of ensuring compliance by financial institutions of their obligations under the MLP Act. It may also, with a search warrant and court order respectively, conduct physical searches of premises<sup>5</sup> and compel the production of documents<sup>6</sup> believed to be connected with money laundering. It is able, on a case-by-case basis, to provide limited forms of assistance to foreign law enforcement agencies on AML/CFT matters. However, such assistance would have to be approved by the Attorney General.
161. The MLA also compiles statistics and records, issues guidelines to financial institutions, undertakes AML supervision of financial institutions and provides training to financial institutions on their obligations.

##### ***Receipt of STRs***

162. There is no obligation for financial institutions to report STRs directly to the FIU – the MLP Act requires STRs to be made to the MLA. However, STRs are in practice submitted to the FIU for collation and analysis. Currently all STRs are submitted by fax, post or are hand delivered. A standard reporting form for STRs has been issued and is contained in the MLA's Money Laundering Prevention Guidelines for the Financial Sector.
163. Upon receipt by the FIU, data from STRs is manually entered into a database on a standalone computer. The standalone computer is only accessible by the MLA and contains analytical FIU software, which has been provided by Australia's FIU.

##### ***Analysis and Dissemination of STRs***

164. The Samoan FIU, while still to be completely established, has the structure and powers of an administrative FIU. On receipt of STRs, the FIU's role is to analyse STRs and disseminate the findings of analysis to the Attorney General and the Commissioner of Police, as the competent authorities, for investigation of any money laundering offence.

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<sup>3</sup> s.10 MLP ActMLP Act.

<sup>4</sup> s.11 MLP ActMLP Act

<sup>5</sup> s.14 MLP ActMLP Act

<sup>6</sup> s.15 MLP ActMLP Act

The FIU does not have a criminal investigation role and does not prepare briefs of evidence towards prosecution of money laundering offences.

165. The FIU is empowered to request information, including documentary records, from financial institutions for the purposes of STR analysis. In practice it is understood that financial institutions conduct checks for such information expeditiously and without unnecessary delay.
166. At this stage the FIU does not, as part of its STR analysis, cross check entities with criminal databases maintained by the Samoa Police Service, Samoa Customs and Revenue or the Immigration department. STR analysis appears to be limited to information provided by the financial institutions, and well as searches of publicly available records.
167. The FIU has access of the Central Bank's 'toll ticket' database which holds detailed records of all inward and outward transfers over SAT \$30,000 (approximately \$US 8,400) collected for exchange control purposes. This is invaluable information for STR analysis.
168. Upon collating the relevant financial records, and having reasonable grounds to suspect that a transaction(s) is linked to proceeds of crime or money laundering, the FIU prepares a file on the STR, including findings from the FIU's analysis, relevant documentary evidence and any other value-added work it had done. The STR file is then delivered by hand to the Attorney General as the designated competent authority for a legal assessment on whether any money laundering and/or criminal offence has been committed.
169. Although section 11(1)(b) of the MLP Act requires the MLA (FIU) to disseminate suspicious transaction reports to both the Attorney General and the Commissioner of Police, to date no such report has been referred to the Police.
170. Under current practice in Samoa, when an STR file is disseminated to the Attorney General, if the Attorney General agrees that a case for money laundering is made out by the FIU, criminal proceedings may be instituted against the suspects. If not, the Attorney General's Office may instruct the FIU to obtain further financial information. However, as an administrative FIU, the Samoa FIU is not empowered to conduct investigations and to present briefs of evidence to the Attorney General's Office.
171. Under current practice, no STR files are referred on by the Attorney General to the police service for investigation, as there are concerns regarding the latter's capacity to handle the intricacies of such investigations.
172. Due to the lack of referrals of STRs for investigation, in practice the FIU does not yet have a role in providing ongoing support to money laundering investigations.
173. The MLP Amendment Bill 2003, once passed, will serve to clarify the roles and functions of the FIU and the competent authorities for dissemination of STRs.

#### *Guidelines & Training*

174. The MLA has issued a set of Money Laundering Prevention Guidelines for the Financial Sector. However, guidelines for countering the financing of terrorism have yet to be issued.
175. Staff of the Samoan FIU are actively involved in regional typologies work and some typologies studies have been shared with various Samoan authorities and with financial institutions. However, there is a need for further sharing of typologies information including typologies reports from the FATF and other open-source materials on recent techniques and trends of money laundering and terrorist financing. A number of Money Laundering Reporting Officers from financial institutions were not aware of the existence of FATF Typologies Reports on AML/CFT when asked.
176. The MLA and FIU welcome the provision of more technical assistance and training on

AML/CFT matters by International Organisations, in particular on operating procedures and intelligence and analysis techniques involving financial intelligence.

177. Computer-based training was provided by the UNODC to the FIU, to Samoan investigations agencies and financial institutions in 2005. Participants' feedback on the training was unanimously positive, and most participants said that the quizzes at the end of the training helped to reinforce the learning points effectively.

### ***Access to Information***

178. The FIU does not currently have direct access to information sources such as criminal records or Police intelligence databases to support its analysis of information received in STRs. However, the FIU does use open sources of information such as the internet as tool for assisting with analysing STRs.
179. Importantly, the FIU is also receiving technical assistance from AUSTRAC to establish an FIU database with FIU-specific analytical software.
180. Information held by a financial institution is accessible by the FIU on a formal basis through the MLA's powers under s.11 (2) of the MLP Act. If necessary, the MLA may also obtain a search warrant to search the premises of the financial institution and/or their employees, and remove any document therein for the purposes of the MLA, or as specified in the warrant.<sup>7</sup>

### ***Protection of Information***

181. There is no statutory provision specifically governing the protection of STR information. However, in practice, STR information is treated as highly confidential. Staff of the FIU are bound by the Declaration of Allegiance and Secrecy signed between the staff and the MLA, declaring the faithful performance of all duties and observing strict secrecy respecting all affairs and transactions of the Authority.
182. Data from STRs is stored on a standalone computer, accessible only by the MLA. STR information is hand delivered to the Attorney General for legal assessment if the FIU has completed its review, and is of the view that a criminal offence may have been committed.
183. Law enforcement agencies such as the Samoa Police Service, the Samoa Customs and Inland Revenue Department are able to have access to STR information for investigation purposes, but only with the approval of the Attorney General. This may impede timely access to STR information by investigative agencies. It is understood that neither the Samoa Police Service nor the Samoa Customs and Inland Revenue Department has to date requested STR information in the course of their work, reflecting problems with effective implementation.

### ***FIU cooperation***

184. The FIU has commenced preparation to apply for membership of the Egmont Group in the near future. Although no Memorandum of Understanding (MOU) has been signed with any FIU so far, the Samoa FIU is willing to cooperate with other FIUs and provide financial intelligence information on the basis of confidentiality and reciprocity. Such cooperation will be on a case-by-case basis and approved by the Attorney General.
185. Since its formation, the FIU has received seven formal and informal requests for assistance. Two of the requests were received in 2004, and the remaining five in 2005. Four requests were from local agencies. Three were from foreign agencies, including one that was a formal request for legal assistance. The FIU responded to all these requests, although an agreed process and timeliness of responses remains an issue.
186. The very low number of requests for assistance from local agencies reflects significant

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<sup>7</sup> s.14 MLP Act

challenges with inter-agency cooperation in Samoa for investigating money laundering and proceeds of crime. There is a strong need to address issues of FIU cooperation with domestic agencies and to increase cooperation internationally.

### **Recommendation 30**

#### *Structure, funding, staff, technical and other resources for the FIU*

187. The FIU is a unit within Financial Institutions Department (FID) of the Central bank of Samoa. The Governor of the Central Bank, as the MLA, has authorised four staff to handle the day-to-day operations of the FIU.
188. In addition to its functions as FIU, AML/CFT regulator and supervisor, the FID is also responsible for the prudential oversight of the commercial banks and non-bank financial institutions. Officers within in the FID collectively devote approximately 40% of their working hours on FIU-related work. The remaining 60% of the time is spent on the FID's broader financial sector supervision-related work.
189. At the policy making level, the consensus is that it is most ideal for the FIU to be located within the MLA of the Central Bank, in terms of the financial expertise of the FIU officers as well as financial resources.
190. The FIU does not have a separate budget, but receives its finances as a unit in the Central Bank of Samoa.
191. At present all staff working in the FIU are Central Bank employees. There are no secondees from any other Samoan agencies and no staff with a law enforcement background or training. This represents a gap in the technical resources of the staff and the capacity to effectively deal with and respond to law enforcement agencies when dealing with financial intelligence and money laundering investigations.
192. Given the low levels of current level of Suspicious Transaction Reporting, the FIU seems to be adequately staffed to receive and analyse the few STRs it does receive. However, the current level of Suspicious Transaction Reporting could and should be improved upon – the number of STRs received has been on a decline since 2003. The FIU could profitably devote resources towards proactively improving the quantity and quality of STRs submitted by the financial sector.
193. The FIU lacks staff and resources for closer cooperation with law enforcement authorities to support investigation of money laundering, terrorist financing and the proceeds of crime. There is a need for regular exchange of information, briefings on developments and direct interaction in intelligence and investigation processes.

#### *Training*

194. The FIU recognises the importance of training in capacity building. As such, staff have attended a number of local and international training programmes. Some examples of recent training programmes attended are:
  - a) A short-term attachment for a senior Samoan FIU officer with the New Zealand FIU for 4 weeks during the May/June 2004 period under the NZODAid Program.
  - b) Samoa was represented at the Seminar on anti-money laundering and combating the financing of terrorism for criminal justice officials for Pacific Islands held in IMF-Singapore Training Institute in March 2004.
  - c) The Samoan FIU was represented at APG Typologies Workshops in 2003, 2004 and 2005.
  - d) Participated at the AML/CFT workshop sponsored by ADB in Japan, also in October 2004
  - e) The Samoan FIU participated in joint APG and IMF training on Mutual Evaluation Assessments in 2003 and 2005.

### **Recommendation 32**

195. The FIU maintains the following statistics:

- (a) The number of STRs received;
- (b) The number of Border Cash Reports received;
- (c) The number of STRs disseminated (to the Attorney-General);
- (d) The number of convictions for money laundering and related criminal activity;
- (e) List of financial institutions who submitted STRs;
- (f) Requests for assistance by local and foreign agencies; and
- (g) Disseminations of UNSCR 1267 lists.

196. The FIU publishes statistics of STRs received and details of training and technical assistance received in the Annual Report of the Central Bank of Samoa, which is presented to the Samoan parliament and released to the public via the CBS website.

<b>Statistics on STRs &amp; Border Cash Reports received &amp; disseminated</b>				
	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>Total</b>
No. of STRs received by FIU	26	23	13	62
No. of Border Cash Reports received by FIU	0	8	8	16
No. of reports disseminated to the Attorney-General	3	3	2	8

197. The number of STRs received has been on a decline since 2003. It was suggested that the “high” figure received in 2003 could be due to over-caution on the part of the financial institutions, i.e. that STRs were submitted even if the transaction were not very suspicious. The level of reporting dropped over the next two years as experience in STRs increased, because the financial institutions were more knowledgeable as to what should or should not be reported.

198. Given the level of profit driven crime in Samoa and notwithstanding the relatively small number of financial institutions in Samoa, the current number of STRs submitted each year appears too low. Important financial institutions had not lodged any STRs for the entire year in certain years. The FIU and/or MLA should continue with its efforts to reach out to these institutions to encourage an improvement in the quality and quantity of STRs submitted.

199. The evaluation team, in its meetings with various financial institutions, noted cases where attempted transactions that were unusual or unexplained were not reported as STRs. This would seem to reflect a lack of experience with financial institutions applying the AML/CFT the STR reporting obligations.

200. Indeed, officers of certain financial institutions that met by the APG Assessment Team did not appear to be familiar with STRs and/or the reporting process, and at times confused STRs with other reports that were regularly submitted to the Central Bank.

201. None of the STRs submitted related to suspected terrorism financing.

202. The FIU has detected that most of the STRs relate to company-to-company transfers of funds between Samoa and countries in Europe and North America. On occasion, some of these transfers do not appear to make commercial sense, hence being regarded as a suspicious transaction. The ability to analyse these STRs has been hampered by the lack

of any direct relationship between the Samoa FIU and the FIUs of these countries. No doubt the admission of the Samoa FIU into the Egmont Group of FIUs would be a positive step towards fostering an effective working relationship with these FIUs, and the ability to analyse such STRs in future.

### 2.5.2 Recommendations and Comments

203. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to provide a legislative basis for the FIU's role with respect to the financing of terrorism and other key FIU functions.
204. The FIU should disseminate suspicious transactions to both the Attorney General and the Police Commissioner as required in the MLP Act.
205. Greater focus should be given to ensure that the competent authorities receiving disseminated STRs recognise the role of the FIU in providing financial intelligence briefs to support the work of TCU and/or the police on AML investigations.
206. Further resources and staff should be appointed to support the full range of FIU functions, including AML/CFT supervision, analysis and dissemination, inter-agency and international cooperation and outreach to the reporting institutions.
207. The authorities should consider seconding staff from other Samoan enforcement agencies to the FIU to share common technical knowledge and expertise and to support the capacity of the FIU to effectively deal with and respond to law enforcement agencies.
208. Cooperation between the FIU and law enforcement agencies in Samoa such as the Samoa Police Service, the Samoa Customs and the Trans-national Crime Unit<sup>8</sup> should be enhanced and supported.
209. FIU staff should receive further training in STR analysis, support to financial investigations and other FIU functions.
210. The Samoa FIU should be given timely access to criminal records information, and the intelligence databases maintained by enforcement agencies in the analysis of the STRs.
211. Enforcement agencies should also have access to financial intelligence information maintained by the FIU on a timely basis.
212. The FIU should consider conducting outreach programs to reporting institutions to better understand the process and criteria for making of STRs in order to support higher levels of reporting of STRs.

### 2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
<b>R.26</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Samoa's FIU has been established in the Central Bank and is staffed by well trained professionals.</li> <li>The FIU has issued guidance and provided training to reporting institutions.</li> <li>Information received by the FIU is securely stored and analysed on an FIU database.</li> <li>Effectiveness of FIU in analysing STRs could be improved with greater cooperation with law enforcement agencies</li> <li>Low and declining levels of STRs may suggest that financial</li> </ul>

<sup>8</sup> More on this Unit in Part 2.6

		<p>institutions are not mindful of AML/CFT measures.</p> <ul style="list-style-type: none"> <li>While the FIU is authorised to disseminate financial intelligence to domestic authorities for investigation, in practice they are not being disseminated to investigative agencies due to concerns of competent authorities regarding the capacity of investigative agencies to handle the intricacies of such investigations.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>There is a need for increased resources and staffing to adequately support the FIU's function</li> <li>FIU staff require further training in STR analysis, support to financial investigations and other FIU functions.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Although some statistics are maintained, the generally low levels of STRs make it difficult to analyse these statistics meaningfully.</li> <li>Quality and types of statistics maintained could be improved.</li> </ul>

## 2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

### 2.6.1 Description and Analysis

#### Overview

213. Under current arrangements, Samoa has designated the Police Service, and in a limited way, the Customs Department as the law enforcement agencies with responsibility for ensuring that money laundering offences are properly investigated. Additionally, the Attorney General's Office and the Department of Immigration have roles with the Police and Customs to investigate money laundering and terrorist financing through the Trans-National Crime Unit (TCU).
214. The Samoan authorities have designated the police to investigate purely domestic money laundering cases and the TCU, which includes specially trained police officers, to investigate money laundering and terrorist financing cases which have a trans-national element. However, current practices with dissemination have meant that no STRs have been disseminated to any designated investigatory authority.
215. Under section 11 of the MLP Act both the Attorney General and the Commissioner of Police are designated to receive any suspicious transaction reports disseminated from the FIU. However, in practice STRs and related financial intelligence are only disseminated by the FIU to the Attorney General, without also being disseminated to the Police Commissioner as required under the MLP Act.
216. Samoan authorities indicate that the Attorney General's Office is the initial recipient for STRs in light of the need for tight security with STR information and due to capacity and resource constraints with the police. The policy allows the Attorney General's Office, after consideration of STRs received from the FIU, to further disseminate the STRs to the TCU for investigation, as the TCU includes well trained police investigators. However, up until this time no STR has been further disseminated by the Attorney General's Office to either the TCU or the police service for investigation.
217. The current process for dissemination and investigation of STRs received by the FIU is impeding the proper investigation of money laundering offences in Samoa, as the authorities designated to ensure the proper investigation of money laundering cases do not receive any STRs.
218. It should be noted that underlying predicate offences are being investigated, including

those involving fraud, complex financial activities and proceeds of crime, but without the support of financial intelligence from the FIU.

219. In some cases the Attorney General's Office has given consideration to the strength of the STR and related financial information received from the FIU as a possible brief of evidence for prosecution. This appears to be treating the FIU as an investigative unit, although the FIU has no investigative role under the MLP Act and no investigative staff.
220. Samoa has given some consideration to allow competent authorities to postpone the arrest of suspected persons for the purpose of further evidence gathering.
221. Samoan law enforcement authorities do not have an adequate legal basis for the use of special investigative techniques. Explicit provisions for the use of listening devices or telephone intercepts are not in place. The Samoan Police Service does, however, have the ability to use certain special investigative techniques such as undercover operations.

#### *Samoan Police Service*

222. The Samoan Police Service is the designated authority responsible for investigating domestic cases of money laundering in Samoa. Under the MLP Act a commissioned police officer may obtain search warrants against any financial institution if it does not comply with the said Act. The officer may obtain property tracking and monitoring orders in money laundering investigations. The officer may also deal with cases involving cross-border trans-shipment of currency.
223. The Samoan Police Service has established the Fraud Investigation Unit to investigate domestic cases of fraud and commercial crime, including money laundering. This Unit is able to initiate investigations independent of the receipt of an STR from the FIU. However, the Police Commissioner noted that the Fraud Unit has not yet had experience in handling money laundering investigations and has weak capacity.
224. Members of the Fraud Investigation Unit have received some training in ML investigations, however there are no investigators with accounting expertise. It was noted that in the rare cases where such technical expertise is required, the Samoan Police Service is able to request assistance of a qualified accountant from the Transnational Crime Unit, or a Government Department.
225. While there have been investigation of fraud cases involving proceeds of crime, thus far, there has not been any dissemination of information from the FIU to the Police on matters relating to money laundering and/or terrorist financing, nor have there been any requests to the FIU for support in the investigation of money laundering arising from police investigations.

#### *Transnational Crime Unit*

226. The Samoan authorities have designated the Samoa Transnational Crime Unit (TCU) as responsible for investigating money laundering cases that include a trans-national element and for investigating the financing of terrorism. The TCU was established in 2002 to provide investigative and operational intelligence to tackle trans-national crime including drug trafficking, money laundering and terrorism. The TCU is a multi-disciplinary Unit within the Department of the Prime Minister, and is made up of specialist officers from the Police Service, Ministry of revenue (which includes Customs) and Immigration Department, the Attorney-General's Office and the Prime Minister's Office. Investigative powers of the Unit only arise from the powers held by the seconded staff working within the TCU.
227. The Board of Management of the TCU consists of the Attorney General's Office, the CEO of the Prime Minister's Department and the CEO Foreign Affairs. The Board of Management is chaired by the Attorney General. Neither the Commissioner of Police, nor the Governor of the Central Bank in his role as the MLA, are included on the TCU Board of Management.

228. Given the staffing and focus of the TCU, it appears to have a higher level of expertise than the overall Police Service in terms of investigating serious crime.
229. At this stage there is relatively weak cooperation and very little information exchange between the TCU and the FIU in the investigation of money laundering offences and underlying predicate offences. This is hindering the TCU in its responsibilities as the Unit designated to investigate money laundering and terrorist financing with trans-national elements.

#### *Samoa Customs Department*

230. Under the current MLP Act, the powers of the Customs Department are limited to the designation of “authorised officer” under section 19 – “Currency Reporting at the Border”. Customs is also involved in investigating money laundering and related predicate offences in cooperation with other enforcement agencies through its participation in the TCU.
231. As a service, it appears that there is some awareness on money laundering matters and has the capability to carry out its own investigations though not necessarily related to money laundering or financing of terrorism.
232. Customs has a dedicated intelligence cell with on-line access to the US Customs ‘Capers’ intelligence system, participates in the Pacific-wide Project Cook ‘Coast Watch’ program and regularly interacts with other law enforcement agencies and its counterparts outside Samoa.

#### *Attorney-General’s Office*

233. The Attorney-General is both the chief prosecutor and chief legal adviser of Samoa. The Attorney-General also chairs the TCU Management Committee and acts as a conduit between the various agencies, including the Central Bank, FIU, TCU, Police Service and Customs Department. In this capacity, the Attorney General’s office has a coordinating role for investigations and would perform the role of redirecting STRs analysed by the FIU, to the relevant agencies for investigation.
234. While the Attorney General’s Office has not yet referred any STRs to law enforcement agencies for investigation, STRs considered by the AG’s Office have been referred back to the FIU for further collection of information to build a stronger case for possible prosecution.

#### *Immigration Department*

235. The Samoan Immigration Department has a role contributing to AML/CFT investigations through its participation in the TCU and is particularly concerned with predicate offences such as human trafficking. The immigration department maintains the Border Management System database which contains information on the movement of people into and out of Samoa. This information is accessible to the Transnational Crime Unit.

#### *FIU*

236. Under the MLP Act the FIU does not have any responsibility for directly investigating ML or TF offences. Under the Act, STRs analysed by the FIU shall be sent to the Attorney General and The Commissioner of Police for consideration and investigation of proceeds of crime and/or money laundering offences.
237. The FIU has a role in supporting law enforcement agencies designated to investigate money laundering. The FIU has a role to advise the Minister and the Attorney General with regard to any matter relating to money laundering. The FIU has a role to monitor accounts for which an STR has been lodged. The Attorney-General has directed the FIU to seek more information on the STRs from the banks. In practice, such additional information provided by the FIU to the Attorney General is generally not shared with investigating agencies.

238. As there have been no seizures or forfeiture of criminal assets under the MLP Act, no competent authority has yet been identified to have responsibility for managing and administering such proceeds of crime. The Public Trustees Office, which is responsible for providing trustee, estate administration and will-making services, may be considered as an option for taking on a role as a designated authority in this regard.

### ***Recommendation 28***

239. At present, the MLP Act does not provide wide powers to investigative authorities to obtain documents and information for use in the investigation and prosecution of money laundering and underlying predicate offences.
240. While Section 14 of MLP Act provides powers to competent investigative authorities to compel the production of, search for and obtain financial records and files, through a search warrant issued by a Judge, it is only applicable in certain circumstances. Specifically only when financial institutions fail to keep records of or report suspicious transactions, or when an officer of a financial institution is involved in committing a money laundering offence. There do not appear to be explicit powers applicable more widely in support of investigations into money laundering.
241. There are no explicit powers to compel the production, search for and obtaining transaction records, CDD data and other records from financial institutions for use in the investigation of terrorist financing offences.
242. The MLP Amendment Bill 2003, when passed, will provide powers to compel the production of records from financial institutions for use in the investigation of money laundering and terrorist financing. The Proceeds of Crime Bill 2003, when passed, will address powers of enforcement agencies to obtain, through a court order, information and evidential material relating to money laundering, the proceeds of crime and underlying predicated offences.
243. Competent investigative authorities in Samoa have powers to take witnesses' statements for use in investigations and prosecutions of money laundering and terrorist financing and other underlying predicate offences or related actions.

### ***Recommendation 30***

#### *Structure, staff and resources of competent authorities*

244. As a small island jurisdiction, staffing and resources are a constant issue for competent authorities and many officers have a number of roles to make up for the lack of staff and resources. It is recognised that as there is very little spare capacity and resource, opportunities should be considered for better structuring, training and staffing key agencies to ensure an effective AML/CFT system.
245. At present, there are a number of key competent authorities involved in AML/CFT which are missing from on high-level management structures for enforcement units and committees. For example, at present the FIU does not have a role with the Border Management Committee in relation to cross border cash reporting. Similarly, neither the MLA (CBS Governor) or the Police Commissioner have a place on the TCU Oversight Committee. Inclusion of these players on AML/CFT management committees will help to ensure the most effective use of all available AML/CFT measures in the vital work of the TCU. The MLP Amendment Bill, once enacted will also provide for the formation of a high-level task force structure.
246. At present there is a lack of formal agreements between domestic agencies to support information sharing and cooperation on AML/CFT investigations. FIU staff are not involved in providing regular briefings to the TCU or the police in relation to use of financial intelligence in ongoing investigations. There is a need for MOUs between the FIU and

agencies involved in the TCU and Police Fraud Investigation Unit to allow them regularly exchange and share information, skills and experience to ensure sufficient technical and human resources are available to effectively perform their AML/CFT functions.

247. The FIU has resource constraints which pose challenges for it to be able to enhance cooperation with law enforcement units involved with AML/CFT investigations while also increasing the frequency of AML/CFT supervision. As such, there is a need for additional FIU resources to be allocated to enable the FIU to cooperate with and support law enforcement authorities. There is also need for additional resources and staffing to be allocated for the FIU to enable it to more effectively supervise all financial institutions. There may be opportunities to attract officers seconded from the private sector to work within the FIU.
248. At present no law enforcement staff are seconded to work with the FIU to assist with the FIU's work in analysing STRs. There is a reciprocal need for law enforcement authorities to provide additional support to the FIU in its role with analysing STRs and providing support to money laundering investigations.
249. At present no competent authority has been identified to manage and administer confiscated assets arising from AML/CFT investigations. Such an authority should be adequately supported through its structure, staff and resource to build its capacity.

#### *Professional standards of competent authorities*

250. Staff of competent authorities are required by law to maintain high professional standards, including standards concerning confidentiality, integrity and proper qualifications. The Public Service Code of Ethics governs public servants in Samoa. Samoa has established an office of the Ombudsman to investigate complaints concerning administrative actions by government agencies, including allegations of corruption.
251. There have been a number of cases detected involving breaches of standards and corruption. Commissions of Enquiry have been established into cases of public sector fraud and corruption, which have led to police investigations and charges, which points to effective application of mechanisms to enforce standards of competent authorities.
252. Neither the TCU nor the FIU have a security vetting arrangement.
253. The Officer in Charge of the TCU does have the ultimate say as to which officers can be seconded to the TCU. The Samoan authorities have been swift in their investigation of cases of possible misconduct involving staff within the TCU.

#### *Training*

254. Given the lack of staff resources, Samoan authorities have made training a priority and have sought continuing technical assistance and training from a number of donors and providers, including the UNODC, the AFP, PIFS, AUSTRAC, the New Zealand FIU and the Commonwealth Secretariat.
255. Good cooperation between regulatory and enforcement agencies is occurring in relation to AML/CFT training and awareness raising. Training of staff is taking place, but more is required to develop capacity of competent authorities. Over 40 TCU and police staff have received training in financial investigations, including AML. Staff from a range of competent authorities have received AML/CFT computer based training and a permanent computer based training unit is being established within the police for use of other competent authorities.
256. The UNODC is continuing to provide detailed on the job training to investigators and prosecutors for AML/CFT, which is highly regarded in Samoa.
257. Samoan judges have received training in AML/CFT.

258. There is a need for high level awareness raising to build and sustain awareness of the nature of the threat from money laundering and terrorist financing and the continuing need for dedicating scarce resources to AML/CFT implementation.
259. There is a need for further training and on the job mentoring of AML/CFT regulatory and investigations staff, including those of the FIU, SIFA, the Central Bank, the TCU, the Police, Customs and Attorney General's Office.
260. The Ministry of Commerce, Industry and Labour and the Office of the Public Trustee have not yet received awareness raising or training on AML/CFT.

### **Recommendation 32**

261. There have not yet been any investigations or prosecutions for money laundering in Samoa. Investigations into cases of foreign money laundering have been limited to providing assistance to foreign law enforcement agencies, and as such there are no convictions. There have also been no investigations into terrorism financing offences.
262. Statistics that are available in relation to the FIU and investigations are generally limited to the number of STRs, and the number of cross border currency reports received by the FIU, over the last three years.
263. The low numbers of STRs, investigations and prosecutions, arguably makes the compilation and meaningful analysis of statistics difficult.

### **2.6.2 Recommendations and Comments**

264. Samoa should pass and implement the MLP Amendment Bill 2003 and Proceeds of Crime Bill 2003.
265. The FIU should disseminate STRs and related financial intelligence to both the Attorney General and the Police Commissioner as required under the MLP Act.
266. The Attorney General's Office should generally refer STRs received from the FIU to the TCU or other law enforcement agencies for investigation.
267. Information sharing and cooperation between the FIU, AG's Office and investigation agencies should be better supported by MOUs and other mechanisms.
268. Samoa should consider putting in place an adequate legal basis for the use of special investigative techniques.
269. Samoa should provide wide powers in legislation to investigative authorities to obtain documents and information for use in the investigation and prosecution of money laundering and underlying predicate offences
270. Samoa should consider including the MLA on the Border Management Committee in relation to cross border cash reporting.
271. Samoa should consider including the MLA and Police Commissioner on the TCU Oversight Committee to best ensure effective investigation of ML and TF.
272. Further resources and staff should be allocated to the FIU for supervision of all financial institutions, to analyse and disseminate STRs, to provide AML/CFT support to investigative agencies and to provide training.
273. Samoa could consider opportunities for seconding officers from the private sector to work within the FIU.
274. Samoan law enforcement authorities should provide additional support to the FIU in its role with analysing STRs and providing support to money laundering investigations.
275. Samoa should identify a competent authority to manage and administer confiscated assets arising from AML/CFT investigations.

276. Further training should be provided to regulatory and investigations staff, including those of the FIU, SIFA, the Central Bank, the TCU, the Police, Customs, the Attorney General's Office as well as the Ministry of Commerce, Industry and Labour.

277. Samoa should consider security vetting for staff joining the FIU and TCU.

### 2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The Samoan authorities have designated the police to investigate purely domestic money laundering cases and the TCU, which includes specially trained police officers, to investigate money laundering and terrorist financing cases which have a trans-national element.</li> <li>Although the MLP Act has give the Samoa Police the authority to investigate money laundering offences, in practice there are no referrals for investigations in view of concerns regarding capacity to handle the intricacies of such investigations. There is some confusion in practice as to which agency has responsibility for ensuring the proper investigation of money laundering cases.</li> <li>Proper investigation of ML offences is being impeded by a weak process of dissemination and investigation STRs and poor information sharing.</li> </ul>
<b>R.28</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>At present, the MLP Act does not provide wide powers to investigative authorities to obtain documents and information for use in the investigation and prosecution of money laundering and underlying predicate offences.</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The FIU is lacking adequate resources to enable it to effectively supervise all financial institutions.</li> <li>There is a need for improved reciprocal sharing of information, expertise and technical capacity between the FIU and law enforcement authorities.</li> <li>The Ministry of Commerce, Industry and Labour has not yet received awareness raising or training on AML/CFT.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The low numbers of STRs, investigations and prosecutions, arguably makes the compilation the meaningful analysis of statistics difficult.</li> </ul>

## 2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

### 2.7.1 Description and Analysis

#### *Cross Border Declaration Framework*

278. Samoa has established a border cash declaration system pursuant to the MLP Act. Section 19(1) of the MLP Act states that any person who leaves or enters Samoa with more than SAT 10,000 (approximately \$US 3,600), or its equivalent in foreign currency, in cash or negotiable bearer instruments<sup>9</sup> without first having reported it to the MLA commits

<sup>9</sup> "Negotiable bearer instrument" has been defined under section 19(2)(b) MLP Act to mean a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, made payable to the bearer.

an offence and shall be liable to a fine not exceeding SAT 10,000 (approximately \$US 36,000) or to imprisonment for a term not exceeding five years, or to both.

279. The provision is also supplemented by section 15 of the Exchange Control Regulations 1999 which imposes a penalty on the making of any false or misleading statement or any material omission with regard to the restrictions on the taking or sending of money, bills of exchange or securities from Samoa. The penalty extends to any individual and body corporate.

280. Measures to undertake random checks on passengers entering or leaving Samoa are also provided for in section 19(3) of the MLP Act where an authorised officer may with such assistance as is reasonable and necessary,

- (i) examine any article which a person has with him or in his luggage; and
- (ii) if the officer has reasonable grounds to suspect that an offence under section 19(1) may have been or is being committed,

search the person who:

- (a) is about to leave Samoa or has arrived in Samoa; or

- (b) is about to board or leave, or has boarded or left, any ship or aircraft,

for the purpose of finding out whether the person has with him or on him or in his clothing, any cash or negotiable bearer instruments in respect of which a declaration report is required.

281. There is also no clear process in place to detect unusual cross border movement of gold, precious metal or precious stones as they are not perceived to be an area of high risk.

#### *Operational Powers*

282. An authorised officer under section 19 MLP Act includes a commissioned officer of the police services, central bank officer (where the MLA and FIU is based) and the customs officer. The principal enforcer of the border cash declaration system rests mainly with the Customs department. An authorised officer may under section 19(6) MLP Act seize the cash or negotiable bearer instruments if he / she has reasonable grounds to believe that the cash or negotiable bearer instruments found during the course of an examination or search may afford evidence as to the commission of an offence under section 19 MLP Act.

283. Although it is possible on an operational level for an authorised officer to question and ascertain the origin and intended use of the cash or negotiable bearer instruments, the ability of the authorised officer (usually from the Custom department) to search and seize the cash or negotiable bearer instruments with regard to money laundering and/or terrorism financing activities is not apparent as section 19 MLP Act is predominantly concerned with border cash declaration only. Section 21 of the Prevention and Suppression of Terrorism Act 2002 provides the Attorney General with powers to freeze funds related to financing specific terrorist acts.

284. Additionally, the powers under the MLP Act would also appear to be limited to physical cash couriers and do not explicitly apply to other forms of cross border movement of cash and/or negotiable instruments through transshipment, containerised cargo or the postal system. Nonetheless, Customs officers have powers under section 178 Customs Act 1977 to examine, analyse and test any goods subject to the control of the Customs department.

#### *Statistics and Analysis*

285. There were a total of 16 border cash transaction reports made by the Customs department to the FIU for 2004 and 2005. The FIU has established a computerised database to record and maintain all records and information on border cash transaction reports analysis.

286. It is noted however that no suspicious transaction reports with regard to money

laundering and/or terrorism financing have been filed to date in relation to the border cash declaration system. There are also no instances where the Customs department has filed any suspicious transaction reports with regard to unusual cross border movement of gold, precious metals or precious stones.

#### *Cooperation and Assistance*

287. The current level of cooperation between the Customs department and the FIU appears limited. Although informal cooperation exists between the various governmental agencies, little regular direct formal cooperation takes place between the FIU and the Customs department.
288. General powers to share information and provide mutual legal assistance exist under the MLP Act. The powers to render assistance are however limited to money laundering offences on a reciprocal basis and the FIU is currently unable to enter into any Memorandum of Understanding (MOU) or formal arrangement.
289. The Customs department is however a member of the Oceania Customs Organisation and the World Customs Organisation (WCO) and has the ability to exchange information vis-à-vis the WCO framework.

#### *Proposed Amendments (MLP Amendment Bill 2003)*

290. The draft Money Laundering Prevention Amendment Bill 2003 includes proposed amendments to the MLA's powers under the MLP Act. Under the MLP Amendment Bill, the declaration threshold has been raised to SAT 20,000 (or its equivalent in foreign currency) whereas the term of imprisonment has been reduced from a maximum term of five years to two years.
291. It is further noted that under clause 15(6) MLP Amendment Bill 2003, the powers of the authorised officer to search and seize the cash or negotiable instruments has been extended to instances where there are reasonable grounds to suspect that the cash or negotiable instruments may afford evidence as to the commission of a serious offence (defined under section 2 of the Proceeds of Crime Act 2003 as an unlawful activity that constitute an offence punishable upon conviction with a maximum period of not less than 12 months, excluding crimes that relate to calculation and collection of taxes or the enforcement of exchange control regulations), a money laundering offence or an offence of financing of terrorism.
292. Cooperation between the Customs department and the FIU would be enhanced under clause 15(8) MLP Amendment Bill 2003, where the FIU would be empowered to transmit reports to the Customs department for the purpose of exercising their respective duties and functions. Additional amendments under section 12 MLP Act 2003 would also allow the FIU to enter into MOUs, agreements or arrangements with Samoan and foreign governmental and non-governmental agencies to ensure close liaison, cooperation and the secure exchange of information. Assistance could also be rendered directly to foreign agency pursuant to section 13 MLP Amendment Bill 2003 whether through a MOU, agreement, arrangement or on a discretionary basis.
293. Explicit powers are also provided pursuant to section 16 and 17 of MLP Amendment Bill 2003 to allow for the seizure, detention and retention of cash or negotiable bearer instruments<sup>10</sup> which might be derived in relation to a serious offence, money laundering offence or an offence of the financing of terrorism. Clause 17(1) (b) of the MLP Amendment Bill 2003 provides for the continued detention of the cash or negotiable bearer instruments while its origin or derivation is being investigated. The Attorney General could

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<sup>10</sup> The definition of "Negotiable bearer instrument" has been amended under section 15(2)(b) MLP Act 2003 to mean a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, *whether made payable to the bearer or not*.

subsequently apply for a forfeiture or pecuniary penalty order pursuant to section 14 Proceeds of Crime Act 2003<sup>11</sup> if the person is convicted of a serious offence.

294. These changes, when implemented, would generally expand the powers of the Customs department and improve its cooperation with the FIU and enhance the border cash declaration regime.

### 2.7.2 Recommendations and Comments

295. Samoa should pass the MLP Amendment Bill 2003 and fully implement the relevant AML/CFT border control provisions.

296. Customs department should have convenient access to financial intelligence information maintained by the FIU.

297. The Customs department should organise training and awareness raising in association with the FIU on money laundering and terrorist financing threats in the areas of identification of emerging trends, avoidance of border cash declaration and detection of trade-based money laundering (including the use of gold, precious metals or precious stones).

### 2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
<b>SR.IX</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Although the border cash declaration system is in place, more efforts could be made to ensure better cooperation and exchange of information between the FIU, Customs department and other governmental agencies.</li> <li>The low number of suspicious transaction reports and border cash transactions reports generated suggests that the effectiveness of the regime could be further enhanced through the building of greater subject expertise, particularly in emerging trends.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>There are adequate statistics of cross border cash reporting being kept. These records however need to be shared and made easily available to other enforcement agencies.</li> </ul>

<sup>11</sup> The Proceeds of Crime Act 2003 would also be passed soon, in conjunction with MLP Act 2003.

### **3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS**

#### **Customer Due Diligence & Record Keeping**

#### **3.1 Risk of money laundering or terrorist financing**

298. Samoa's AML/CFT system is not based on risk assessments in the manner contemplated in the revised FATF 40 Recommendations.
299. An assessment should be undertaken to determine the nature of risk for money laundering and terrorist financing to directly support any consideration by the Samoan authorities of applying certain preventative measures to elements of Samoa's financial system and DNFBPs on a risk sensitive basis.

#### **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

##### **3.2.1 Description and Analysis**

###### *Overview*

300. Samoa's AML law, regulations and guidelines were prepared prior to the revision of the FATF 40 Recommendations in 2003. Therefore, the essential criteria of the revised recommendations have generally not been reflected in the laws, regulations and guidelines under evaluation.
301. Section 12 of the MLP Act and section 3, 4 and 5 of the Money Laundering Prevention Regulations 2002 impose legal obligations on financial institutions to take a number of customer due diligence (CDD) measures, among others, for establishing or maintaining business relationship with customers.
302. It should be noted that the Regulations provide very few of the details of required CDD measures and their timing. Rather the details are included in the Guidelines. This goes against the obligations under the Interpretative Notes to the FATF Recommendations which requires that the obligations under Recommendation 5 must be included in law or regulation, rather than guidelines.
303. Part V of the Guidelines are intended to provided a practical interpretation to the legislation and regulations and to give examples of good practice. On this basis the guidelines provide directions in terms of optional language in many places, although there is not a risk-based approach is in operation.
304. A number of essential criteria in Recommendation 5 are only contained in enforceable Guidelines, rather than laws or regulations.
305. The penalties for enforcing such obligations are set out in section 42 (2) and 43 of the Act, section 9 of the Regulations and part VII of the Guidelines.
306. Despite the MLP Act having been passed six years ago, onsite supervision of AML/CFT implementation is new in Samoa. Therefore effective implementation of the requirements as set out below has not yet been adequately monitored by the Samoan authorities.

##### **Recommendation 5**

###### *Anonymous accounts*

307. Financial institutions are not specifically prohibited from opening or keeping anonymous accounts or accounts in fictitious names. However, the identification procedures established in the Part V of the Guidelines emphasize the need for financial institutions to know their customers, to ascertain the nature of their businesses and to verify their identity.

This serves to prevent customers from establishing anonymous accounts or accounts in fictitious names. Samoa authorities indicated that in practice anonymous accounts are not being permitted to operate and this appeared to be backed up by discussions with financial institutions.

308. Regulation 4 requires financial institutions to establish and maintain procedures that require the customer to produce satisfactory evidence of identity or that enable the financial institution to obtain satisfactory evidence of customer identity after contact is first made with the customer. Financial institutions cannot proceed with a business relationship or carry out a one-off transaction where satisfactory evidence of the identity of the client has not been produced or obtained unless it is directed to do so by the Money Laundering Authority (the Authority). Satisfactory evidence of identity is determined in accordance with the guidelines.
309. The issue of anonymous accounts is addressed in the proposed MLP Amendment Bill 2003, which specifies that financial institutions shall not open, operate or maintain any anonymous accounts in fictitious, false or incorrect name.

*When CDD is required*

310. The current AML regime does not adopt the customer due diligence concept as set out under the FATF Forty Recommendations 2003.
311. Section 12.01 of the Guidelines states that identification procedures are required when establishing or operating an account or business relationship or carrying out a single transaction. However, section 4 (3) of the Money Laundering Prevention Regulations 2002 stipulates that the required identification procedures are not applicable to one-off transactions less than SAT \$30,000 (approx. USD 11,500) or equivalent in other currencies, unless
- (a) there are reasonable grounds to believe that the one-off transaction is linked to one or more other one-off transactions in total amount of SAT \$30,000 or over; or
  - (b) there is suspicion of money laundering.
312. Section 12.01 does not cover suspicion of terrorist financing. This may cause a loophole that the transactions below SAT \$30,000 (approx. USD 11,500) suspiciously involving in terrorist financing would not be subject to identification procedures and eventual reporting.
313. Section 12.29 of the Guidelines also requires financial institutions to include accurate and meaningful originator information on funds transfers, but this requirement does not seem to apply to one-off transactions of funds transfers below Tala \$30,000 (approx. USD 11,500), because such transactions are exempted from identification procedures by the Regulations.
314. There is no requirement for financial institutions to undertake customer due diligence measures when they have doubts about the veracity or adequacy of previously obtained customer identification data or when there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds.

*Required CDD measures*

315. Part V of the Guidelines requires financial institutions to verify customer identity and to establish satisfactory evidence for identity by using reliable source documents. The identification procedures cover direct and non-face to face individual customers, corporate customers and trusts.
316. For individual customers, financial institutions are required to obtain information including true name and/or names used, date and place of birth, nationality, correct permanent address, telephone and fax number, and specimen signature.

317. Financial institutions in Samoa noted that names of individual customers in Samoa sometimes cause confusion as local people may have different documents bearing different names (long or short form) and titles. People living in rural areas may not possess identity documents. Financial institutions have to rely on referees or other sources to confirm the identity of some local people. There is a need for guidance from the authorities for financial institutions to have consistent measures in this regard.
318. For corporate customers, the required information includes certificate of incorporation, annual return, address, identity of beneficial owners, directors, identity of account signatories, resolution etc. For trusts, the required information covers identity of trustees, settlors, protectors etc. In addition, evidence of proper appointment of trustees, details of nature and purpose of trusts, and source of funds are also required.
319. For non-face to face customers, financial institutions are required to put in place additional procedures to establish personal verification including address, employment and identity details. At the same time, third party verification (notary, lawyer, other bank) of non-face to face customer identity is also recommended.
320. The Guidelines set out the identity requirements for direct personal (individual) clients, partnerships, corporate clients and trusts. Section 12.09 of the Guidelines provides that the evidence of identity required should be obtained from documents issued by reputable sources. For instance, to establish the identity of an individual client the following documents are considered by the Guidelines to be acceptable-
- Current valid passport
  - Driving licence which bears a photograph and/or
  - National identity card
321. Under section 12.06 of the Guidelines, financial institutions are required to satisfy themselves that they are dealing with real persons or organisations (natural, corporate or legal) and to verify the identity of those persons who have power to operate an account. If funds to be deposited or invested are being supplied by or on behalf of a third party, the identity of the third party (i.e. the underlying beneficiary) should also be established and verified. Section 12.20 (e) requires financial institutions, when dealing with corporate customers, to obtain verified identity of each of the beneficial owners holding interest of 10% or more. There is no express requirement for financial institutions to understand the ownership and control structure of the customer or to determine who are the natural persons that ultimately own or control the customer.
322. For trusts, section 12.22 of the Guidelines requires the verification of identification of trustees, settlors, protectors, any persons having power to appoint or remove trustees and any persons (other than the settlors) who have provided funds to the settlement. Section 12.23 states that consideration should be given to obtaining and verifying the identity of beneficiaries, or at least the principal beneficiaries of a trust. If the trust is complex, it is accepted that obtaining and verifying the identity of the beneficiaries will not be possible or necessary. Section 10.03 also states fiduciary service providers should take reasonable measures to establish and verify the identity of the ultimate beneficial owner or beneficiary on whose behalf an applicant for business is acting, and to ask trustees/nominees from the outset the capacity in which they are operating or making application. Under these requirements, it seems that measures for identifying beneficial owner for customers (natural or legal persons or legal arrangements) are basically in place. However the vague and optional nature of the provisions in the Guidelines related to the identification of beneficiaries undermines the ability of the MLA to have timely access to adequate, accurate and current information on the beneficial ownership of trusts.
323. The elements for identifying beneficial owner are not laid down in the Regulations but in the Guidelines. There is a need for the Regulations to be revised to cover this important requirement, as well as beneficiaries under insurance policies, particularly life and other

investment linked insurance.

324. Section 12.03 of the Guidelines requires financial institutions to ascertain the nature of the business that the customers expect to conduct at the outset and to have a clear understanding of the business of their customers. However, the Guidelines seem to be lack of a requirement for financial institutions to obtain information on the purpose of business relationships.
325. Section 12.10 of the Guidelines requires a record of any subsequent changes to the customer's name, address or employment details. The Guidelines lack scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the customers, their business and risk profile, and the source of funds. Similarly there are no obligations to undertake reviews of existing records of higher risk customers or business relationships, in order to ensure documents, data or information collected under the customer due diligence process being kept up-to-date and relevant.
326. For corporate customers, financial institutions are required under the guidelines to obtain a statement signed by a director setting out the nature of the business of the company, the reason for the account being opened. Similar requirement applies where the client is a trust.

### *Risk*

327. The Samoan Authorities have not adopted a risk based approach to customer due diligence. Financial institutions are not required to perform enhanced due diligence for higher risk categories and financial institutions are not permitted to apply reduced due diligence.
328. However, verification of identity requirements do not apply where the client is-
- (a) a central or local government statutory body or agency of government;
  - (b) a company quoted (or a subsidiary thereof) or a fund listed on an approved market or exchange;
  - (c) another financial institution in Samoa or a foreign regulated institution or a subsidiary thereof.
329. Section 12.32 of the Guidelines lists some categories of customer that are exempted from documentary evidence of identity, which means that financial institutions are not required to establish evidence of identity for the categories of customer. There may be a need to amend the Guidelines to ensure that these exemptions do not apply when there is suspicion of money laundering or terrorist financing.
330. Sections 12.24 and 12.25 of the Guidelines permit financial institutions to simplify procedures for customer identification by relying on another institution to undertake the procedures or to confirm identity. Section 12.26 also permits financial institutions to rely on other institutions to verify the identity and permanent address of non-resident customers. It seems that financial institutions have not yet been reminded that the simplified procedures should be limited to customers from or institutions in those countries and territories having effectively implemented the FATF Recommendations.
331. The Guidelines, through sections 10.00, 12.22 & 12.26, require relevant due diligence when establishing business relationship with trusts, non-resident customers and entities created in jurisdictions without equivalent AML/CFT procedures in place. However the Guidelines lack a requirement for financial institutions' measures to exercise enhanced due diligence for certain higher risk categories of customer, business relationship or transaction.

### *Timing of verification*

332. The identification procedures of the Guidelines require financial institutions to verify the identity of customers and beneficial owners at the time of opening an account or entering into a business relationship, or to obtain the identity as soon as is reasonably practicable. There is a lack of specific procedures for handling commencement of business relationship prior to verification for financial institutions to follow, in order to avoid interruption of normal conduct of business.

### *Failure to satisfactorily complete CDD*

333. Section 12.12 of the Guidelines only requires that unless satisfactory evidence of customer identity is obtained or it is directed to do so by the MLP Authority, financial institutions must not proceed any further with the business relationship or carry out a one-off transaction with prospective customers.

### *Existing customers*

334. Part V of the Guidelines seems to attempt to apply, at the same time, the identification procedures to new business relationships and to those existing before issuance of the Guidelines. This may cause difficulties for the financial institutions to comply with. The relevant part of the Guidelines may be enhanced to allow financial institutions to apply identification procedures to customers and business relationships existing before issuance of the Guidelines on basis of materiality and risk at appropriate times.
335. Financial institutions are not required to apply CDD requirements to existing customers.
336. In practice, however one of the insurance companies has indicated that it has undertaken verification of identity of existing clients upon the renewal of insurance policies.

## **Recommendation 6**

### *Politically exposed persons*

337. Although there are proper due diligence procedures for individual customers, the Guidelines has yet to require financial institutions to adopt a risk based approach for establishing proper policies and senior management controls for dealing with the business relationship with politically exposed persons (PEPs). In addition to normal CDD, these policies and controls may include: appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP, senior management approval for establishing or continuing business relationships with a PEP, reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs, and enhanced ongoing monitoring on such relationships.
338. To further strengthen Samoa's system against laundering the proceeds of corruption Samoa could consider extending measures to those PEPs who hold prominent public functions domestically and becoming party to and fully implementing the 2003 United Nations Convention against Corruption.

339. .

## **Recommendation 7**

### *Cross-border correspondent banking*

340. While due diligence procedures for corporate customers are included in the Guidelines, financial institutions have not yet been required to take enhanced CDD measures when establishing or going on business relationship with respondent institutions (correspondent banking and other similar relationships) as set out in the FATF Recommendations. The measures may include, in addition to the normal CDD, gathering of sufficient information

about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision (whether it has been subject to a money laundering or terrorist financing investigation or regulatory action), assessment of the respondent institution's AML/CFT controls (adequacy and effectiveness), senior management approval before establishing new correspondent relationships, documentation of the respective AML/CFT responsibilities of each institution, and proper CDD obligations for accessing "payable-through accounts" if any.

### **Recommendation 8**

341. There is only limited guidance given for financial institutions to address specific risks associated with non-face to face business relationships or transactions that apply both when establishing customer relationships and when conducting on-going due diligence are absent. Sections 12.27 and 12.28 of the Guidelines require financial institutions to take some enhanced measures for handling verification of identity of non-face to face customers when establishing postal and telephone banking. Section 12.31 of the Guidelines appears to apply to verification of non face-to-face customers, however there is some confusion as to whether this only relates to wire transfers, or account activities more widely. Section 12.32 addresses policies outlining low-risk categories of entities for which reduced levels of documentary evidence are required.
342. Requirements for financial institutions to have policies in place or take measures to prevent misuse of technological developments that may favour anonymity are limited to postal and telephone banking services.
343. Provision of financial services and transactions over the internet, ATM or other electronic means have not yet been specifically addressed.

### **3.2.2 Recommendations and Comments**

344. The MLP Amendment Bill 2003 should be passed and related preventive measures implemented as soon as possible;
  - Legislation should explicitly prohibited financial institutions from opening, operating or maintaining any anonymous accounts in fictitious, false or incorrect name.
345. Revised AML Regulations and Guidelines should be issued to explicitly cover combating the financing of terrorism and to better reflect the further obligations arising from the revised FATF Recommendations;
346. Revised AML Regulations should be issued to cover:
  - customer due diligence measures in instances of a suspicion of money laundering or terrorist financing;
  - identification procedures for one-off or occasional wire transfer transactions below the agreed threshold;
  - identifying and verifying beneficial owners
  - ongoing due diligence on transactions throughout the course of business relationship;
  - obtaining information on the purpose of the business relationship;
347. Revised Guidelines should be issued to cover:
  - measures to handle identity of customers with different names and titles, and customers not possessing proper identification documents;
  - adopting a risk based approach for taking enhanced due diligence for higher risk categories;
  - normal due diligence for the exempted customers where there is suspicion of money laundering or terrorist financing;
  - simplified CDD procedures limited to those customers from and institutions in those

countries and territories having effectively implemented the FATF Recommendations;

- procedures for handling commencement of business relationship prior to verification, in order to avoid interruption of normal conduct of business;
- terminating or not commencing business relationships, and to consider filing a suspicious report, if satisfactory evidence of customer identity cannot be obtained;
- permitting financial institutions to apply the relevant identification procedures to existing customers and business relationships on the basis of materiality and risk;
- risk management systems and procedures in relation to customers or the beneficial owner who may be a politically exposed person (PEP);
- cross-border correspondent banking and other similar relationships regarding the nature of the respondent's business and their level of implementation of global AML/CFT standards; and
- policies and procedures in place to prevent misuse of technological developments in money laundering or terrorist financing schemes.
- Policies, procedures and measures to address any specific risks associated with non-face to face transactions.

348. Samoa could consider extending measures to those PEPs who hold prominent public functions domestically

349. Samoa could consider becoming party to and fully implementing the 2003 United Nations Convention against Corruption.

### 3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
<b>R.5</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• A number of the required CDD elements are covered in the legislation, regulations and guidelines.</li> <li>• Obligations to obtain satisfactory evidence of the identity of account holders prevents anonymous accounts from being permitted to operate, and these obligations appear to be being implemented in practice by financial institutions.</li> <li>• CDD procedures are not in place for existing customers on materiality and risk basis at appropriate times.</li> <li>• The preventive measures required by financial institutions do not apply with respect to the financing of terrorism</li> <li>• There is no requirement for financial institutions to undertake CDD when there are doubts about the adequacy of previously obtained data or when there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds.</li> <li>• There is no requirement for on-going CDD or enhanced due diligence on high-risk customers, business or transactions.</li> <li>• There is no requirement to understand the ownership and control structure or the mind and management of corporate customers</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No requirement for establishing proper policies, and procedures for enhanced due diligence of PEPs.</li> </ul>
<b>R.7</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No requirement for establishing proper policies and procedures and enhanced due diligence for correspondent banking or other similar relationships.</li> </ul>

<b>R.8</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Limited due diligence requirements exist for financial institutions to take measures to address risks associated with non-face to face business relationships or transactions, although this does not extend to on-going due diligence.</li> <li>• There are some requirements for prevent misuse of technological developments that favour anonymity, although these are limited to telephone and postal banking services.</li> </ul>
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### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

350. Section 10.04 of the Guidelines allows fiduciary service providers to rely on written assurance provided by a financial institution in Samoa or a foreign regulated institution for introduced business, unless there is suspicion of money laundering. The written assurance requires introducer to:

- (a) verify the identity of all applicants for business sufficiently to comply with the MLP Act;
- (b) maintain records of the evidence of verification of identity and transactions as required by MLP Act regime;
- (c) inform impossibility of verification of identity; and
- (d) provide details of identity of applicants upon request.

351. The Guidelines provides a list of countries where AML obligations are equivalent to those of Samoa. Only those institutions in the listed countries can be accepted as introducers, and most of the listed countries are members of APG and/or FATF subject to proper AML/CFT measures.

352. Where sufficient information cannot be obtained about the underlying nature of a trust, the nominee company or the source of funds, fiduciary services providers are required in accordance with Section 10.05 of the Guidelines not to proceed further with the business relationship or carry out one-off transaction with the applicant for business, unless directed to do so by the MLA.

353. Section 12.05 of the Guidelines also stipulates an overriding requirement for financial institutions to satisfy themselves that true identity of the prospective customer has been established.

354. Financial institutions are permitted under paragraph 12.24 of the Guidelines to rely on other regulated institutions. As far as possible financial institutions are required to standardise and simplify their procedures and avoid duplicating the identification requirements where it is reasonable to do so. While the responsibility to obtain satisfactory evidence remains with the financial institution who is establishing or operating a business relationship with a client or carrying out a single transaction, the guidelines provides that there are occasions when it is reasonable to rely on another institution to undertake the procedures or to confirm identity. The occasions where reliance on third parties are permitted is not clear and it is also not clear who third party can be as there is no definition of 'another institution' under the guidelines.

355. While Appendix 2 of the Guidelines provides a list of jurisdictions subject to appropriate due diligence requirements, , there is no requirement for financial institutions to satisfy themselves that the other institution is regulated and supervised and has measures in place to comply with CDD requirements.

356. Apart from obligations in the Guidelines on fiduciary service providers mentioned above, there is no requirement for all financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation will be

made available from the introducer upon request without delay. This poses a potential reputational risk especially where business is being introduced to a financial institution in Samoa by a financial institution based in another jurisdiction.

### 3.3.2 Recommendations and Comments

357. Revised guidelines for reliance on third parties to perform elements of the CDD process should be issued to clarify and consolidate the obligations on financial institutions in keeping with the requirements of Recommendation 9, in particular regarding:

- when it is permitted to rely on third parties;
- adequate steps to be taken to be satisfied that copies of identification data and other relevant documentation will be made available from the introducer upon request without delay.
- Steps to be taken to be sure that the introducing institution, when in another country, is regulated and supervised and has measures in place to comply with CDD requirements.

### 3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	PC	<ul style="list-style-type: none"> <li>• There are shortcomings in the arrangement for allowing financial institutions to rely on another institution to confirm identity.</li> <li>• There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the other institution upon request without delay.</li> <li>• there is no requirement for financial institutions to satisfy themselves that the introducing institution, when in another country, is regulated and supervised and has measures in place to comply with CDD requirements.</li> </ul>

## 3.4 Financial institution secrecy or confidentiality (R.4)

### 3.4.1 Description and Analysis

358. There are no statutory or other financial institution secrecy or confidentiality laws in Samoa that inhibit the implementation of the FATF Recommendations. The Samoan AML/CFT framework reconciles the right to confidentiality of financial institutions' customers with competent authorities' need to access the information they may require to perform their supervisory, investigative and judiciary activities, with particular attention to those relevant to AML/CFT regulation.

359. All secrecy or confidentiality obligations are overridden by section 8 of the MLP Act. The scope of section 8 is extensive as it applies to any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other law or otherwise.

360. However, due to the broader issue of the lack of coverage of terrorist financing under the MLP Act, it does appear that section 8 applies with respect to combating the financing of terrorism.

361. Section 8 of the MLP Act stipulates that provisions of the Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of

information imposed by any law. Section 9 also considers lawful for any person to make any disclosure in compliance with this Act. Under the same section, a financial institution, its employees, staff, directors, owners or other representatives as authorized by law shall be exempted from criminal, civil and/or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the disclosure, where the disclosure was made in good faith.

362. Section 11 of the MLP Act empowers domestic authorities to share information, although implementation of this provision is not always occurring in practice. Sections 26 and 31 also empower competent authority to share information with foreign states.
363. No obvious impediment exists in the legislation to hinder financial institutions from sharing information with each other.
364. The MLP Amendment Bill 2003, once passed, will provide further explicit powers to expedite domestic and international information sharing.
365. Financial institutions may in practice be bound by a contractual duty of confidentiality with their clients. In this respect, section 9 of the MLP Act contains safe harbour provisions with respect to a financial institution, its officers and employees where disclosure is made in good faith in breach of a contractual, legislative, regulatory or administrative obligation on restriction of disclosure of information for the purposes of complying with the MLP Act.

### 3.4.2 Recommendations and Comments

366. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to further enhance information sharing among competent authorities, either domestically or internationally, and revised Guidelines should be issued encouraging sharing of information between financial institutions where this is required by correspondent banking, introduced business and wire transfers.

### 3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> <li>There are no statutory or other financial institution secrecy or confidentiality laws in Samoa that inhibit the implementation of the FATF Recommendations.</li> <li>Due to the lack of coverage of terrorist financing under the MLP Act, it does not appear that section 8 applies with respect to combating the financing of terrorism.</li> </ul>

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### *Record keeping*

367. Section 12 of the MLP Act requires financial institutions to keep a business transaction record of any new business transaction exceeding SAT \$30,000 for a period of seven years after termination of the business transaction. Section 2 of the Act interprets "business transaction record" as:
- the identification records of all the persons party to that transaction;
  - a description of that transaction sufficient to identify its purpose and method of execution;

- (c) the details of any account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction.

368. Under the same section, the “business transaction” is interpreted as any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person. Section 6 of the Regulations 2002 requires financial institutions to keep the records required under the Act in such manner as will enable them to be retrieved or reproduced in legible and useable form within a reasonable period of time.

369. Shortcomings in the arrangements for record keeping are:

- (a) only transactions over SAT \$30,000 are subject to record keeping;
- (b) business correspondence is not yet covered in the necessary information for record keeping.
- (c) there is no explicit requirement for financial institutions to keep account files or business correspondence for at least five years following the termination of an account or business relationship.

370. The Amendment Bill 2003 as drafted will addresses these shortcomings.

371. Pursuant to the Regulations, financial institutions must when required to do so by the Money Laundering Authority, produce records without delay and this is happening in practice.

#### *Wire transfers*

372. Section 12.29 of the Guidelines requires financial institutions to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message throughout the payment chain. In the event of incomplete originator information, financial institutions are required to conduct enhanced scrutiny of and monitor for suspicious activity under section 12.30.

373. The above-mentioned requirements for full originator information appear to be applicable to domestic and cross-border transfers, but there is no specific mention of batch transfer and transactions using a credit or debit card to effect funds transfer. During onsite contacts, it was noted that all banking institutions were using SWIFT system for handling cross-border transfers and the SWIFT system did not allow batch transfers. However, cross-border transfers might be batched through systems other than SWIFT by non-banking institutions, e.g. money transfer agents.

374. Regulation or Guidelines do not currently cover requirements for domestic wire transfers to follow the same requirement for cross-border transfers, or to require institutions to include only the originator’s account number or where no account number exists, a unique identifier, within the message or payment form accompanying the domestic wire transfers, if full originator information can be made available to the beneficiary financial institution and to competent authorities within three business days of receiving a request.

375. Clear instructions in the Guidelines should also be in place to require financial institutions not to batch non-routine transactions as this would increase the risk of money laundering or terrorist financing.

376. The Guidelines do require that originator information should remain with the transfer

throughout the payment chain. However, the application of this requirement to intermediary financial institution in the payment chain is unclear.

377. The one-off or occasional transaction threshold of SAT \$30,000 (approximately \$US 8,400) for triggering identification procedures, as set out at section 4 (3) of the Regulations seems applicable to wire transfers. This is a weakness, as financial institutions should be required to include full originator information for any outward wire transfers regardless of amount.
378. Financial institutions are required to conduct enhanced scrutiny of and monitor for suspicious activity, any funds transfers that do not contain complete originator information. The guidelines do not, however, provide examples of enhanced scrutiny measures that could be applied by financial institutions.
379. There is no requirement for financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering.
380. The authorities are yet to establish regular onsite supervision and other compliance tests that the existing obligations for wire transfers are being effectively implemented by all financial institutions and inspections of the banks and major remittance agencies only commenced in 2005. Discussions with financial institutions and remittance businesses raised doubts about whether the obligations with respect to wire transfers are understood and being complied with in practice. Given the amount of cross border remittance business in Samoa, this is a significant weakness in Samoa's AML/CFT system.

### **3.5.2 Recommendations and Comments**

381. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to remove the transaction threshold for record keeping and to include the business correspondence among others as required information for record keeping.
382. In relation to wire transfers, revised Guidelines should be issued and their implementation supported, which require financial institutions to:
- include full originator information in the message or payment form accompanying the wire transfers, or batched wire transfers, or funds transfers effected by transactions using credit or debit cards; and
  - ensure non-routine transactions not to be batched for avoiding increasing risk of money laundering or terrorist financing.
  - require domestic wire transfers to follow the same requirement for cross-border transfers, or to require institutions to include only the originator's account number or where no account number exists, a unique identifier, within the message or payment form accompanying the domestic wire transfers, if full originator information can be made available to the beneficiary financial institution and to competent authorities within three business days of receiving a request.
  - provide examples of enhanced scrutiny measures that could be applied by financial institutions in cases where wire transfers are not accompanied by complete originator information.
  - Require procedures for batch transfers to separately address cross-border or domestic batch transfers, for credit or debit card funds transfers
383. Revised Regulations should be issued requiring financial institutions to include full originator information for any outward wire transfers regardless of the amount.
384. Authorities should pay particular attention to financial institutions compliance with the above obligations as a matter of some priority, through onsite and offsite supervision, feedback and training.

### **3.5.3 Compliance with Recommendation 10 and Special Recommendation VII**

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The MLP Act requires financial institutions to keep a business transaction record of any new business transaction exceeding SAT 30,000 for a period of seven years after termination of the business transaction.</li> <li>• There is no requirement for financial institutions to keep business records for transactions that are less than SAT30, 000.</li> <li>• Regulations do not explicitly require all necessary records to be kept for at least five years following the termination of an account or business relationship</li> </ul>
<b>SR.VII</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing.</li> <li>• There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> </ul>

### **Unusual and Suspicious Transactions**

## **3.6 Monitoring of transactions and relationships (R.11 & 21)**

### **3.6.1 Description and Analysis**

#### *Monitoring of transactions*

385. There are no explicit legally binding provisions that impose a direct obligation on designated bodies to detect and monitor transactions that may feature complex, unusual large transaction, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. Section 12.30 of the Guidelines only requires financial institutions to conduct scrutiny of and monitor for suspicious activity, any funds transfers that do not contain complete originator information. Part VI of the same Guidelines also requires financial institutions to recognize and report suspicious transactions by giving some samples.
386. Part III of the Guidelines requires that financial institutions should be constantly vigilant in deterring criminals from making use of the financial system for the purpose of money laundering, but there is no specific requirements for financial institutions to examine, as far as possible, the background and purpose of transactions and to set forth findings in writing.
387. Although there are legal requirements for record keeping, the same requirements do not seem to require financial institutions to keep findings about background and purpose of complex, unusual large transactions to be available for verification of competent authorities and auditors for at least five years.
388. The above deficiencies are addressed in the MLP Amendment Bill 2003, but which has yet to be passed and implemented.

#### *Monitoring of relationships*

389. Section 10.04 (c) of the Guidelines provides a list of jurisdictions having obligations at least equivalent to the MLP Act regime, but this is for introduced business only. In fact, there are no requirements in the Guidelines for financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the

## FATF Recommendations.

390. The list of jurisdictions mentioned above may be served as reference source for jurisdictions having sufficiently applied the FATF Recommendations. However, there is no requirement in the Guidelines for effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.
391. There is no requirement in the Guidelines for financial institutions to examine background and purpose of the transactions having no apparent economic or visible lawful purpose, and the written findings should be available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors in their necessary actions.
392. There is also no mechanism in the Guidelines for applying counter-measures if those countries not to apply or insufficiently apply the FATF Recommendations. It is noted that some measures mentioned above for monitoring relationships have been addressed in the MLP Amendment Bill 2003, but the mechanism for taking counter-measures for those countries not to apply or insufficiently apply the FATF Recommendations is not in the Amendment Bill.

### 3.6.2 Recommendations and Comments

393. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to require financial institutions to:
- pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose,
  - examine as far as possible the background and purpose of such transactions and to set forth their findings in writing, and to keep such findings available for competent authorities and auditors for at least five years.
  -
394. Samoa should implement a mechanism for ensuring financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries, and for applying counter-measures if those countries not to apply or insufficiently apply the FATF Recommendations. The possible counter-measures include:
- (a) stringent requirements for identifying customers and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;
  - (b) enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;
  - (c) in considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking in to account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;
  - (d) warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering; and
  - (e) limiting business relationships or financial transactions with the identified country or persons in that country.

### 3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
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<b>R.11</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>No requirements to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.</li> </ul>
<b>R.21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>No requirements to give special attention to the background and purpose of business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations, and to apply appropriate counter-measures.</li> </ul>

### **3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)**

#### **3.7.1 Description and Analysis**

##### *Reporting of suspicious transactions*

395. Section 12 (b) of the MLP Act requires that, as soon as the suspicion is formed, financial institutions to report to the MLP Authority (FIU) any business transaction suspiciously involves proceeds of crime. Under section 2 of the MLP Act, there are interpretation for the following key terminologies:
396. "Proceeds of crimes" is interpreted as the proceeds of unlawful activity wherever committed (and whether derived or obtained directly or indirectly through such activity), and includes any property that is mingled with property that is proceeds of unlawful activity;
397. "Unlawful activity" is interpreted as any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than five years, but does not include any crimes that relate, directly or indirectly, to the regulation, imposition, calculation or collection of taxes or the enforcement of exchange control regulations; and
398. "Property" is interpreted as including money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situated, whether in Samoa or elsewhere, and includes any interest in such property.
399. It seems that there is legal obligation for financial institutions to report suspicious transactions (STR) covering proceeds of crime committed anywhere, but the following shortcomings are noted:
- The obligation to make a STR may not cover transactions about funds that are the proceeds of all offences including predicate offences under Recommendation 1. It is because, according to the MLP Act, the offences are restricted to crimes punishable by death or imprisonment for a maximum period of not less than five years. As required in Recommendation 1.4 b), all offences which are punishable by a maximum penalty of more than one year's imprisonment should be included;
  - The obligation to make a STR does not specifically cover transactions suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism;
  - The obligation to make a STR does not apply to attempted transactions; and
400. It is noted that these shortcomings are already addressed in the MLP Amendment Bill 2003 but which has yet to be passed and implemented.

##### *Protection and Tipping off*

401. Section 9 of the MLP Act provides protection for financial institutions, its employees,

staff, directors, owners or other representatives as authorised by law to be exempted from criminal, civil and/or administrative liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the disclosure, where the disclosure was made in good faith. It seems that the protection for persons reporting suspicious transaction is in place and the protection is not conditional for knowing precisely what the underlying criminal activity was, and whether illegal activity actually occurred.

402. Under section 17 (1) and (2) of the MLP Act, it is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced, and it is also an offence for any person who knows or suspects that a disclosure by a financial institution has been made to the MLP Authority (FIU) to divulge that fact or other information to another whereby any investigation that might be conducted following the disclosure is likely to be prejudiced. Therefore, “tipping off” is an offence and prohibited.
403. There is a lack of specific provisions to ensure that the names and personal details of staff of financial institutions that make a STRs are kept confidential by the FIU. It is noted that protection of identity of the relevant persons is addressed in the Amendment Bill 2003.

#### *Reporting of large currency transactions*

404. Samoa implemented elements of a system where banks and other financial institutions and intermediaries report all international currency transactions above a fixed amount.
405. There is a cross border reporting requirement under section 19 of the MLP Act for any person who leaves or enters Samoa with more than Tala \$10,000 in cash or negotiable bearer instruments.
406. Arising from foreign exchange controls, financial institutions are required to report to the Central Bank all sent or received foreign remittances in amount of Tala \$30,000 or over. Such information including customer names and amounts is regularly recorded in the Central Bank’s ‘Toll Ticket’ database which is available to the FIU staff for information and monitoring purposes. This system is not, at present, available to other competent authorities.
407. There is no requirement for financial institutions to report large domestic transactions that do not involve an international transfer.

#### *Guidelines*

408. Under section 11 (2) (f) (iii) of MLP Act, the MLP Authority (FIU) have issued money laundering prevention guidelines (Guidelines) for financial sector including DNFBP. The guidelines are to explain money laundering, to emphasize need for combating money laundering, to outline the requirements of the MLP Act, to provide a practical interpretation of the legislation, to give examples of good practice, and to assist management in developing policies and procedures appropriate to their business. However, apart from other deficiencies mentioned earlier, the guidelines focus on AML, and CFT has not been sufficiently covered.
409. It is noted that FIU has put in place procedures for giving feedback to financial institutions when suspicious transactions are reported to the MLP Authority. Upon receipt of a suspicious transaction report (STR), a letter of acknowledgement is sent to the reporting institution and the relevant information is recorded in the FIU database for analysis and further enquiries. There is ongoing communication between the FIU and the financial institution to gather further intelligence and information if necessary.
410. Due to resourcing problems, feedback has not been provided on:

- (a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures;
- (b) information on current techniques, methods and trends (typologies); and
- (c) sanitized examples of actual money laundering cases.

411. The FIU provides financial institutions that are required to report suspicious transactions with adequate and appropriate feedback. However, a number of the financial institutions that met with the team during the onsite visit indicated that they did not receive or received delayed feedback from the FIU.
412. Although the MLP Amendment Bill 2003 will strengthen the functions of FIU, more resources should be allocated to FIU for enhancing its capability for giving appropriate general feedback (statistics, typologies and cases) to financial institutions.
413. The Guidelines do not cover issues relating to a description of ML and TF techniques and methods.

#### *STR for terrorist financing*

414. In practice, there are procedures for alerting financial institutions about terrorist individuals and organizations designated by the UN Security Council, and requesting financial institutions to check and report whether there are dealings with such customers. However, the current guidelines do not cover, sufficiently, mandatory reporting of suspicious transactions or attempted transactions linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

### **3.7.2 Recommendations and Comments**

415. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to cover suspicious transactions involving proceeds of crimes from all offences punishable by a maximum penalty of more than one year's imprisonment, suspicious transactions linked or related to terrorist financing, any attempted transactions, and suspicious transactions.
416. Although border cash and foreign remittance reporting systems are in place, implementation of a large currency reporting system should be considered for financial institutions to report all domestic transactions in currency above a fixed threshold to the FIU.
417. Revised guidelines should be issued to sufficiently cover CFT.
418. Further resources should be allocated to FIU for enhancing its capacity to provide feedback (statistics, typologies and cases) to financial institutions and DNFBPs.
419. Revised guidelines should be issued requiring STR to cover any suspicious transactions linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism linked or related to FT.

### **3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV**

	Rating	Summary of factors underlying rating
<b>R.13</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• System for STR is in place but coverage is not sufficient, e.g. suspicious transactions involving proceeds of all crimes, attempted transactions, and transactions related to FT and tax matters are not yet covered.</li> <li>• There is no explicit obligation on financial institutions to make a STR where there are reasonable grounds to suspect or they are</li> </ul>

		suspected to be linked or related to, or to be used for terrorism, terrorists acts or by terrorist organisations.
<b>R.14</b>	<b>C</b>	<ul style="list-style-type: none"> <li>The recommendation is fully met</li> </ul>
<b>R.19</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>Border cash and foreign remittance reporting systems are in place but no consideration has been given to a general requirement to report of large domestic currency transactions.</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The Guidelines issued by the MLA do not take account of the FATF Forty Recommendations 2003 and do not cover CFT more broadly.</li> <li>The Guidelines do not apply to trustee companies</li> <li>The FIU does not provide adequate and timely feedback to reporting financial institutions and DNFBP.</li> </ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>No specific requirement is in place for STR linked or related to terrorist financing.</li> <li>There is no explicit obligation on financial institutions to make a STR where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorists acts or by terrorist organisations.</li> </ul>

### **Internal controls and other measures**

## **3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)**

### **3.8.1 Description and Analysis**

#### *Control, compliance and audit*

420. Under section 12 (e) of the MPL Act, all covered financial institutions are required to develop and apply internal policies, procedures and controls to combat money laundering and develop an audit procedure to evaluate such policies, procedures and controls. Section 8 of the Regulations requires financial institutions to ensure that all relevant employees are aware of the Act, the Regulations, Guidelines and any relevant directions, requirements, policies, functions, procedures and controls. Meanwhile, the Guidelines provides assistance to financial institutions for forming the relevant policies, procedures and controls that cover CDD, record retention, detection of suspicious transactions and reporting obligation.

421. Internal controls, compliance and audit measures for CFT have not been sufficiently covered in the MLP Act, Regulations and Guidelines. In practice some financial institutions, particularly foreign banks, have policies, procedures and controls that include CFT in addition to AML controls.

422. The authorities are yet to establish regular onsite supervision and other compliance tests that the existing obligations for Internal controls, compliance and audit are being effectively implemented for all financial institutions covered under the MLP Act. All banks, the two largest remittance agencies and trustee companies have been subject to onsite supervision since early 2005. Discussions with financial institutions and remittance businesses during the onsite visit raised doubts about whether the obligations with respect to internal controls, compliance and audit are fully understood and being complied with in practice. This is a significant weakness in Samoa's AML/CFT system.

423. The Regulations require financial institutions to develop compliance management arrangements and to appoint a Money Laundering Reporting Officer (MLRO) who has full access to necessary information in ensuring AML compliance and to report to the MLA any relevant information related to an STR. It is not, however, a requirement that at a minimum the MLRO should be at the management level.

424. During onsite contacts, it was noted that not all financial institutions covered under the MLP Act, had appointed an MLRO. In some instances where an MLRO was designated, the MLRO was not at the appropriate management level to have final decision on whether to report an STRs to the FIU. In those cases where an MLRO was designated they do appear to have proper access to all necessary information including customer identification data, other CDD information and transaction records.
425. While there is an obligation for all financial institutions to develop a procedure to audit AML compliance, there is no obligation to maintain an adequately resource an independent audit function to test compliance with AML/CFT. Section 10 of the Financial Institutions Act 1996 requires banks operating in Samoa to appoint an external auditor for auditing accounts.
426. The MLP Amendment Bill 2003 does require compliance audit to be conducted by auditors of financial institutions.
427. The Regulations and Guidelines require financial institutions to establish training procedures for all employees of financial institutions and financial institutions may not carry on any relevant financial business unless they comply with the training requirements under the regulations. This does not seem to be the case in practice.
428. While the FIU has organized AML training for staff of all the major financial institutions, apart from the largest banks, very little in-house AML training appear to have been undertaken.
429. It does not appear that all the financial institutions provide internal AML/CFT training to all relevant employees. In some instances financial institutions have indicated that only their senior employees have received FIU organised AML training, mostly organised by the FIU.
430. The training requirements under the regulations do not include ongoing training by financial institutions to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends. Recognising the capacity constraints on financial institutions in Samoa, the FIU has organised training to keep financial institutions employees informed of the latest ML and FT techniques and trends.
431. Procedures for recruiting proper employees are in place in all financial institutions but there is no requirement in the Regulations or Guidelines for financial institutions to put in place screening procedures to ensure high standards when hiring employees.
432. Overall, effective implementation of the existing obligations on financial institutions' internal controls, compliance and audit obligations remains a weakness in Samoa. Effectiveness remains an issue for many of the banks and larger NBFIs and the biggest two remittance agencies which have taken some steps to build their internal controls and compliance systems.

#### *Foreign branches*

433. There are no obligations on financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF recommendations, to the extent that local laws and regulations permit. While local Samoan financial institutions do not have foreign branches, there are remittance agencies, insurance companies and trust and company service providers that have a foreign presence.
434. Branches or subsidiaries of foreign institutions dominate Samoa's financial market. Locally incorporated financial institutions have yet to develop their operations to overseas market. Therefore, no requirements are laid down in the Act, Regulations and Guidelines

for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations. All other essential criteria in this regard have also not been mentioned.

### 3.8.2 Recommendations and Comments

435. Authorities should ensure that current obligations regarding Internal controls, compliance and audit are fully implemented by financial institutions.
436. Revised Guidelines should be issued to cover
- internal procedures, policies, controls and training, with an emphasis on both AML and CFT, in particular:
    - screening procedures to ensure high standards when hiring employees;
    - ensuring that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local laws and regulations permit, especially in countries which do not or insufficiently apply the FATF Recommendations
    - financial institutions informing their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.
437. The MLP Amendment Bill 2003 should be passed and requirements for independent audits to include AML/CFT compliance for financial institutions should be implemented as a matter of priority.

### 3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
<b>R.15</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Internal controls, compliance and audit measures are not addressed for CFT</li> <li>• Implementation with existing obligations is weak and not extended beyond the large banks, NBFIs and largest remittance agencies</li> <li>• screening procedures for high standards of employees have not been sufficiently covered.</li> <li>• While a procedure is required to audit AML compliance, there is no obligation to maintain an adequately resource and independent audit function.</li> <li>• The training requirements do not include ongoing training.</li> </ul>
<b>R.22</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are no requirements to ensure that branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations.</li> </ul>

## 3.9 Shell banks (R.18)

### 3.9.1 Description and Analysis

438. As at the date of the on-site visit, the Samoan authorities were implementing transition arrangements to cease the continued operation of international banks with no physical presence (shell banks) in Samoa and had taken actions to de-license three international banks for non-compliance. Recent legislative amendments now require international banks to have a physical presence in Samoa, but transitional arrangements have been in

place since May 2005 which still accept the continued operation of some shell banks in Samoa for a limited period of time.

439. The International Banking Act 2005 (the IBA), which commenced on 25 May 2005, repeals the Offshore Banking Act 1987 and provides a new framework for the licensing and supervision of international banks in Samoa. International banks are now required to establish and maintain a physical presence as a place of business in Samoa and to employ one or more individuals full time. International Banks are also required to maintain operations and banking records at their place of business in Samoa.
440. Under transitional arrangements contained in the IBA, existing international banks (previously licensed under the Offshore Banking Act 1987) are deemed to be licensed under the International Banking Act 2005 and were given an initial period of 270 days to comply with the licensing requirements to establish a physical presence in Samoa. The initial transitional period came to an end on 25 February 2006. As of that date, three international banks had complied with the requirements, three had applied for an extension of time to comply and two failed to comply or apply to extend. Under section 11 (4) of the IBA the authorities may, upon sufficient cause being shown, extend the period of time provided to licence holders to establish a physical presence in Samoa for a further period of up to a maximum of 270 days.
441. Onsite inspections were conducted on the three international banks which established a physical presence to check for compliance with the licensing requirements and were found to be in compliance. An onsite inspection is scheduled to be conducted on the three remaining applicant international banks, to be conducted on the date of the conclusion of the transition period.
442. While SIFA granted the three applicant international banks an extension of time to comply with the requirements until 25 July 2006, SIFA has indicated that no further extensions of time will be considered beyond that date.
443. On 18 May 2006 the banking licences were revoked for the two international banks which failed to comply or apply for an extension under Section 11 of the IBA. As part of the de-licensing process, SIFA has required that the two de-licensed international banks immediately cease conducting business to new clients and to submit a plan of dissolution and wind up operations, cease using the word 'bank' from any company name and notify of any plan to re-domicile.
444. Financial institutions are not expressly prohibited to enter into or continue correspondent banking relationships with shell banks.
445. Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
446. As mentioned in 3.2.1, no requirement is in place for financial institutions to adopt a risk based approach for establishing proper policies, procedures, senior management control and enhanced due diligence for correspondent banking or other similar relationships.
447. During onsite contact, it was noted that major foreign banking institutions had proper group policies in place for not maintaining or entering into business relationships with shell banks and offshore companies.

### **3.9.2 Recommendations and Comments**

448. SIFA should require those international banks operating without a physical presence in Samoa to take steps to immediately establish the required physical presence.
449. SIFA should not grant any further extension periods to those existing offshore banks that yet to meet the physical presence requirement.

450. The remaining international banks which do not meet the physical presence requirements of the IBA 2005 should be de-licensed as early as possible and no longer be permitted to operate in Samoa.
451. Onsite inspections should be conducted to confirm compliance with the obligations to establish a physical presence as well as to confirm the winding up of the de-licensed international banks.
452. Regulations should be implemented as soon as possible requiring financial institutions to:
- not enter into, or continue, correspondent banking relationships with shell banks.
  - be satisfied that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	<ul style="list-style-type: none"> <li>• Samoan authorities are implementing transition arrangements to cease the continued operation of shell banks, however a small number are currently permitted to operate, albeit for a finite period of time.</li> <li>• Onsite inspections have been conducted for the three international banks that have established a physical presence and active steps have recently been taken to de-license and wind up operations of three shell banks that did not comply with the transition arrangements to establish physical presence.</li> <li>• Financial institutions are not prohibited from entering into or continue correspondent banking relationships with shell banks.</li> <li>• Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>

## **Regulation, supervision, guidance, monitoring and sanctions**

### 3.10 The supervisory and oversight system - competent authorities and SROs

#### **Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)**

##### **3.10.1 Description and Analysis**

##### *Competent authorities, SROs, resources and staffing*

453. The Central Bank of Samoa Act 1984 and the Financial Institutions Act 1996 provides the legal framework for the Central Bank of Samoa to license and prudentially supervise financial institutions operating in Samoa.
454. Pursuant to the MLP Act, the MLA is mandated to supervise financial institutions in accordance with the Act and to ensure that financial institutions comply with their obligations under section 12 MLP Act. The functions of the MLA are carried out by the Governor of the Central Bank who has authorised the FIU to carry out the functions of the competent authority for monitoring supervision and guidance within the MLP Act.
455. The Central Bank is the competent authority for granting a licence under the Financial Institutions Act. The Central Bank does undertake fit and proper tests before granting a licence.

456. There is however, no requirement for supervisors or other competent authorities to take necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest.
457. A draft Insurance Bill which takes into account the IAIS Core Principles is in preparation with the help of technical assistance.
458. Self regulatory organizations (SROs) for financial institutions presently have very limited roles in regulating the application of AML/CFT measures in the financial system. The Bankers Association and other associations may, in the future, be able to assist financial institutions and DNFBPs to organise training programmes and adopt best practices in this regard. It is noted that the relevant authorities have yet to make use of the SROs for developing closer relationship with the sector, in order to encourage best practices and appropriate training to support more effective implementation of the AML/CFT regime.
459. The Samoa Financial Intelligence Unit (FIU) is established within the Financial Institutions Department (FID) of the Central Bank of Samoa and comprised of four designated staff. The FID is also responsible for the prudential oversight of the commercial banks and non-bank financial institutions as governed under the Financial Institutions Act 1996. The FID has seven staff in total involved in such supervisory roles.
460. Given the growing demand of FID's supervisory responsibility over the financial system, there are currently insufficient resources for performing all the duties and responsibilities assigned and the overlapping functions of AML/CFT supervisor, prudential supervisor and FIU. This may also hinder sufficient operational independence and autonomy from undue influence or interference.
461. There is a plan to recruit additional qualified staff in the near future, to ensure the effective conduct of the FIU's statutory role under the existing regime.
462. Staff of the FIU are bound by the Declaration of Allegiance and Secrecy signed between the staff and the Central Bank of Samoa as well as the MLA to declare the faithful performance of all duties and observe strict secrecy and respect all the affairs and transactions of the MLP Authority. It is noted that key staff members are well qualified with proper qualification and experience.
463. The MLA considers training as an important component for developing adequate capacity to undertake its statutory role more effectively. The relevant FID staff members are therefore provided with opportunities for attending training programs, meetings and seminars both locally and abroad in order to keep abreast of ongoing changes and developments in AML/CFT issues.

#### *Relevant powers and sanctions*

464. The MLA may pursuant to its powers under section 11(2) of the MLP Act conduct onsite compliance visits on the business premises of financial institutions. For this purpose the MLA may authorise any person to enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution and ask any questions relevant to such record and to make notes or take any copies of the whole or any part of any such record. The FIU has conducted on-site examinations of banks to ensure compliance with AML measures.
465. There are clear powers in relevant legislation for supervisors to compel production/access to records, documents or information during onsite inspections. However, beyond onsite inspections, it does not appear that the MLA has the power to compel production of or obtain access to all records, documents or information relevant to monitoring compliance.
466. Under the MLP Act, the MLA has no power of sanction for non-compliance, other than applying to the court for a mandatory injunction to ensure compliance. Only the court may

impose a sanction for non-compliance on the financial institutions, their officers or employees.

467. Upon application by the MLP Act, a judge may, where satisfied that a financial institution has failed without reasonable excuse to comply with section 12 of the MLP Act, grant an injunction and order financial penalties against a financial institution and its officers to enforce compliance.
468. The MLA may conduct an investigation for the purpose of ensuring compliance by financial institutions with the provisions of the MLP Act. A Judge in Chambers may, upon application of the MLA grant a search warrant to the MLA to enter financial institution and to remove relevant records and objects.
469. Under the FIA, the Central Bank has powers to apply administrative sanctions including giving directions and ultimately revocation of license. This is only in relation to banks and does not apply to all financial institutions as covered under the MLP Act.
470. The Central Bank has twice suspended a licence as a sanction to a money transfer agent who failed to comply with exchange control regulations, rather than AML/CFT obligations. Up to the time of evaluation, no statistics are available for consideration and application of further such sanctions.

#### *Licensing/registration*

471. The Central Bank of Samoa has the sole authority to issue banking licences and conducts fit and proper tests when considering an application. Elements considered include: history and qualifications of the applicant, promoters, substantial shareholders and management, their character and experience, the proposed accounting and internal control systems, the adequacy and the structure of capital and business activities.
472. The Central Bank undertakes fit and proper tests and has powers to investigate any information relevant to a bank application including the quality and integrity of the promoters, directors and management of the proposed bank. This includes independent verification and affidavits of individuals profession and experience, reputation and qualifications of key officials who will be directly associated with the bank's operation.
473. Money transfer agents and moneychangers are required to be licensed with the Central Bank of Samoa under the Exchange Control Regulations 1999 and licensing procedures similar to those for other financial institutions. Section 5 of the Exchange Control Regulation stipulates that only banks or persons licensed under such regulation can be foreign exchange dealer who may carry out foreign exchange and currency exchange. The licensed money transfer agents and moneychangers are registered with the Central Bank.
474. Financial institutions other than those subject to the core principles, e.g. credit unions and moneylenders are also licensed under the relevant laws and regulations. These institutions are also covered by the MLP Act, Regulations 2002 and Guidelines for taking AML measures. It is noted that, due to the relatively low-risk nature of their business and their small size, AML/CFT supervisory actions taken so far for credit unions and moneylenders have been limited.

#### *Supervision/oversight*

475. Banks are subject to prudential supervision based on the Basel core principles. Insurance activities are still in the process for transferring to the Central Bank for prudential supervision.
476. In general, the supervision process covers offsite and onsite surveillances. The onsite examination manuals used by the FID when conducting supervision for AML/CFT are comprehensive. The offsite supervision regularly considers financial institutions' financial performance and conditions, while onsite examinations are used to verify the books, records and systems in different business areas of financial institutions based on a risk

approach. Similar procedures are also in place for verifying financial institutions' compliance with AML/CFT measures.

477. Given the limited supervisory resources, it is doubtful that onsite inspections can be realised regularly and sufficiently to cover all the required areas and all financial institutions.
478. Onsite inspection of financial institutions for AML/CFT is new in Samoa. Due to limited capacity and resources, regular onsite inspections are yet to be undertaken for all financial institutions. Onsite AML inspections of banks and trustee companies commenced in early 2005 and three rounds of onsite inspections taken place to date for banks, trustee companies and the two largest remittance providers. At present statistics related to these onsite inspections are limited.
479. The Central Bank has applied sanctions for non-compliance under exchange control regulations, on two money transfer agents, with one case resulting in a suspended licence for 6 months and the other for three months. No sanctions have been applied under the MLP Act.
480. There are adequate computerized systems in the Custom and Port Authority, the Central Bank and the MLP Authority (FIU) for maintaining data of comprehensive statistics for border cash declarations, foreign remittances, foreign exchange (money change and transfer) transactions, and STRs for statutory and AML/CFT analysis purposes.

### 3.10.2 Recommendations and Comments

481. The supervisory authority should make use of the existing powers to apply dissuasive sanctions on those financial institutions which fail to comply with Samoa's AML/CFT requirements.
482. Consideration should be given to providing powers for enabling the Regulator to apply administrative sanctions for not complying with AML/CFT requirements.
483. Samoa should increase the frequency and scope of supervision to ensure financial institutions are subject to adequate AML/CFT regulation.
484. Sufficient further staffing resources should be obtained to ensure that the FID is able to performing its duties as AML/CFT supervisor in addition to its FIU functions.
485. Consideration could be given to extending a requirement for all financial institutions to submit a compliance certificate on a yearly basis to enhance the monitoring of financial institutions.
486. In recognition of the real capacity constraints in Samoa, the authorities could consider encouraging various industry associations and SROs to assist financial institutions and DNFBPs to coordinate appropriate training, to promote best practices for the financial sector and to delegate some aspects of supervision with SROs.
487. The data collected from border cash declarations, foreign remittances, foreign exchange including money change and transfer, and STRs should be consolidated and analysed to assist the FIU and other competent authorities combating money laundering and terrorist financing.
488. Revised Regulations and Guidelines should be issued to sufficiently cover all aspects of CFT, including supervision, guidance, monitoring and sanctions.

### 3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
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<b>R.17</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There has only been very limited use of dissuasive sanctions against financial institutions that fail to comply with AML/CFT requirements.</li> <li>• Criminal and civil sanctions are available but administrative ones are unclear.</li> </ul>
<b>R.23</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Inadequate scope and frequency of AML/CFT supervision due to limited resources.</li> <li>• CFT aspects have yet to be adequately addressed</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Guidelines are in place but CFT aspects have yet to be adequately addressed</li> <li>• DNFBPs are not offered specific guidance.</li> </ul>
<b>R.29</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Supervisors don't have powers, beyond onsite inspections, to compel or obtain access to relevant records to monitor compliance.</li> <li>• Supervisors do not have any direct powers of enforcement or sanction for failure to implement or comply with national AML/CFT requirements. .</li> </ul>
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• There are currently inadequate resources for the MLA to comprehensively undertake its role as AML/CFT supervisor in addition to its role as FIU.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Systems for maintaining statistics relating to onsite and offsite supervision are in place.</li> </ul>

### **3.11 Money or value transfer services (SR.VI)**

#### **3.11.1 Description and Analysis**

489. Globally, Samoa is one of the highest recipients of remittances as a share of GDP.

Remittances amounted to about 24 percent of Samoa's GDP in 2004. A majority of Samoa's population live in rural areas and the majority of Samoa's population does not use formal banking services.

490. Money transfer services are licensed and regulated by the Central Bank of Samoa under the Exchange Control Regulations 1999. The licensing procedures are described in 3.10. Agents providing money transfer services are also covered in the MLP Act, the related Regulations and Guidelines for implementing CDD measures as required by the AML regime. The FIU has responsibility to supervise money transfer agents in relation to AML compliance.

491. In recent years the Samoan authorities have issued greater numbers of licenses to remittance operators to develop the remittance sector and support the movement of a greater portion of the remittance business in Samoa to formal regulated channels.

492. It is clear, however, that there still remains an element of unlicensed alternative remittance operators in Samoa. For example there are indications of the use of retail businesses (for example grocery stores, hair dressers, taxi services) offering unlicensed remittance services between Samoa, New Zealand, the US and Australia. No assessment has been conducted about the extent of unlicensed alternative remittance systems in Samoa. Such an assessment would allow the authorities to ascertain the relevant risks and to determine the respective remedial actions.

493. A number of remittance agencies working in Samoa are part of international groups or affiliated with local banks. Western Union, for example, is the biggest single remittance operator, accounting for almost 20% of market share in Samoa. Those local operations with international affiliation appear to have better developed AML/CFT controls, in keeping

with by group policies.

494. Onsite AML/CFT inspections and related training have thus far only occurred with a limited number of the larger remittance agencies. Significant weaknesses remain in implementation of AML/CFT regulation across the remittance sector in Samoa.
495. Given the number and spread of remittance agencies across Samoa there are significant resource challenges for the FIU to directly provide awareness raising and training to all players in the remittance market.
496. Despite the extent of remittance operations in Samoa and the inherent risks in relatively poorly regulated sector, no suspicious transaction reports have been provided to the FIU by any remittance agencies, despite the clear risks in this sector. This points to weaknesses in the compliance culture of remittance agencies in Samoa.
497. To foster a culture of AML/CFT compliance in the sector and develop capacity there may be benefits for the FIU to support the formation of a remittance agent's association or some form of self-regulatory organisation amongst remittance agencies. Such an industry body would be able to support cooperative training, awareness raising and consultation with the FIU, which would better enable the sector to reach compliance with AML/CFT obligations.

### **3.11.2 Recommendations and Comments**

498. Regular AML/CFT onsite inspections should be undertaken to ensure that proper CDD measures, record keeping and suspicious transaction reporting requirements are followed by all money transfer agents in Samoa.
499. An assessment should be conducted as soon as possible to ascertain the extent, vulnerabilities and risks from continuing unlicensed remittance activities and determine necessary regulatory and enforcement actions.
500. Specific AML/CFT training and awareness raising for all remittance agents should be undertaken across Samoa.
501. The authorities should consider supporting the formation of a remittance agent's association to support sector-wide training, internal controls, awareness raising and consultation with the FIU to better enable the sector to comply with AML/CFT obligations.

### **3.11.3 Compliance with Special Recommendation VI**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Awareness and implementation of AML/CFT obligations is weak</li><li>• Monitoring of MVT services is inadequate to ensure compliance with AML/CFT control;</li><li>• Unlicensed ARS activities have not been assessed to ascertain risks.</li></ul>

## **4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS**

### **4.1 Customer due diligence and record-keeping (R.12) (applying R.5, 6, 8 to 11, & 17)**

#### **4.1.1 Description and Analysis**

502. The following categories of DNFBP operate in Samoa:
- Real estate agents
  - Dealers in precious stones and metals
  - Lawyers and accountants
  - Trust and company service providers.
503. The definition of activities of financial institutions under Schedule 1 of the MLP Act includes real property transactions, bullion dealing, casinos and other gambling and betting services, certified public accountants, lawyers and trust and company service providers. Therefore these DNFBPs are considered to be financial institutions for the purposes of the MLP Act and are subject to the same obligations under the Act that apply to financial institutions and are therefore not separately considered in this section.
504. However, in practice, apart from the trust and company service providers, most of these categories of DNFBP are not supervised for AML purposes. From meetings with representatives of the sector, it is clear that these sectors are largely unaware of their obligations under the MLP Act or the relevant Regulations and Guidelines.
505. Section 10 of the Guidelines contains provisions that apply to fiduciary services including services provided by trustee companies. There are no areas of the Regulations or Guidelines to specifically address the business activities of the other covered DNFBPs.
506. Trustee Companies operating in Samoa have put in place AML preventive measures in keeping with the MLP Act. Trustee companies operating in Samoa have in place procedures with respect to verification of identity of clients prior to the establishment of the business relationship; suspicious transaction reporting; and record keeping.
507. The FIU and the SIFA which have conducted AML focused on-site visits of the premises of the trustee companies.
508. There is no requirement for trustee companies to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person (PEPs).
509. Trustee companies are required to have policies in place to address any specific risks associated with non-face to face business relationships or transactions as outlined in the Guidelines.
510. The core business of the trustee companies is to incorporate International Business Companies (IBCs) and most of the client relationships are established on the basis of referrals from the head office or third parties (mostly accountants and lawyers outside Samoa). In these circumstances, the trustee companies have no knowledge of the identity of the ultimate beneficial owner of the IBC, or of the purpose for which the IBC is being established. The trustee companies have procedures in place that require them to undertake some form of due diligence on the introducer and in practice it does not appear that the introducers are necessarily regulated for AML/CFT purposes. Further, all customer due diligence records, where they exist, are retained by the introducer outside Samoa.
511. The provisions of the guidelines do not require the trustee company to have knowledge of the ultimate beneficial owner or the purpose for which the client relationship is being established. The arrangements in place do not meet the international standards with respect to introduced business.
512. In practice, Trustee companies keep customer identification data for a period of at least 5 years.
513. Trustee companies, as with other financial institutions, are not required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

514. There is a clear legal authority to sanction trustee companies for failure to apply measures under the MLP Act. SIFA appears to have the authority under the *Trustee Companies Act 1987* to cancel a trust company licence for failure to comply with the MLP Act.
515. The SIFA sends regular updates on the UN Taliban Watch list to all trustee companies who are requested to report on any name match identified. No name match has been identified by any of the Trustee Companies.
516. During the APG's onsite visit, it was noted that the sector of DNFBP was actually quite small but the risk should not be underestimated for the international financial services and others vulnerable to money laundering or terrorist financing.

#### 4.1.2 Recommendations and Comments

517. DNFBPs should be required to fully implement the existing obligations contained in the MLP Act, Regulations and Guidelines.
518. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to give adequate legislative support to enhance the preventive measures for DNFBP, and to include those activities of the dealers in precious metals and stones in the designated activities subject to the AML/CFT regime.
519. In relation to dealings with politically exposed persons, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 6.
520. In relation to technological developments, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 8.
521. In relation to relying on third parties to perform elements of CDD, and in addition to the provisions under paragraph 10 of the Guidelines, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 9.
522. In relation to record keeping, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 10.
523. Legislative amendments should ensure that the designated competent authorities have effective proportionate and dissuasive criminal, civil or administrative sanctions available to deal with DNFBPs that fail to comply with the AML/CFT requirements.
- 524.
525. Appropriate measures and mechanism should be in place to ensure oversight of those trust and company service providers not having physical presence or management stationed in Samoa.
526. Given the difference of the business nature of DNFBP and financial institutions, separate guidelines should be issued according to the characteristics of DNFBP for assisting them in compliance with the relevant AML/CFT requirements.

#### 4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	<ul style="list-style-type: none"> <li>Although DNFBP are subject to the same AML/CFT requirements as all other financial institutions, implementation by lawyers and accountants is minimal.</li> <li>Trustee companies are not yet required to undertake comprehensive CDD measures; risk manage PEPs; take measures to prevent the misuse of technological developments in ML or TF schemes</li> </ul>

		<ul style="list-style-type: none"> <li>• The requirements for introduced business do not meet international standards as trustee companies are not required to immediately obtain from the introducer information on the identity of the customer or of the beneficial owner and the intended purpose and nature of the business relationship</li> <li>• There is no requirement for trustee companies to conduct on-going due diligence with respect to introduced business relationships.</li> </ul>
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## 4.2 Suspicious transaction reporting (R.16) (applying R.13 to 15, 17 & 21)

### 4.2.1 Description and Analysis

527. All DNFBP are required, as for financial institutions, to report suspicious transactions. The relevant description and analysis are in 3.7.1. Trustee companies appear to be well prepared to identify and suspicious transactions, however lawyers and accountants do not appear to have been trained in identifying and reporting STRs. Only one suspicious transaction report has been filed by any DNFBP, a trust and company service provider, since the enactment of the MLP Act.

528. The internal control requirements for DNFBP are the same as for financial institutions. The relevant description and analysis are in 3.8.1.

529. Similar to financial institutions, requirements are not in place for DNFBP to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. The relevant description and analysis are in 3.6.1.

530. Sanctions in this regard for DNFBP are also the same as for other financial institutions. The relevant description and analysis are in 3.10.

### 4.2.2 Recommendations and Comments

531. The MLP Amendment Bill 2003 should be passed and regulations and guidelines issued as a matter of priority.

532. Samoa should conduct DNFBP sector-specific AML/CFT awareness raising and training, in particular in relation to STR obligations and practices.

533. Regular onsite inspections should be extended to all relevant DNFBP to ensure their compliance with the AML/CFT regime.

### 4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
<b>R.16</b>	<b>PC</b>	AML/CFT measures have not yet been implemented by most of the DNFBP, with the exception of trust and company service providers.

## 4.3 Regulation, supervision and monitoring (R.24-25)

### 4.3.1 Description and Analysis

534. Supervision and monitoring powers under the MLP Act are applicable to DNFBPs in Samoa. Trustee companies have been subject to an equivalent level of oversight as banks and other financial institutions. However, it is noted that the other DNFBPs have not been properly supervised and monitored for compliance with the required AML/CFT regime since the enactment of the MLP Act 2000.

535. Section 10 of the Guidelines contains provisions that apply to fiduciary services including services provided by trustee companies.
536. No other specific guidelines have been issued, according to the respective characteristics of each type of business, for assisting DNFBP beyond trustee companies to implement and comply with their respective AML/CFT requirements. This has not occurred because all DNFBP are subject to the same guidelines for financial institutions.
537. The description and analysis of sanctions for DNFBP are the same in 3.10.
538. Onsite supervision visits have only taken place with trustee companies which have been subject to three rounds of onsite supervision visits by the MLA and the SIFA and/or the Registrar of International Companies since early 2005.
539. There has been a lack of feedback provided to financial institutions and DNFBPs, both on general trends and case by case feedback.

#### **4.3.2 Recommendations and Comments**

- The MLA (FIU) should extend its supervision and monitoring of AML/CFT compliance to effectively cover all relevant DNFBP.
- Specific guidelines according to the business characteristics of various DNFBP should be issued as soon as possible for assisting DNFBP to effectively implement and comply with AML/CFT requirements.
- Competent authorities should provide general and case by case feedback to DNFBPs.

#### **4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.3 underlying overall rating</b>
<b>R.24</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Trustee companies have been subject to an equivalent level of oversight as banks and other financial institutions.</li> <li>• Most other DNFBPs have not been properly supervised and monitored since the enactment of the MLP Act 2000.</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• No specific guidelines are issued for DNFBP for assisting their implementation and compliance with AML/CFT requirements.</li> <li>• Inadequate feedback has been provided to financial institutions and DNFBPs, both on general trends and case by case feedback.</li> </ul>

### **4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)**

#### **4.4.1 Description and Analysis**

540. Samoa has not yet undertaken a formal risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs.
541. Given the small population, comparatively small size of economy and consumer market, the risk of other non-financial businesses and professions vulnerable to money laundering appears to be quite low. There is reportedly, however, a relatively high incidence of theft of domestic property. Given the incidence of property crime, authorities may consider assessing vulnerabilities of pawn shops and consider the need for any further regulatory coverage of this area. Beyond this possibility, there does not appear to be an immediate need for application of the relevant AML/CFT measures to these categories of DNFBP in

Samoa.

542. Limited measures are in place for encouraging the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering or terrorist financing. EFTPOS systems are being introduced to Samoa. Additionally, internet banking is available in the two largest banks in Samoa. Salary deductions for payments of various services including insurance is also common practice.

#### **4.4.2 Recommendations and Comments**

543. The authorities may consider formally assessing vulnerabilities of pawn shops and consider the need for any further regulatory AML/CFT coverage of this area.
544. Although the small market and economy size may not justify immediate application of new technologies such as e-money or automated transfer systems, measures should be in place to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

#### **4.4.3 Compliance with Recommendation 20**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.20</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• Samoa has not yet undertaken a formal risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs, although risks from other businesses and professions appear to be low.</li><li>• Measures are in place for developing modern and secure techniques for conducting financial transactions.</li></ul>

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS**

### **5.1 Legal Persons – Access to beneficial ownership and control information (R.33)**

#### **5.1.1 Description and Analysis**

##### **a. Domestic sector**

545. In the domestic sector, the Samoan legal system recognises companies, incorporated societies, cooperative societies and boards of charitable trusts.

##### *Companies*

546. Companies in Samoa are registered under an amended version of the New Zealand Companies Act 1955. A modernised Companies Act was passed in 2001, but this legislation has yet to come into force as the translation of this legislation into Samoan has not been completed.
547. Companies may be either public or private. Private companies are restricted to 25 members and unable to invite the public to take up shares in the company, but are subject to fewer obligations than public companies in other areas. Public companies do not have any limitations on maximum membership and may issue share prospectuses to the public. Samoa has not yet developed a capital market and does not have a stock exchange. The analysis below applies to both public and private companies.
548. Under the Companies Act 1955, a company seeking registration must deliver a Memorandum and Articles of Association to the Registrar of Companies who retains and registers them. The vast majority of incorporations in Samoa are done through legal practitioners.

549. The Memorandum sets out the names and addresses of the initial members of the company. The Registrar's role is primarily administrative, ensuring that the required formalities have been complied with.
550. Companies are required to keep a register of members under section 118 of the Companies Act 1955. The register of members must record the name and address of all members and, in the case of a company limited by shares, a statement of the shares held by each member. Under section 125 companies are prohibited from entering any notice of a trust in the register of members and such notice may not be received by the Registrar. Information about nominee shareholdings is also not recorded in the register of members. A company's register of members may be inspected by members of the public for a small cost.
551. Companies in Samoa may also issue share warrants to bearer under section 93 of the Companies Act. A share warrant entitles the bearer to the shares listed on the share warrant, and the shares listed on the share warrant may be transferred to the bearer by surrendering of the share warrant to the company.
552. The issue of share warrants is vulnerable to misuse for money laundering due to the complete absence of information held about the bearer. When a share warrant is issued, the name of the member who held the shares listed in the share warrant is removed from the register of members as if their membership has ceased. The member's details are replaced by the particulars of the share warrant, ie details of the shares to which the share warrant relates and its date of issue. Section 120 of the Companies Act allows companies, through their Articles of Association, to treat the holders of share warrants as members of the company for all but very limited purposes, effectively making share warrants the equivalent of bearer shares. No information was available about the extent of share warrants available in Samoa.
553. Under section 200 of the Companies Act 1955, companies must maintain a register of directors and secretaries at their registered office. The register of directors and secretaries must include particulars of a director's name, former names, residential address, nationality and occupation in the case of individual directors, or the director's corporate name and registered or principal office for corporate directors. The register must also include particulars of a secretary's name, former names and residential address for individual secretaries, or corporate name and registered or principal office for corporate secretaries. A partnership may also act as the secretary of a company, in which case the register of directors and secretaries may include particulars of the firm's name and its principal office instead of the details for each partner. Appointments or changes in directors or the secretary must be notified to the Registrar, including the required particulars, within 14 days. A company's register of directors and secretaries must be made available to members of the public at a small cost.
554. Companies must also file an annual return following each Annual General Meeting with the Registrar. These annual returns includes a range of information including all the details required to be set out in the register of directors and secretaries for each of the directors and the secretary immediately after the Annual General Meeting, and a list of names and addresses of all current members and people who have been members since the last Annual General Meeting.
555. Samoan authorities indicated that records held by the Registrar of Companies are available to other Government agencies and the public.
556. The MLP Guidelines, at paragraph 12.20, also require financial institutions to obtain a range of information and documentation on customers that are companies including, among other things:
- verified identity of each of the beneficial owners of the company who hold an interest of 10% or more in the company and/or the persons on whose instructions the directors,

signatories on the company's account or individuals authorised to deal with the financial institutions, and

- verified identity of account signatories or persons authorised to deal with the financial institutions.

557. The Samoan authorities have access to information held by financial institutions on company clients. Under section 11(2) of the MLP Act, the Money Laundering Authority may authorise a person to enter the premises of regulated businesses during business hours to inspect business transaction records, which include identification records and descriptions of transactions sufficient to identify their purpose and method of execution. The Authority assesses financial institutions' compliance with the identification requirements for companies as part of its on-site inspections.

#### *Incorporated societies*

558. Incorporated societies are legal persons incorporated under the Incorporated Societies Ordinance 1952. The Registrar of Companies is also the Registrar of Incorporated Societies. Any society that consists of 15 or more people associated for any lawful purpose, but not for pecuniary gain, may apply to become an incorporated society and thereby gain legal personality.

559. Applications for incorporation as an incorporated society must be accompanied by a list of the names, occupations and addresses of each members and must be signed by each member. Incorporated societies are required to keep a register of members that includes the same particulars as must be included in an application as well as the date each person became a member. Incorporated societies must provide a copy of the register of members when requested.

560. The Registrar maintains a register of incorporated societies and documents lodged with the registrar are available for inspection by a member of the public for a small fee. The Registrar does not appear to maintain a list of current officers of incorporated societies.

#### *Co-operative Societies*

561. Co-operative societies may be registered under the Co-operative Societies Ordinance 1952. Co-operative societies are required to maintain a list of members which must be made available for inspection by the public free of charge.

#### *Charitable trust boards*

562. The trustees of a charitable trust or a society fulfilling the role of a board of a charitable trust may apply for incorporation under the Charitable Trusts Act 1965. Incorporation is voluntary and is usually undertaken for reasons such as protecting the name of the charitable trust and other benefits of incorporation. The Registrar of Companies and Incorporated Societies is also the Registrar for charitable trusts. Applications for incorporation as a board of a charitable trust must be accompanied by the names and addresses of a majority of the trustees or at least five members of a society. The Registrar has only minimal powers of supervision following registration, for example the Registrar may enquire about whether a board is still carrying on its operations and, if the charitable trust board is inactive, the Registrar order its dissolution.

### **b. International Financial Services sector**

#### International Companies

563. The International Companies Act 1987 provides a parallel legal regime for international companies-which cannot be beneficially owned by residents or citizens of Samoa. International companies are registered with the Registrar of International Companies through trustee companies-which are primarily engaged in the formation management or administration of international companies. Every international company incorporated

under the International Companies Act is a company limited by shares and may in addition to ordinary shares issue bearer shares. While international companies may be set up for any lawful purpose they cannot carry on the businesses of banking, insurance or acting as a trustee unless they are licensed or otherwise permitted to do so under the laws of Samoa. An international company must have a registered office in Samoa, which office must be the principal office of a trustee company. An international company must keep at its registered office, a register of its directors, a share register and index of its members and such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

564. Under this regime, details on the directors and registered shareholders of the international business companies are kept with the Registrar of International Companies however there is no requirement for disclosure of beneficial ownership. Beneficial ownership information would normally be kept by the Trustee Companies who must comply with AML requirements. It does not appear that there exists any mechanism for the SIFA or the Registrar of International Companies to obtain beneficial ownership information from Trustee Companies. Under the provisions of MLP Act, the FIU may have access to beneficial ownership information kept by Trustee Companies. The FIU may provide information to law enforcement agencies and regulatory bodies within or outside Samoa through the Attorney General who is the competent authority for mutual assistance in relation to money laundering investigation or prosecution.
565. There are no controls on bearer shares as yet. However, amendments to the International Companies Act 1987 that are under preparation will impose stricter controls on all bearer instruments.

### 5.1.2 Recommendations and Comments

566. The Companies Act 1955 allows for information about the legal ownership and control of companies to be available to competent authorities in a timely fashion, except where companies have issued share warrants. Samoa should take steps to ensure that information about beneficial ownership of share warrants (while they remain available under the legislation) is available in a timely manner to authorities, eg by requiring the bearer to be listed in the share register. The evaluation team notes that the Companies Act 2001 which is awaiting commencement does not contain any provision for share warrants.
567. No information is maintained about beneficial owners where these differ from the legal owner. Samoa should consider amending the Companies Act 2001 to allow notices of trusts to be entered in companies' share registers.
568. The Companies Act 2001 will also require directors to be natural persons, which will provide greater certainty to competent authorities about the control of companies.
569. Legislative measures should be implemented to ensure information on the beneficial owners of international companies is always available to competent authorities in Samoa.
570. Legislative measures should be adopted to ensure bearer shares are not misused for money laundering or terrorist financing.

### 5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> <li>Competent authorities in Samoa have access to information on the legal ownership and control of companies through the system of registration</li> <li>No information is available about the beneficial ownership of</li> </ul>

		<p>companies.</p> <ul style="list-style-type: none"> <li>• No information is available about the control of companies where exercised through nominee directors or foreign company directors.</li> <li>• No measures are in place to prevent the misuse of share warrants for money laundering.</li> <li>• Access to information about legal persons other than companies is weakened by the lack of guidance on how to identify these customers in the Guidelines.</li> </ul>
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## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 Description and Analysis

#### a. Domestic sector

571. Trusts are a feature of the Samoan legal system, and are governed by a mix of the principles of equity and statute law. As with other common law jurisdiction, Samoa does not have a system of central registration of trusts. The *Trustees Act 1975* sets out a range of measures relating to the administration of trusts but does not govern the creation of trusts. Charitable trusts that own land are subject to the requirement to update the Land Registry Office of changes in trustees.

572. Section 10.03 of the Guidelines requires fiduciary service businesses, which includes formation and administration of a trust and acting as a trustee, to take reasonable measures to establish and verify the identity of the of the ultimate owner or beneficiary on whose behalf an applicant for business is acting. However awareness of AML/CFT obligations amongst lawyers and accountants, the primary fiduciary service providers in the domestic sector, is limited.

573. Section 12.22 of the Guidelines requires financial institutions to verify the identity of trustees, settlers, protectors and any persons having power to appoint and remove trustees and any person (other than the settler) who has provided funds to the settlement as direct prospective clients. In addition to the standard requirements in relation to individual and corporations who are trustees, financial institutions are required to obtain evidence of the proper appointment of trustees, such as extracts from the Deed of Trust or a letter from a lawyer verifying the appointment, details of the nature and purpose of the trust and details of the source of funds.

574. There is a general requirement on financial institutions and DNFBPs to obtain and verify the identity of beneficiaries in paragraph 12.23 of the Guidelines. However, this is not mandatory and phrased in vague terms, ie ‘consideration should be given to obtaining and verifying the identity of beneficiaries or at least the principal beneficiaries of a trust’. The Guidelines also provide that ‘if the trust is complex, it is accepted that this will not always be possible or necessary’, but no guidance is given about what constitutes a complex trust.

575. The Samoan authorities have access to trust information held by financial institutions. Under section 11(2) of the Money Laundering Prevention Act, the MLA may authorise a person to enter the premises of regulated businesses during business hours to inspect business transaction records, which include identification records and descriptions of transactions sufficient to identify their purpose and method of execution. The Authority assesses financial institutions’ compliance with the identification requirements for trusts as part of its on-site inspections.

## **b. International Financial Services sector**

### *International Trusts*

576. An international trust may be registered under The *International Trust Act 1987*. An international trust is defined under the Act as a trust which is registered under the Act and in respect of which -

- (c) at least one of the trustees, donors or holders of power of advancement is either:
  - (i) a trustee company;
  - (ii) an international company; or
  - (iii) a foreign company registered under the *International Companies Act 1987*;and
- (d) the beneficiaries are at all times non-resident.

577. International Trusts are registered with the Registrar of International Trusts who keeps details of the name of the trust, the address of the registered office of the trust and the date of registration in the register of international trusts. An international trust must maintain a registered office in Samoa which office shall be the registered office of the representative trustee. A representative trustee is the trustee company, international company or foreign company registered under the *International Companies Act 1987* which has been authorised in writing by other trustee of the trust to accept legal service and to sue and be sued in the name of each and every trustee.

578. There is no upfront disclosure of details on the settlors, trustees (other than the representative trustee) beneficiaries and protectors of international trusts to the Registrar of International Companies. The authorities would need to obtain this information from Trustee Companies, which must, as part of their AML requirements verify the identity of trustees, settlors, protectors and any persons having power to appoint and remove trustees and any person (other than the settlor) who has provided funds to the trust as direct prospective clients.

579. Section 10.03 of the Guidelines requires fiduciary service businesses to take reasonable measures to establish and verify the identity of the ultimate owner or beneficiary on whose behalf an applicant for business is acting. However, Section 12.23 indicates that other entities providing services to trusts are only required to give consideration to obtaining and verifying the identity of the beneficiaries. Further, the Section indicates that where the trust is complex, obtaining and verifying the identity of the beneficiaries will not always be possible or necessary. Under such circumstances, information on the beneficial ownership on international trusts may not always be available to law enforcement, regulatory, supervisory or other competent authorities in Samoa.

### **5.2.2 Recommendations and Comments**

- Samoan authorities should take steps to raise awareness of the obligation to identify ultimate beneficial owner and beneficiaries when establishing or administering trusts amongst lawyers and accountants. This should be supplemented by increased AML/CFT oversight of the legal and accounting professions.
- The vague and optional nature of the provisions in the Guidelines related to the identification of beneficiaries undermines the ability of the MLA to have timely access to adequate, accurate and current information on the beneficial ownership of trusts. These provisions should be clarified and strengthened to ensure that, at the least, all major beneficiaries of express trusts must be identified.
- Measures should be taken to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that the commercial,

trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

- Regular and effective supervision should also be take place to ensure the availability of adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts.

### 5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	PC	<ul style="list-style-type: none"> <li>• Fiduciary service businesses are required to take reasonable measures to establish and verify the identity of the ultimate owner or beneficiary on whose behalf an applicant for business is acting. However, awareness of this obligation among lawyers and accountants, the primary fiduciary service providers for the domestic sector, is limited.</li> <li>• The ability of the MLA to obtain adequate, accurate and current information in a timely manner about the beneficiaries of trusts is undermined by the identification of beneficiaries by other businesses being optional.</li> <li>• Effective supervision is not in place to ensure availability of adequate, accurate and current information about beneficial ownership and control of legal arrangements.</li> </ul>

## 5.3 Non-profit organisations (SR.VIII)

### 5.3.1 Description and Analysis

580. Samoa has yet to undertake a review of its non-profit organisations (NPOs) sector and the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism. The MLA informed the evaluation team that it plans to undertake such a review in the latter half of 2006.

581. The non-profit sector in Samoa consists primarily of incorporated societies or charitable trusts which are regulated by the Incorporated Societies Ordinance and the Charitable Trusts Act 1965 discussed at 5.1 above. It is estimated that there are over 90 charities operating in Samoa.

582. NPOs may apply for tax exemption certificates from the Ministry of Revenue, following registration with the Registrar of Incorporated societies.

583. A large number of unincorporated associations also operate in Samoa, but estimates of numbers are unavailable.

584. There are no laws in Samoa regulating fundraising or expenditure by NPOs. Monitoring of these issues by authorities is limited to the requirements for incorporated societies to file annual audited statements of income and expenditure each financial year. The Registrar's role is to ensure that such statements are filed and have been audited.

585. External funding of NPOs must be funnelled though the Ministry of Foreign Affairs that will, in consultation, direct it towards appropriate groups.

586. Samoa has an NGO sector association for NGOs, the Samoa Umbrella for Non-Governmental Organisations (SUNGO). SUNGO operates as an administrative body to Samoan NGOs help them further their aims, achieve their goals and bring about a better

society for the people of Samoa. SUNGO helps NGOs to promote their activities and policies. SUNGO works to consult with government, to raise the public profile of NGOs, to build capacity of its members and assist NGOs in getting funds to carry out their work. SUNGO is Samoa's national liaison point for the Pacific Islands Association of Non-Governmental Organisations (PIANGO).

### 5.3.2 Recommendations and Comments

- Samoa should review the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism.
- Samoa should consider implementing measures consistent with the Interpretative Note to Special Recommendation VIII to ensure that terrorist organisations cannot pose as legitimate NPOs, and to ensure that funds or other assets collected by, or transferred through, NPOs are not diverted to support the activities of terrorists or terrorist organisations.

### 5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
<b>SR. VIII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Samoa has not reviewed the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism.</li> <li>• NPOs in Samoa are not yet involved in Samoa's AML/CFT regime and are subject to minimal supervision and monitoring.</li> </ul>

## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 National co-operation and coordination (R.31 & 32)

#### 6.1.1 Description and Analysis

587. The existing legislative regime explicitly provides measures for co-operation and coordination among the relevant law enforcement agencies, supervisors and other competent authorities at both the national and international levels. However, it is noted that in practice there are significant gaps in national cooperation and coordination for AML/CFT.

588. Coordination is taking place between certain agencies involved in AML/CFT, but at an operational level a number of key AML/CFT agencies are not involved in coordination structures. This is resulting in relatively weak cooperation and inadequate sharing of information.

589. Samoa's Trans-national Crime Unit is established within the Department of the Prime Minister. The unit currently consists of Police, Customs Service, Ministry of Revenue and Immigration staff. The focus of this unit is the prevention of trans-national crime including terrorism, people smuggling, illegal immigration, drug trafficking, money laundering, human trafficking and cyber crime. Despite the Unit's focus on serious crimes, particularly money laundering and anti-terrorism, cooperation with the FIU remains weak, particularly regarding the sharing and exchange of information or cooperating in relation to investigations involving the proceeds of crime and money laundering. This is serving to stop an increase of the capacity of the TCU, the Police and Customs to investigate money laundering and to effectively utilise financial intelligence.

590. At a policy setting level, neither the Police Commissioner, nor the head of the Money Laundering Authority (CBS Governor) sit on the Oversight Committee for the TCU, which

is chaired by the Attorney General.

591. At the operational level the police, the Prime Minister's Officer (representing the Immigration Department) and Customs all have officers placed at the TCU and the Attorney General's Office also plays a role. At present, the FIU does not have a direct role as part of the TCU. At the same time there are not effective mechanisms for coordinating the exchange of financial intelligence as part of the indirect relationship.
592. Problems have existed over a number of years with formal instruments to support information sharing and cooperation between domestic agencies. In particular, since 2003 a draft Memorandum of Understanding has been prepared to involve the FIU, the Attorney General's Office and agencies involved in the TCU (Police, Immigration, and Customs) to share information. This draft MOU has never been signed to allow formal sharing to take place. Its absence is a block to effective cooperation and AML/CFT enforcement capacity building.
593. The National Border Management Committee is convened by the Prime Minister's Department and involves Immigration, Customs and other relevant agencies. There is an MOU in place between agencies to support information sharing. At this stage the FIU is not involved in this Management Committee, despite the role of the FIU in receiving and analysing cross border currency declarations.
594. The Board of the Samoa International Finance Authority (SIFA) includes the Attorney General, Governor of the Central Bank and the CEO SIFA, all of whom are key stakeholders in AML/CFT. This coordinated governance arrangement should allow closer cooperation with implementation of AML/CFT over the international financial services sector.
595. Good cooperation between regulatory and enforcement agencies is taking place in relation to AML/CFT training and awareness raising, though more could be done.
596. Coordination and consultation between government agencies did take place during the framing of the 2003 AML bill, which is now before the parliament. Consultation also took place with the financial sector, although some DNFBP were not included in such consultation.
597. There are structures in place for regular consultation with the financial sector on various governance matters, including AML/CFT. This reflects the strong working relationship between the regulator and much of the private sector. This strong relationship could be further enhanced with cooperative exchanges of information, staff and training.
598. The MLP Amendment Bill 2003 provides for the establishment of a Task Force comprising heads of various government agencies which will be set up to ensure liaison, cooperation and coordination between FIU, Government departments and statutory authorities involved in AML/CFT. At the same time the amended law will provide greater powers for sharing ML/FT information with domestic and international authorities.
599. The system for maintaining comprehensive statistics on AML matters exists in the FIU of the MLP Authority, but there is no proper mechanisms in place to use the statistics for a regular review of the effectiveness of the AML/CFT systems.

#### **6.1.2 Recommendations and Comments**

600. Samoan authorities should finalise the MOUs for seamless cooperation and information exchange between relevant agencies involved in AML/CFT;
601. Establish formal and informal mechanisms to support cooperation and coordination at policy and operational levels. Such mechanisms could include:
- the inclusion of the FIU and relevant competent authorities on the committees overseeing the TCU and National Border Management; and

- Establishment of operational task forces to include the FIU at an early stage of investigations of criminal matters involving the proceeds of crime, money laundering and terrorist financing.
- Secondment (part time) of FIU staff to the TCU and vice versa;

602. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible for policy makers, the FIU, law enforcement and supervisors and other competent authorities to have effective mechanisms in place to enable them to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.
603. Mechanisms should be established or strengthened for consultation between competent authorities, the financial sector and other sectors (including DNFBP) on implementation of the AML/CFT laws, regulations, guidelines or other measures.
604. Consideration should be given to inviting larger financial institutions to second appropriate staff to the FIU to build government and private sector capacity and reinforce good cooperation.
605. A review of the effectiveness of the cooperation and coordination systems for AML/CFT should be conducted as soon as possible and thereafter on a regular basis.

### 6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> <li>Existing mechanisms are inadequate for policy makers, FIU, law enforcement and supervisors to effectively cooperate and coordinate in the development and implementation of AML/CFT policies and measures.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>Regular review is not in place for ensuring effectiveness of the cooperation and coordination systems for AML/CFT.</li> </ul>

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 Description and Analysis

#### *Implementation of the Vienna and Palermo Conventions*

606. Samoa acceded to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 19 Aug 2005. Samoa is not a party to the UN Convention against Transnational Organized Crime (the Palermo Convention).
607. Provisions relevant to the implementation of these conventions are found in the Narcotics Act 1967 and the Crimes Ordinance 1960 (with respect to the predicate offences for money laundering), the MLP Act (with respect to the offence of money laundering and mutual legal assistance) and the Extradition Act 1974.
608. Samoa's implementation of the Vienna and Palermo Conventions is hampered by a range of factors discussed elsewhere in this report. Freezing and confiscation is only available in limited circumstances, as discussed in section 2.3 above, and is subject to shortcomings such as the inability to freeze or forfeit the instrumentalities of money laundering, or property of corresponding value to the proceeds of money laundering. Whilst elements of a freezing and confiscation regime exist in each of the four freezing/seizure and forfeiture regimes set out in the range of applicable legislation, the

inconsistency between these regimes means that different elements are missing from each.

609. The formal mutual legal assistance required by Article 7 of the Vienna Convention and Article 18 of the Palermo Convention is, as discussed in section 6.3 below, only available for the offence of money laundering (ie not for the relevant predicate offences) and subject to certain other shortcomings. Extradition requirements, particularly in Article 6(11) of the Vienna Convention and Article 16(17) of the Palermo Convention, are also not implemented with a major shortcoming being the lack of extradition treaties and extradition designations of Commonwealth countries as discussed in section 6.4 below.
610. Section 23 of the Crimes Ordinance, which criminalises the conduct of participants in a conspiracy and a range of ancillary offences, seems to substantially implement the requirements of Article 5 of the Palermo Convention. Similarly the Narcotics Act contains a range of offences dealing with many of the predicate offences set out in Article 3 of the Vienna Convention.
611. It is noted that the recent Narcotics Amendment Act 2006 addresses some previous shortcomings in the range of predicate offences in the Narcotics Act, eg previously there was no offence relating to the production, manufacture or extraction of a narcotic drug or psychotropic substance (Article 3(1)(a)(i) of the Vienna Convention). The Narcotics Amendment Act has now introduced the offence of unlawful manufacture of a narcotic drug. The Narcotics Amendment Act also introduces the offence of unlawful sale or manufacture of a controlled precursor.
612. Importantly, the Narcotics Amendment Act increases the penalty for import and export of a trafficable quantity of a narcotic drug to 7 years' imprisonment, making it a predicate offence for money laundering. The previous penalty of 2 years' imprisonment fell below the five years' imprisonment threshold for money laundering predicate offences in the MLP Act.
613. The recent amendments to the Narcotics Act do not, however, seem to cover the manufacture, transport or distribution of equipment or materials, knowing they are to be used in or for the cultivation, production or manufacture of narcotic drugs or psychotropic substances, as required by Article 3(1)(a)(iv).
614. It is also not clear that the Samoan law makes any provision for the police force to use the special investigative technique, such as controlled delivery, set out in Article 11 of the Vienna Convention and Article 20 of the Palermo Convention.

*The Financing of Terrorism Convention and UN Security Council Resolutions 1267 and 1373*

615. Samoa signed the International Convention on the Suppression of the Financing of Terrorism on 13 November 2001 and ratified the convention on 27 September 2002. Samoan authorities indicate that Samoa is continuing to improve its capacity to fully implement all the requirements of the Convention.
616. As with the Vienna and Palermo Conventions, Samoa has not fully implemented the Financing of Terrorism Convention due to shortcomings noted elsewhere in this report. In particular, the freezing and forfeiture provisions in the Prevention and Suppression of Terrorism Act relate only to the recovery of terrorist finances by the State and are not backed up by identification or tracing powers, or the protection of the rights of bona fide third parties. It is also of particular concern that formal avenues for mutual legal assistance are currently restricted to money laundering offences and do not extend to the financing of terrorism or other terrorism offences.
617. The financing of terrorism and other terrorist offences are extraditable offences and the extradition procedures in the Prevention and Suppression of Terrorism Act are both simplified and not dependent on the existence of extradition treaties. However, as noted in section 6.4 below, it is not clear whether the ban on extradition for offences of a political

character would be an impediment in matters involving a terrorism offence. Article 14 of the Terrorism Financing Convention requires the exclusion of the financing of terrorism from the political offence exception to extradition.

618. Offences under Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are criminalised by Part X of the Civil Aviation Act 1998 and therefore financing of such acts does not fall within the financing of terrorist acts offence in the Prevention and Suppression of Terrorism Act. Funding provided for offences under the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf also falls outside the scope of the financing of terrorist acts offences and, while Samoa is not a party to these two international instruments, Samoa has not made a declaration under Article 2(2)(a) of the Financing of Terrorism Convention.
619. While the practical steps taken by the Samoa FIU in circulating UN and other lists of terrorists to major financial institutions, money transfer businesses and trust and company service providers is acknowledged, the lack of a legal basis for quickly freezing the assets of designated persons and entities means that Samoa has not implemented UN Security Council Resolutions 1267 or 1373 (see further section 2.4 above).

### 6.2.2 Recommendations and Comments

620. Samoa should become a party to the Palermo Convention. Samoa should fully implement the Vienna and Palermo Conventions, including taking steps outlined elsewhere in this report with respect to measures to freeze and forfeit the proceeds of crime, mutual legal assistance and extradition. Samoa should reduce the threshold for predicate offences for money laundering to include all offences punishable by a maximum period of imprisonment of 12 months or more as is proposed in the draft Proceeds of Crime Bill.
621. Samoa should consider reviewing the Narcotics Act to ensure that all activities set in Article 3(1) of the Vienna Convention are criminalised under Samoan law.
622. Samoa should review the Prevention and Suppression of Terrorism Act to bring funding for offences under Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (criminalised by Part X of the Civil Aviation Act) within the scope of the financing of terrorist acts offence, and should consider doing the same for funding of offences set out in the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.
623. Samoa should also review the freezing and forfeiture provisions in the Prevention and Suppression of Terrorism Act to bring them into line with international standards, particularly with regards to identification and tracing of terrorist funds and proceeds and the protection of bona fide third parties.
624. Samoa should enact and implement legislation allowing for the assets of persons and entities designated under UN Security Council Resolution 1267, its successor resolutions and UN Security Council Resolution 1373 to be frozen without delay. Samoa should also implement mechanisms for designating persons or entities under UN Security Council Resolution 1373.

### 6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> <li>Samoa has acceded to the Vienna Convention and has signed and ratified the Financing of Terrorism Convention.</li> </ul>

		<ul style="list-style-type: none"> <li>• Samoa is not a party to the Palermo Convention.</li> <li>• Samoa has not fully implemented the Vienna or Palermo Conventions, particularly with respect to freezing and confiscation of the proceeds of crime and international cooperation requirements.</li> <li>• The Narcotics Act does not appear to contain all the necessary predicate offences for money laundering under the Vienna Convention, eg the manufacture, transport or distribution of equipment or materials, knowing they are to be used in or for the cultivation, production or manufacture of narcotic drugs or psychotropic substances.</li> <li>• Samoa should review its laws relating to the use of special investigative techniques by the police force to ensure that techniques such as controlled delivery are available.</li> <li>• Samoa has not fully implemented the Financing of Terrorism Convention, particularly with respect to measures to identify and trace terrorist funds, the protection of bona fide third parties in freezing and forfeiture processes, and the provision of mutual legal assistance in financing of terrorism matters.</li> </ul>
<b>SR.I</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Samoa has signed and ratified the International Convention on the Suppression of the Financing of Terrorism.</li> <li>• Samoa has not fully implemented the Financing of Terrorism Convention, particularly with respect to measures to identify and trace terrorist funds, the protection of bona fide third parties in freezing and forfeiture processes, and the provision of mutual legal assistance in financing of terrorism matters.</li> <li>• The full range of terrorist acts under Article 2(1)(a) of the Financing of Terrorism Convention, for which the provision or collection of funds should give rise to an offence, are not covered by the financing of terrorist acts offence in the Prevention and Suppression of Terrorism Act.</li> <li>• UN Security Council Resolutions 1267 and 1373 are not implemented.</li> </ul>

### **6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)**

#### **6.3.1 Description and Analysis**

625. Samoa does not currently have a general law relating to mutual legal assistance. Under Part V of the MLP Act mutual legal assistance is available for the investigation or prosecution of money laundering, but this does not extend to other predicate offences or the financing of terrorism. A Mutual Assistance in Criminal Matters Bill has been drafted and, if enacted and implemented, will provide a flexible framework in which to offer mutual legal assistance for any crime punishable by a maximum period of imprisonment of 12 months or more.

626. Despite the current lack of legal provisions, the Samoan authorities have demonstrated a strong commitment to international cooperation and have provided assistance informally in 6 cases over the past 5 years consistent with obligations under the MLP Act and Samoa's bilateral arrangements with requesting states. Such informal international cooperation avoids the need for court process but relies on voluntary cooperation by the financial sector in providing information requested by foreign jurisdictions. Informal mutual legal assistance cannot be considered a substitute for formal, legally enforceable, mutual legal assistance arrangements.

627. Formal mutual legal assistance requests under the MLP Act, including requests for

information and records from the Samoa FIU, are dealt with by the Attorney General, as competent authority. The range of powers available to provide mutual legal assistance in money laundering matters is, in most respects, sufficient but suffers from the same limitations as the powers available to Samoan authorities for freezing and forfeiture of proceeds of crime.

628. Under Part V of the MLP Act, the Attorney General may apply to a judge of the Supreme Court for search warrants and court orders for the production of evidence. Search warrants issued under section 27 allow for the seizure of documents and other evidence specified in the warrant for the purpose of executing a mutual assistance request. Section 28 allows a judge to order that documents identifying, locating or quantifying property, and identifying and locating documents necessary for the transfer of any property be delivered to the Attorney General. A judge may also order that information held by financial institutions about any business transaction conducted by the person subject to the mutual assistance request be produced without delay to the Attorney General.
629. Under section 30, the Attorney General may also apply to a judge of the Supreme Court to give effect to evidence orders issued by a foreign court. Where a foreign court has ordered that a person in Samoa deliver himself or herself or any document or material to the jurisdiction of the foreign court, the judge of the Supreme Court of Samoa may order that the person deliver himself or herself to the jurisdiction of the Supreme Court of Samoa or the foreign court. The Supreme Court of Samoa has powers to conduct such proceedings as are necessary to take the evidence from the Attorney General to send to the requesting state. The MLP Act does not provide any power for law enforcement authorities to take witness statements.
630. The powers available under the MLP Act for freezing and forfeiting property in domestic money laundering cases are also available when executing a mutual legal assistance request. This was done in the case of Attorney General v Pacific International Development Bank of American Samoa in 2000. However, as with freezing and forfeiture for domestic matters, these powers are limited to proceeds of crime and do not cover instrumentalities used in, or intended for use in the commission of a money laundering offence, or property of corresponding value.
631. There are no provisions mutual legal assistance with respect to the service of judicial documents. Samoan authorities indicated that foreign judicial documents may be served by engaging local lawyers.

#### *Conditions for mutual legal assistance*

632. Mutual legal assistance in money laundering matters is only available where Samoa has entered into mutual assistance arrangements on a bilateral or multilateral basis with the requesting state (see section 31 of the MLP Act). While no ongoing mutual assistance arrangements are in place, Samoan authorities indicated that such arrangements, including arrangements for coordinating seizure and confiscation and asset sharing, can be made on a case by case basis.
633. Grounds for refusing a mutual legal assistance request are set out in section 31 of the MLP Act under which the Attorney General may refuse a mutual legal assistance request if the action sought by the request is contrary to any provisions of the Constitution of Samoa or the execution of the request is likely to prejudice the national interest or existing laws, policy or procedure of Samoa. These grounds for refusal are potentially broad but Samoan authorities indicated that these grounds for refusal would only be used exceptionally.
634. While the definition of money laundering in the MLP Act excludes dealing with the proceeds tax offences or exchange control offences, Samoan authorities indicated that mutual legal assistance would not be refused on the sole ground that an offence is also

considered to involve fiscal matters where the offence involves other elements.

635. Section 8 of the MLP Act overrides any other obligations as to secrecy or other restriction upon disclosure, and this extends to the provision of information pursuant to a mutual legal assistance request.

#### *Powers of law enforcement authorities*

As noted in 2.6 above it is not clear that the Samoan law enforcement authorities have access to the full range of law enforcement powers. The MLP Act does not provide law enforcement authorities with power to take witness statements in connection with Mutual Legal Assistance requests.

#### *Avoiding conflicts of jurisdiction*

636. Samoan authorities recognise the limited resources available in the country for investigating and prosecuting money laundering offences and there appears to be a general policy that where an offence could be prosecuted in Samoa or another country, it would be better for the offence to be prosecuted in the other country.

#### *Dual criminality*

637. Dual criminality is required for mutual legal assistance under the MLP Act. For mutual legal assistance to be available, the request must relate to the investigation or prosecution of an offence which is a money laundering offence within the terms of the very broad definition of money laundering in section 2 of the MLP Act. In the one instance of formal mutual legal assistance to date, this requirement was not interpreted restrictively. The high threshold for predicate offences would, however, give rise to difficulties where the predicate offence for money laundering is punishable by less than 5 years' imprisonment under both Samoan law and the law of the requesting jurisdiction.

#### *Forfeited assets fund*

638. The Samoan authorities have considered the establishment of an asset forfeiture fund. The proposed amendments to the MLP Act would establish a confiscated assets fund. Under the proposed amendments, the Minister for Finance will have the power to order that forfeited property be remitted to a foreign State. The confiscated assets fund will also be available to fund the MLP Authority, FIU, enforcement of the MLP Act and proposed Proceeds of Crime Bill, crime prevention measures and law enforcement measures.

### **6.3.2 Recommendations and Comments**

639. The draft Mutual Assistance in Criminal Matters Bill should be enacted and implemented as a matter of urgency.
640. The limited scope of the current mutual legal assistance powers in the MLP Act, which apply only to the investigation and prosecution of money laundering, means that no mutual legal assistance capacity exists for other predicate offences or the financing of terrorism.
641. Samoa should enact and implement legislation allowing for mutual legal assistance for, in addition to money laundering, the full range of predicate offences for money laundering as well as terrorist financing.
642. It is noted that the Mutual Assistance in Criminal Matters Bill would allow for mutual legal assistance to be given to any country for the investigation or prosecution of any offence that would, if it had occurred in Samoa, be punishable by a maximum period of imprisonment of 12 months or more.
643. Freezing and forfeiture measures pursuant to mutual legal assistance requests should be extended to apply to instrumentalities used for, or intended for use in the commission of

an offence, as well as property of corresponding value.

644. It is noted that the draft Mutual Assistance in Criminal Matters Bill in combination with the draft Proceeds of Crime Bill, if both enacted and implemented, would achieve this.
645. Mutual legal assistance should be available for effecting the service of judicial documents, along the lines of section 46 of the draft Mutual Assistance in Criminal Matters Bill.
646. Police should be given the power to take witness statements pursuant to a mutual legal assistance request.
647. Consideration should be given to removing the requirement for dual criminality for mutual legal assistance, particularly less intrusive, non compulsory measures. The Mutual Assistance in Criminal Matters Bill would improve on the current requirement by broadening the scope of offences for which mutual legal assistance can be provided and lowering the penalty threshold to a maximum period of imprisonment of 12 months or more.

### 6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, & R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<ul style="list-style-type: none"> <li>Mutual legal assistance is available for the investigation and prosecution of money laundering offences but not for other predicate offences or the financing of terrorism.</li> <li>There is no provision for service of judicial documents pursuant to a mutual legal assistance request.</li> <li>There is no power in the MLP Act for the police to take witness statements for use in investigations and prosecutions pursuant to a mutual legal assistance request.</li> </ul>
R.37	PC	<ul style="list-style-type: none"> <li>Dual criminality is required for all mutual legal assistance measures, including less intrusive and non compulsory measures.</li> </ul>
R.38	PC	<ul style="list-style-type: none"> <li>Freezing and forfeiture orders pursuant to mutual legal assistance requests is subject to the same limitations as domestic freezing and forfeiture orders, ie they apply only to proceeds of crime/property derived from money laundering and not to instrumentalities used in, or intended for use in, the commission of an offence.</li> </ul>
SR.V	NC	<ul style="list-style-type: none"> <li>Mutual legal assistance is not available for matter involving financing of terrorism, terrorist acts or terrorist organisations.</li> </ul>
R.32	PC	<ul style="list-style-type: none"> <li>Given the limited nature of mutual legal assistance requests, only limited statistics are kept.</li> </ul>

## 6.4 Extradition (R.37, 39, SR.V, R.32)

### 6.4.1 Description and Analysis

648. Two pieces of legislation set out the Samoan extradition regime: the Extradition Act 1974 and the Prevention and Suppression of Terrorism Act. The Extradition Act provides for extradition generally and is primarily treaties based. The Prevention and Suppression of Terrorism Act sets out a simplified, fast-track method of extradition in relation to terrorism offences, including the financing of terrorism.

#### *Extradition Act*

649. Extradition under the Extradition Act is only available to countries with which Samoa has an extradition treaty in force or, in the case of Commonwealth countries, where the

Head of State has designated the country in the Samoa Gazette. While these requirements are not in and of themselves a problem, the Extradition Act has been rendered ineffective as Samoa has not entered into any extradition treaties with foreign countries or designated any Commonwealth countries under the Extradition Act. The remainder of this analysis will therefore examine the potential compliance of the Extradition Act as if an extradition treaty or designation were in force.

650. All crimes punishable by a maximum penalty of 12 months imprisonment or more in the extradition country and which would be offences if committed in Samoa are extraditable under the Extradition Act. The range of extraditable offences may be expanded by the extradition treaty in force between Samoa and the extradition country to cover offences that do not carry a penalty under the law of the extradition country. In addition to this general provision for extraditable offences, section 41 of the MLP Act provides that money laundering is an extraditable offence for the purposes of any law relating to extradition or rendition. The effect of this provision seems to be that money laundering would be an extraditable offence even if it carried a penalty of less than 12 months imprisonment in the extradition country, but it does not override the requirement for an extradition treaty or an extradition designation by the Head of State.
651. Dual criminality is required for extradition with the requirement that the act or omission constituting the offence would have constituted an offence under Samoan law. Under section 6, extradition must be refused where the offence is of a political character or where the offence is an offence under military law but not under ordinary criminal law. Extradition must also be refused where the request is made for the ulterior purpose of prosecuting or punishing the person on account of his or her race, religion, ethnic identity, nationality or political opinions, or if the person might be prejudiced at trial or punished or detained for these reasons.
652. Under the Extradition Act, the Samoan Government may extradite Samoan nationals at the discretion of the Minister for Justice.

#### *Prevention and Suppression of Terrorism Act*

653. The simplified procedure for extradition for terrorism offences is set out in Part VIII of the Prevention and Suppression of Terrorism Act. Section 23 of that Act states that Part VIII applies notwithstanding the provisions of the Extradition Act or any other Act or law.
654. Dual criminality is required for extradition under the Prevention and Suppression of Terrorism Act. Section 24 provides that extradition is available for any terrorist offence under the Prevention and Suppression of Terrorism Act (including the financing of terrorism) and any offence determined by the Supreme Court to be the equivalent of such an offence.
655. The simplified extradition procedure for terrorist offences does not require a request from a foreign country and applies to all countries without the requirement for a treaty. The process is initiated where a police officer suspects, on reasonable grounds, that a foreign national is wanted by a Commonwealth for foreign country to face charges concerning a terrorist act, or that a foreign national is unlawfully at large for committing a terrorist offence. In these circumstances the police officer may arrest the person and, without undue delay, bring them before the Supreme Court.
656. Before the Supreme Court can order a person to be extradited, it must be satisfied that the grounds for refusing extradition in section 6 of the Extradition Act do not apply and that reasonable evidence is available that a person should face trial for committing a terrorist offence or is unlawfully at large after conviction for committing a terrorist offence. Section 6 of the Extradition Act prevents extradition where the offence is of a political character and it is not clear from the legislation how this ground for refusal interacts with the extradition procedure in the Prevention and Suppression of Terrorism Act. Samoan authorities indicated, however, that in practice the political offence ground for refusal

would not prevent extradition for a terrorist offence.

657. Only foreign nationals may be extradited under the Prevention and Suppression of Terrorism Act. A Samoan citizen subject to an extradition request for a terrorism offence could be tried under Samoan law due to the extra-territorial operation of the offences in the Act; however cooperation in the prosecution would be hampered by the lack of mutual legal assistance provisions for terrorism offences.

#### *Effectiveness*

658. Although Samoa has received no extradition requests in the past ten years, the Samoan Government has dealt with requests relating to foreign offenders in its jurisdiction. The usual way of responding to such requests is to cancel the offender's permit to be in Samoa under the Immigration Act, usually for failure to disclose a prior criminal conviction when entering Samoa. This approach is not a complete substitute for implementing working a formal extradition mechanism, as it cannot ensure that the offender is sent to the requesting country. The reliance on the Immigration Act also suggests that the absence of extradition requests may be due to the lack of any extradition treaties rather than a lack of need.

### **6.4.2 Recommendations and Comments**

659. Samoa should take steps to designate Commonwealth countries and enter into extradition treaties with foreign countries including, as a matter of priority, those who have previously sought assistance with regard offenders in Samoa.

### **6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, & R.32**

	<b>Rating</b>	<b>Summary of factors relevant to s.6.4 underlying overall rating</b>
<b>R.39</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>While Samoa's has legislation in place that would allow extradition of money launderers to designated Commonwealth countries and foreign countries with which Samoa has an extradition treaty, the absence of any designations or extradition treaties prevents extraditions from taking place.</li> <li>Samoa has used a range of other mechanisms to make up for the lack of effective extradition arrangements.</li> </ul>
<b>R.37</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>The dual criminality requirement for extradition allows for extradition where both Samoa and the requesting country criminalise the conduct underlying the offence.</li> <li>The absence of extradition designations or treaties impedes extradition even where both Samoa and the requesting country criminalise the conduct underlying the offence.</li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>A simplified process exists for extraditing foreign nationals wanted to face charges or convicted of terrorist offences including the financing of terrorism.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Comprehensive statistics of measures used in lieu of extradition have not been kept.</li> </ul>

## **6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)**

### **6.5.1 Description and Analysis**

660. The Samoan Government is willing to cooperate with international community in regard

to AML/CFT. However, the current legal framework does not directly support this willingness with effective legal measures.

661. Part V of the MLP Act 2000 provides a basic framework for mutual assistance in relation to money laundering. As stated, cooperation with a foreign state is restricted to request for assistance in the investigation or prosecution of a money laundering offence and assistance to a foreign state is provided only to those states with whom Samoa has entered into mutual assistance arrangements on a bilateral or multilateral basis. Moreover, request for assistance may be refused if (a) the action sought by the request is contrary to any provisions of the Constitution of Samoa; or (b) the execution of the request is likely to prejudice the national interest or existing laws, policy or procedure of Samoa. Obviously, the scope of the mutual assistance has not yet been extended to terrorist financing, and exchange of information with foreign states has not been clearly specified. The mutual assistance in criminal matters other than money laundering offence (e.g. other predicate offences) is not in place.
662. For improving the legal framework for mutual legal assistance, it is noted that the Mutual Assistance in Criminal Matters Bill 2003 has been drafted to address the deficiencies mentioned above. The MACM Bill will enable the international cooperation to cover all criminal matters. It is also noted that the MLP Amendment Bill 2003 will enhance the information exchange with relevant domestic and international authorities.
663. Statistics maintained by FIU have not yet covered all mutual legal assistance and extradition requests and other formal request for assistance.
664. Police to police contact occurs regularly between Samoan police and other partner police agencies in the region. The TCU is involved in the Pacific Transnational Crime Coordination Centre (PTCCC) which is a multi agency and multi jurisdictional team of officers drawn from Pacific law enforcement agencies. It aims to offer Pacific Islands States a regional approach to supporting and combating transnational organised crime and act as a hub for all law enforcement intelligence in the Pacific Region.
665. Detailed statistics of informal international cooperation and its outcomes are not kept.
666. It should be noted that Samoa is committed to providing a wide range of international cooperation through its full participation in the APG. In addition to participation in Plenary meetings and Typologies Workshops, Samoa provided a financial sector expert as part of the Team to conduct the Mutual Evaluation of Nepal in 2005.

### 6.5.2 Recommendations and Comments

667. The Mutual Assistance in Criminal Matters Bill 2003 should be passed and implemented as soon as possible for providing sufficient legal support to mutual legal assistance in widest range and for AML and CFT as well. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible for broadening the scope of mutual assistance to CFT, administrative investigation, inquiries and information exchange.

### 6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Scope of mutual assistance not extended to terrorist financing, and exchange of information not clearly specified.</li> </ul>
<b>SR.V</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>Measures are insufficient for assistance in connection with criminal, civil enforcement and administrative investigation, inquiries and proceedings.</li> </ul>
<b>R.32</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>Limited statistics are available for mutual assistance or other international requests for cooperation.</li> </ul>

7.

## TABLES

**Table 1: Ratings of Compliance with FATF Recommendations**

**Table 2: Recommended Action Plan to improve the AML/CFT system**

**Table 3: Authorities' Response to the Evaluation (if necessary)**

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating
<b>Legal systems</b>		
1. ML offence	PC	<ul style="list-style-type: none"> <li>The threshold requirement for crimes to be punishable for a maximum of more than five years' imprisonment is too high.</li> <li>The predicate offences for money laundering do not appear to cover all the designated categories of offences, due to penalties for such offences being lower than the five year imprisonment threshold or the offences not existing under Samoan law.</li> </ul>
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>While Samoan law addresses the essential criteria of Recommendation 2, effectiveness has been weakened by the need for more capacity amongst law enforcement authorities to investigate financial crimes.</li> </ul>
3. Confiscation and provisional measures	NC	<ul style="list-style-type: none"> <li>There are specific freezing and forfeiture measures for the proceeds of money laundering, financing of terrorist acts and for predicate offences involving narcotics or the use of a firearm, but no general freezing and forfeiture regime for other predicate offences.</li> <li>There is no power to freeze or forfeit instrumentalities used in, or intended for use in, money laundering, nor the proceeds of money laundering held by third parties.</li> <li>There is no power to confiscate property of corresponding value to the proceeds of money laundering, the financing of terrorism or predicate offences other than offences involving narcotics or the use of a firearm.</li> <li>There is no power to void actions taken in contravention of a freezing order under the Prevention and Suppression of Terrorism Act.</li> <li>The powers to identify and trace property derived from money laundering do not extend to property that is the proceeds of the financing of a terrorist act or a predicate offence for money laundering.</li> <li>There is no protection of bona fide third parties for seizure, freezing and forfeiture of terrorist funds or the proceeds of an offence involving narcotics or the use of a firearm.</li> </ul>
<b>Preventive measures</b>		<ul style="list-style-type: none"> <li></li> </ul>
4. Secrecy laws	LC	<ul style="list-style-type: none"> <li>Due to broader issues of the lack of coverage of</li> </ul>

consistent with the Recommendations		terrorist financing under the MLP Act, it does appear that section 8 applies with respect to combating the financing of terrorism.
5. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• A number of the required CDD elements are covered in the legislation, regulations and guidelines.</li> <li>• Obligations to obtain satisfactory evidence of the identity of account holders prevents anonymous accounts from being permitted to operate, and these obligations appear to be being implemented in practice by financial institutions.</li> <li>• CDD procedures are not in place for existing customers on materiality and risk basis at appropriate times.</li> <li>• The preventive measures required by financial institutions do not apply with respect to the financing of terrorism</li> <li>• There is no requirement for financial institutions to undertake CDD when there are doubts about the adequacy of previously obtained data or when there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds.</li> <li>• There is no requirement for on-going CDD or enhanced due diligence on high-risk customers, business or transactions.</li> <li>• There is no requirement to understand the ownership and control structure or the mind and management of corporate customers</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>• No requirement for establishing proper policies, and procedures for enhanced due diligence of PEPs.</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>• No requirement for establishing proper policies and , procedures and enhanced due diligence for correspondent banking or other similar relationships.</li> </ul>
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> <li>• Limited due diligence measures are in place for postal and phone banking however specific risks associated with non-face to face business relationships or transactions that apply both when establishing customer relationships and when conducting on-going due diligence are absent.</li> <li>• There are no requirements for measures to prevent misuse of technological developments.</li> </ul>
9. Third parties and introducers	PC	<ul style="list-style-type: none"> <li>• There are shortcomings in the arrangement for allowing financial institutions to rely on another institution to confirm identity.</li> <li>• There is no requirement for financial institutions to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the other institution upon request without delay.</li> <li>• there is no requirement for financial institutions to satisfy themselves that the introducing institution, when in another country, is regulated and supervised and has measures in place to comply with CDD requirements.</li> </ul>
10. Record keeping	PC	<ul style="list-style-type: none"> <li>• The MLP Act requires financial institutions to keep a business transaction record of any new business transaction exceeding SAT 30,000 for a period of seven years after termination of the business transaction.</li> <li>• There is no requirement for financial institutions to keep business records for transactions that are less than SAT 30,000.</li> </ul>

		<ul style="list-style-type: none"> <li>Regulations do not explicitly require all necessary records to be kept for at least five years following the termination of an account or business relationship</li> </ul>
11. Unusual transactions	NC	<ul style="list-style-type: none"> <li>No requirements to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.</li> </ul>
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> <li>Although DNFBP are subject to the same AML/CFT requirements as all other financial institutions, implementation by lawyers and accountants is minimal.</li> <li>trustee companies are not yet required to undertake CDD measures; risk manage PEPs; take measures to prevent the misuse of technological developments in ML or TF schemes</li> <li>The requirements for introduced business do not meet international standards as trustee companies are not required to immediately obtain from the introducer information on the identity of the customer or of the beneficial owner and the intended purpose and nature of the business relationship</li> <li>There is no requirement for trustee companies to conduct on-going due diligence with respect to introduced business relationships.</li> <li>Trustee companies are not supervised for AML/CFT purposes.</li> </ul>
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>System for STR is in place but coverage is not sufficient, e.g. suspicious transactions involving proceeds of all crimes, attempted transactions, and transactions related to FT and tax matters are not yet covered.</li> <li>There is no explicit obligation on financial institutions to make a STR where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorists acts or by terrorist organisations.</li> </ul>
14. Protection & no tipping-off	C	<ul style="list-style-type: none"> <li>The recommendation is fully met</li> </ul>
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> <li>Internal controls, compliance and audit measures are not addressed for CFT</li> <li>Implementation with existing obligations is weak and not extended beyond the large banks, NBFIs and largest remittance agencies</li> <li>screening procedures for high standards of employees have not been sufficiently covered.</li> <li>While a procedure is required to audit AML compliance, there is no obligation to maintain an adequately resource and independent audit function.</li> <li>The training requirements do not include ongoing training.</li> </ul>
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> <li>AML/CFT measures have not yet been implemented by most of the DNFBP.</li> <li>There is no requirement for trustee companies to report suspicious transactions to the FIU.</li> </ul>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>There has been no use of dissuasive sanctions against financial institutions that fail to comply with AML/CFT requirements.</li> <li>Criminal and civil sanctions are available but administrative sanctions are unclear.</li> <li>Record does not show effective application of sanctions.</li> </ul>
18. Shell banks	NC	<ul style="list-style-type: none"> <li>Samoan authorities are implementing transition arrangements</li> </ul>

		<p>to cease the continued operation of shell banks, however a small number are currently permitted to operate, albeit for a finite period of time.</p> <ul style="list-style-type: none"> <li>Onsite inspections have been conducted for the three international banks that have established a physical presence and active steps have recently been taken to de-license and wind up operations of three shell banks that did not comply with the transition arrangements to establish physical presence.</li> <li>Financial institutions are not prohibited from entering into or continue correspondent banking relationships with shell banks.</li> <li>Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	LC	<ul style="list-style-type: none"> <li>Border cash and foreign remittance reporting systems are in place but there is no reporting of large domestic currency transactions.</li> </ul>
20. Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> <li>Samoa has not yet undertaken a risk assessment of vulnerabilities to non-financial businesses and professions other than DNFBPs.</li> <li>Measures are in place for developing modern and secure techniques for conducting financial transactions.</li> </ul>
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>No requirements to give special attention to the background and purpose of business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations, and to apply appropriate counter-measures.</li> </ul>
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> <li>No requirements to ensure that branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations.</li> </ul>
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>Inadequate scope and frequency of AML/CFT supervision due to limited resources.</li> <li>CFT aspects have yet to be adequately addressed.</li> </ul>
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>Trustee companies have been subject to an equivalent level of oversight to banks and other financial institutions.</li> <li>Most other DNFBPs have not been properly supervised and monitored since the enactment of the MLP Act 2000.</li> <li>There is no explicit requirement under the MLP Act for trustee companies to be monitored or supervised for AML/CFT purposes.</li> </ul>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>The Guidelines issued by the MLA do not take account of the FATF Forty Recommendations 2003 and do not cover CFT more broadly.</li> <li>The Guidelines do not apply to trustee companies</li> <li>No specific guidelines are issued for DNFBP for assisting their implementation and compliance with AML/CFT requirements.</li> <li>Inadequate feedback has been provided to financial institutions and DNFBPs, both on general trends and case by case feedback.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	PC	<ul style="list-style-type: none"> <li>Samoa's FIU has been established in the Central Bank and is staffed by well trained professionals.</li> <li>The FIU has issued guidance and provided training to</li> </ul>

		<p>reporting institutions.</p> <ul style="list-style-type: none"> <li>• Information received by the FIU is securely stored and analysed on an FIU database.</li> <li>• effectiveness of FIU in analysing STRs could be improved with greater cooperation with law enforcement agencies</li> <li>• low and declining levels of STRs may suggest that financial institutions are not mindful of AML/CFT measures.</li> <li>• While the FIU is authorised to disseminate financial intelligence to domestic authorities for investigation, in practice they are not being disseminated to investigative agencies due to concerns of competent authorities regarding the capacity of investigative agencies to handle the intricacies of such investigations.</li> </ul>
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> <li>• Although the MLP Act has give the Samoa Police the authority to investigate money laundering offences, in practice there are no referrals for investigations in vew of concerns regarding capacity to handle the intricacies of such investigations. There is some confusion in practice as to which agency has responsibility for ensuring the proper investigation of money laundering cases.</li> <li>• Proper investigation of ML offences is being impeded by a weak process of dissemination and investigation STRs and poor information sharing.</li> </ul>
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> <li>• At present, the MLP Act does not provide wide powers to investigative authorities to obtain documents and information for use in the investigation and prosecution of money laundering and underlying predicate offences.</li> </ul>
29. Supervisors	PC	<ul style="list-style-type: none"> <li>• Supervisors don't have powers, beyond onsite inspections, to compel or obtain access to relevant records to monitor compliance.</li> <li>• Supervisors do not have any direct powers of enforcement or sanction for failure to implement or comply with national AML/CFT requirements.</li> </ul>
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>• There is a need for increased resources and staffing to adequately support the FIU's function</li> <li>• FIU staff require further training in STR analysis, support to financial investigations and other FIU functions.</li> <li>• The FIU is lacking adequate resources to enable it to effectively supervise all financial institutions.</li> <li>• There is a need for improved reciprocal sharing of information, expertise and technical capacity between the FIU and law enforcement authorities.</li> <li>• The Ministry of Commerce, Industry and Labour has not yet received awareness raising or training on AML/CFT.</li> </ul>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• Existing mechanisms are inadequate for policy makers, FIU, law enforcement and supervisors to effectively cooperate and coordinate in the development and implementation of AML/CFT policies and measures.</li> </ul>
32. Statistics	PC	<ul style="list-style-type: none"> <li>• Comprehensive statistics on the number of money laundering investigations undertaken were not given</li> <li>• There have been no financing of terrorism investigations, prosecutions or convictions in Samoa.</li> <li>• One freezing order has been granted under the MLP Act was pursuant to a mutual legal assistance request from the United States</li> </ul>

		<ul style="list-style-type: none"> <li>• No funds or other assets have been frozen pursuant to UN Security Council Resolutions 1267 or 1373.</li> <li>• Records are kept of distributions of UN lists of designated entities.</li> <li>• although some statistics are maintained, the generally low levels of STRs make it difficult to analyse these statistics meaningfully.</li> <li>• quality and types of statistics maintained by the FIU could be improved.</li> <li>• The low numbers of STRs, investigations and prosecutions, arguably makes the compilation the meaningful analysis of statistics difficult</li> <li>• Given the small size of the jurisdiction, the compilation and analysis of statistical data for trends and policy-making considerations is perhaps not a high priority</li> <li>• There are adequate statistics of cross border cash reporting being kept. These records however need to be shared and made easily available to other enforcement agencies.</li> <li>• Systems for maintaining statistics relating to onsite and offsite supervision are in place.</li> <li>• Regular review is not in place for ensuring effectiveness of the cooperation and coordination systems for AML/CFT.</li> <li>• Comprehensive statistics of measures used in lieu of extradition have not been kept.</li> <li>• Limited statistics are available for mutual assistance or other international requests for cooperation.</li> </ul>
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> <li>• Competent authorities in Samoa have access to information on the legal ownership and control of companies through the system of registration.</li> <li>• No information is available about the beneficial ownership of companies.</li> <li>• No information is available about the control of companies where exercised through nominee directors or foreign company directors.</li> <li>• No measures are in place to prevent the misuse of share warrants for money laundering.</li> <li>• Access to information about legal persons other than companies is weakened by the lack of guidance on how to identify these customers in the Guidelines.</li> <li>•</li> </ul>
34. Legal arrangements – beneficial owners	PC	<ul style="list-style-type: none"> <li>• Fiduciary service businesses are required to take reasonable measures to establish and verify the identity of the ultimate owner or beneficiary on whose behalf an applicant for business is acting. However, awareness of this obligation among lawyers and accountants, the primary fiduciary service providers for the domestic sector, is limited.</li> <li>• The ability of the Money Laundering Authority to obtain adequate, accurate and current information in a timely manner about the beneficiaries of trusts is undermined by the identification of beneficiaries by other businesses being optional.</li> <li>• Effective supervision is not in place to ensure availability of adequate, accurate and current information about beneficial ownership and control of legal arrangements.</li> </ul>

International Co-operation		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• Samoa has acceded to the Vienna Convention and has signed and ratified the Financing of Terrorism Convention.</li> <li>• Samoa is not a party to the Palermo Convention.</li> <li>• Samoa has not fully implemented the Vienna or Palermo Conventions, particularly with respect to freezing and confiscation of the proceeds of crime and international cooperation requirements.</li> <li>• The Narcotics Act does not appear to contain all the necessary predicate offences for money laundering under the Vienna Convention, eg the manufacture, transport or distribution of equipment or materials, knowing they are to be used in or for the cultivation, production or manufacture of narcotic drugs or psychotropic substances.</li> <li>• Samoa should review its laws relating to the use of special investigative techniques by the police force to ensure that techniques such as controlled delivery are available.</li> <li>• Samoa has not fully implemented the Financing of Terrorism Convention, particularly with respect to measures to identify and trace terrorist funds, the protection of bona fide third parties in freezing and forfeiture processes, and the provision of mutual legal assistance in financing of terrorism matters.</li> </ul>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• Mutual legal assistance is available for the investigation and prosecution of money laundering offences but not for other predicate offences or the financing of terrorism.</li> <li>• There is no provision for service of judicial documents pursuant to a mutual legal assistance request.</li> <li>• There is no power in the MLP Act for the police take witness statements for use in investigations and prosecutions pursuant to a mutual legal assistance request.</li> </ul>
37. Dual criminality	PC	<ul style="list-style-type: none"> <li>• Dual criminality is required for all mutual legal assistance measures, including less intrusive and non compulsory measures.</li> <li>• The dual criminality requirement for extradition allows for extradition where both Samoa and the requesting country criminalise the conduct underlying the offence.</li> <li>• The absence of extradition designations or treaties impedes extradition even where both Samoa and the requesting country criminalise the conduct underlying the offence.</li> </ul>
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• Freezing and forfeiture orders pursuant to mutual legal assistance requests is subject to the same limitations as domestic freezing and forfeiture orders, ie they apply only to proceeds of crime/property derived from money laundering and not to instrumentalities used in, or intended for use in, the commission of an offence.</li> </ul>
39. Extradition	NC	<ul style="list-style-type: none"> <li>• While Samoa's has legislation in place that would allow extradition of money launderers to designated Commonwealth countries and foreign countries with which Samoa has an extradition treaty, the absence of any designations or extradition treaties prevents extraditions from taking place.</li> <li>• Samoa has used a range of other mechanisms to make up for the lack of effective extradition arrangements.</li> </ul>
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> <li>• Scope of mutual assistance not extended to terrorist financing,</li> </ul>

		and exchange of information not clearly specified.
<b>Nine Special Recommendations</b>	<b>Rati ng</b>	
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> <li>Samoa has signed and ratified the International Convention on the Suppression of the Financing of Terrorism.</li> <li>Samoa has not fully implemented the Financing of Terrorism Convention, particularly with respect to measures to identify and trace terrorist funds, the protection of bona fide third parties in freezing and forfeiture processes, and the provision of mutual legal assistance in financing of terrorism matters.</li> <li>The full range of terrorist acts under Article 2(1)(a) of the Financing of Terrorism Convention, for which the provision or collection of funds should give rise to an offence, are not covered by the financing of terrorist acts offence in the Prevention and Suppression of Terrorism Act.</li> <li>UN Security Council Resolutions 1267 and 1373 are not implemented.</li> </ul>
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> <li>The financing of terrorist acts offence does not effectively criminalise the collection or provision of funds for use by terrorist organisations or individual terrorists.</li> <li>Samoa does not expressly criminalise the providing or collecting funds with the intention that such funds or proceeds be used, or in the knowledge that they are to be used, to carry out an act that constitutes an offence under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.</li> <li>The financing of terrorist acts offence appears difficult to apply to legal persons due to a lack of penalties other than imprisonment.</li> </ul>
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> <li>Lists of UN designated entities are only distributed to major financial institutions and trustee companies</li> <li>Samoa does not have laws and procedures in place to freeze without delay terrorist funds or other assets of person designated by the UN Security Council Resolution 1267 Committee.</li> <li>Samoa does not have laws and procedures in place to designate persons or entities in accordance with UN Security Council Resolution 1373 or freeze without delay terrorist funds or other assets of such people.</li> </ul>
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>No specific requirement is in place for STR linked or related to terrorist financing.</li> <li>There is no explicit obligation on financial institutions to make a STR where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorists acts or by terrorist organisations.</li> </ul>
SR.V International co-operation	NC	<ul style="list-style-type: none"> <li>Mutual legal assistance is not available for matter involving financing of terrorism, terrorist acts or terrorist organisations.</li> <li>A simplified process exists for extraditing foreign nationals wanted to face charges or convicted of terrorist offences</li> </ul>

		<p>including the financing of terrorism.</p> <ul style="list-style-type: none"> <li>Measures are insufficient for assistance in connection with criminal, civil enforcement and administrative investigation, inquiries and proceedings.</li> </ul>
SR VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> <li>Awareness and implementation of AML/CFT obligations is weak</li> <li>Monitoring of MVT services is inadequate to ensure compliance with AML/CFT control;</li> <li>Unlicensed ARS activities have not been assessed to ascertain risks</li> </ul>
SR VII Wire transfer rules	PC	<ul style="list-style-type: none"> <li>a lack of separate procedures for cross-border or domestic batch transfers, for credit or debit card funds transfers</li> <li>There is no requirement for financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing.</li> <li>There is no requirement for beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</li> </ul>
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>Samoa has not reviewed the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism.</li> <li>NPOs in Samoa are not yet involved in Samoa's AML/CFT regime and are subject to minimal supervision and monitoring.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> <li>Although the border cash declaration system is in place, more efforts could be made to ensure better cooperation and exchange of information between the FIU, Customs department and other governmental agencies.</li> <li>The low number of border cash transactions reports generated suggests that the effectiveness of the regime could be further enhanced through the building of greater subject expertise, particularly in emerging trends.</li> </ul>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of Money Laundering (R.1, 2 & 32)	<p>Samoa should enact and implement the MLP Amendment Bill and the Proceeds of Crime Bill to:</p> <ul style="list-style-type: none"> <li>• reduce the threshold requirement for predicate offences for money laundering to cover all offences punishable by a maximum period of imprisonment of 12 months or more.</li> <li>• expressly state that knowledge, intent or purpose for an element of the offence may be inferred from objective factual circumstances.</li> </ul> <p>Samoa should consider reviewing its criminal laws to ensure that offences in each of the designated categories of offences in the glossary to the FATF Recommendations are criminalised and, in cases of appropriate severity, carry penalties that meet the threshold for predicate offences for money laundering.</p> <p>Law enforcement authorities would benefit from further training and capacity building in the investigation of financial crimes.</p>
Criminalisation of Terrorist Financing (SR.II, R.32)	<p>Samoa should criminalise the collection and provision of funds or proceeds for use by a terrorist organisation or an individual terrorist, without the requirement that the funds or proceeds be linked to a specific terrorist act.</p> <p>Samoa should criminalise the provision or collection of funds with the intention that such funds or proceeds be used, or in the knowledge that they are to be used, to carry out an offence under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.</p> <p>Samoa should amend the Prevention and Suppression of Terrorism Act to expressly provide for the liability of legal persons under the financing of terrorist acts and adopt appropriate penalties for corporate liability.</p> <p>Samoa should also include a provision, along the lines of that relating to assisting the financing of terrorist acts, stating that where a legal person is found guilty of the financing of terrorist act, managers, company directors or other persons with authority over funds or proceeds are also personally liable unless proven otherwise.</p>
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	<p>Samoa should be enact and implement the Proceeds of Crime Bill as a matter of priority to:</p> <ul style="list-style-type: none"> <li>• introduce a general freezing and confiscation regime for the proceeds of all offences punishable by a maximum period of 12 months or more ('serious offences'), extending the scope of these measures to predicate offences beyond those involving narcotics or the use of a firearm</li> <li>• allow for the freezing and forfeiture of instrumentalities used in, or intended for use in, the commission of a money laundering, financing of terrorism or other predicate offence</li> <li>• allow for the imposition of pecuniary penalty orders of corresponding value to the proceeds of money laundering, financing of terrorism or</li> </ul>

	<p>other predicate offences clarify that property derived both directly or indirectly from a serious offence is proceeds of crime and subject to confiscation, and</p> <ul style="list-style-type: none"> <li>• extend powers to identify and trace property to proceeds of all serious offences, and extend the power to void actions taken to avoid confiscation measures to the proceeds of all serious offences.</li> </ul> <p>Samoa authorities should implement existing and, when passed, enhanced provisions to trace, freeze, seize and confiscate proceeds of profit driven crime.</p> <p>The Prevention and Suppression of Terrorism Act should be amended to: clarify the application of the freezing and forfeiture provisions in the Prevention and Suppression of Terrorism Act to the instrumentalities of financing of terrorism introduce powers to identify and trace funds and proceeds covered by the financing of terrorist act offence, and provide that actions taken in contravention of a freezing or confiscation order under the Prevention and Suppression of Terrorism Act are void.</p>
Freezing of funds used for terrorist financing (SR.III, R.32)	<p>Samoa should enact and implement laws allowing a competent authority to freeze without delay the terrorist funds and other assets of persons and entities designated by the UN Security Council 1267 Committee, beyond those funds provided or collected for the purpose of carrying out a specific terrorist act.</p> <p>Samoa should also enact and implement laws allowing Samoan authorities to designate persons and entities in accordance with UN Security Council Resolution 1373 and to freeze without delay the terrorist funds and other assets of such persons or entities.</p> <p>Samoa authorities should consider options for providing more timely communication to the financial sector and other relevant businesses of designations pursuant to UN Security Council Resolution 1267 and 1373, such as receiving and distributing changes to the lists of designations in electronic form where possible.</p>
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to provide a legislative basis for the FIU's role with respect to the financing of terrorism and other key FIU functions.</p> <p>The FIU should disseminate suspicious transactions to both the Attorney General and the Police Commissioner as required in the MLP Act.</p> <p>Greater focus should be given to ensure that the competent authorities receiving disseminated STRs recognise the FIUs role in providing financial intelligence briefs to support the work of TCU and/or the police on subsequent AML investigations.</p> <p>Further resources and staff should be appointed to support the full range of FIU functions, including AML/CFT supervision, analysis and dissemination, inter-agency and international cooperation and outreach to the reporting institutions.</p> <p>The authorities should consider seconding staff from other Samoan enforcement agencies to the FIU to share common technical knowledge and expertise and to support the capacity of the FIU to effectively deal with and respond to law enforcement agencies.</p> <p>Cooperation between the FIU and law enforcement agencies in Samoa such as the Samoa Police Service, the Samoa Customs and the Trans-national Crime Unit should be enhanced and supported.</p> <p>FIU staff should receive further training in STR analysis, support to financial investigations and other FIU functions.</p> <p>The Samoa FIU should be given timely access criminal records information,</p>

	<p>and the intelligence databases maintained by these agencies (or which these agencies have access to) in the analysis of the STRs.</p> <p>Enforcement agencies should also have access to financial intelligence information maintained by the FIU on a timely basis.</p> <p>The FIU should consider conduct outreach programmes to reporting institutions to better understand the process and criteria for making of STRs in order to support higher levels of reporting of STRs.</p>
Cross Border declaration or disclosure (SR.IX)	<p>Samoa should pass the MLP Amendment Bill 2003 and fully implement the relevant AML/CFT border control provisions.</p> <p>Customs department should have convenient access to financial intelligence information maintained by the FIU.</p> <p>The Customs department should organise training and awareness raising in association with the FIU on money laundering and terrorist financing threats in the areas of identification of emerging trends, avoidance of border cash declaration and detection of trade-based money laundering (including the use of gold, precious metals or precious stones).</p>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<p>Samoa should pass and implement the MLP Amendment Bill 2003 and Proceeds of Crime Bill 2003.</p> <p>The FIU should disseminate STRs and related financial intelligence to both the Attorney General and the Police Commissioner as required under the MLP Act.</p> <p>The Attorney General's Office should generally refer STRs received from the FIU to the TCU or other law enforcement agencies for investigation.</p> <p>Information sharing and cooperation between the FIU, AG's Office and investigation agencies should be better supported by MOUs and other mechanisms.</p> <p>Samoa should consider putting in place an adequate legal basis for the use of special investigative techniques.</p> <p>Samoa should provide wide powers in legislation to investigative authorities to obtain documents and information for use in the investigation and prosecution of money laundering and underlying predicate offences</p> <p>Samoa should consider including the MLA on the Border Management Committee in relation to cross border cash reporting.</p> <p>Samoa should consider including the MLA and Police Commissioner on the TCU Oversight Committee to best ensure effective investigation of ML and TF.</p> <p>Further resources and staff should be allocated to the FIU for supervision of all financial institutions, to analyse and disseminate STRs, to provide AML/CFT support to investigative agencies and to provide training.</p> <p>Samoa could consider opportunities for seconding officers from the private sector to work within the FIU.</p> <p>Samoa law enforcement authorities should provide additional support to the FIU in its role with analysing STRs and providing support to money laundering investigations.</p> <p>Samoa should identify a competent authority to manage and administer confiscated assets arising from AML/CFT investigations.</p> <p>Further training should be provided to regulatory and investigations staff, including those of the FIU, SIFA, the Central Bank, the TCU, the Police, Customs, the Attorney General's Office as well as the Ministry of Commerce, Industry and Labour.</p>

	Samoa should consider security vetting for staff joining the FIU and TCU.
<b>3. Preventive Measures – Financial Institutions</b>	
Risk of money laundering or terrorist financing	An assessment should be undertaken to determine the nature of risk for money laundering and terrorist financing to directly support consideration of applying certain preventative measures to elements of Samoa's financial system and DNFBPs on a risk sensitive basis.
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>The MLP Amendment Bill 2003 should be passed and related preventive measures implemented as soon as possible;</p> <p>Legislation should explicitly prohibited financial institutions from opening, operating or maintaining any anonymous accounts in fictitious, false or incorrect name.</p> <p>Revised AML Regulations and Guidelines should be issued to explicitly cover combating the financing of terrorism and to better reflect the further obligations arising from the revised FATF Recommendations;</p> <p>Revised AML Regulations should be issued to cover:</p> <ul style="list-style-type: none"> <li>• customer due diligence measures in instances of a suspicion of money laundering or terrorist financing;</li> <li>• identification procedures for one-off or occasional wire transfer transactions below the agreed threshold;</li> <li>• identifying and verifying beneficial owners</li> <li>• ongoing due diligence on transactions throughout the course of business relationship;</li> <li>• obtaining information on the purpose of the business relationship;</li> </ul> <p>Revised Guidelines should be issued to cover:</p> <ul style="list-style-type: none"> <li>• measures to handle identity of customers with different names and titles, and customers not possessing proper identification documents;</li> <li>• adopting a risk based approach for taking enhanced due diligence for higher risk categories;</li> <li>• normal due diligence for the exempted customers where there is suspicion of money laundering or terrorist financing;</li> <li>• simplified CDD procedures limited to those customers from and institutions in those countries and territories having effectively implemented the FATF Recommendations;</li> <li>• procedures for handling commencement of business relationship prior to verification, in order to avoid interruption of normal conduct of business;</li> <li>• terminating or not commencing business relationships, and to consider filing a suspicious report, if satisfactory evidence of customer identity cannot be obtained;</li> <li>• permitting financial institutions to apply the relevant identification procedures to existing customers and business relationships on the basis of materiality and risk;</li> <li>• risk management systems and procedures in relation to customers or the beneficial owner who may be a politically exposed person (PEP);</li> <li>• cross-border correspondent banking and other similar relationships regarding the nature of the respondent's business and their level of</li> </ul>

	<p>implementation of global AML/CFT standards; and</p> <ul style="list-style-type: none"> <li>• policies and procedures in place to prevent misuse of technological developments in money laundering or terrorist financing schemes.</li> </ul> <p>Samoa should sign, ratify and fully implement the 2003 United Nations Convention against Corruption;</p>
Third parties and introduced business (R.9)	<p>Revised guidelines for reliance on third parties to perform elements of the CDD process should be issued to clarify and consolidate the requirements financial institutions in keeping with the requirements of Recommendation 9, in particular regarding:</p> <ul style="list-style-type: none"> <li>• when it is permitted to rely on third parties;</li> <li>• adequate steps to be taken to be satisfied that copies of identification data and other relevant documentation will be made available from the introducer upon request without delay.</li> <li>• Steps to be taken to be sure that the introducing institution, when in another country, is regulated and supervised and has measures in place to comply with CDD requirements.</li> </ul>
Financial institution secrecy or confidentiality (R.4)	<p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to further enhance information sharing among competent authorities, either domestically or internationally, and revised Guidelines should be issued encouraging sharing of information between financial institutions where this is required by correspondent banking, introduced business and wire transfers.</p>
Record keeping and wire transfer rules (R.10 & SR.VII)	<p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to remove the transaction threshold for record keeping and to include the business correspondence among others as required information for record keeping.</p> <p>In relation to wire transfers, revised Guidelines should be issued and their implementation supported, which require financial institutions to:</p> <ul style="list-style-type: none"> <li>• include full originator information in the message or payment form accompanying the wire transfers, or batched wire transfers, or funds transfers effected by transactions using credit or debit cards; and</li> <li>• ensure non-routine transactions not to be batched for avoiding increasing risk of money laundering or terrorist financing.</li> <li>• require domestic wire transfers to follow the same requirement for cross-border transfers, or to require institutions to include only the originator's account number or where no account number exists, a unique identifier, within the message or payment form accompanying the domestic wire transfers, if full originator information can be made available to the beneficiary financial institution and to competent authorities within three business days of receiving a request.</li> <li>• provide examples of enhanced scrutiny measures that should be conducted by financial institutions.</li> <li>• Require procedures for batch transfers to separately address cross-border or domestic batch transfers, for credit or debit card funds transfers</li> </ul> <p>Revised Regulations should be issued ensuring financial institutions to include full originator information for any outward wire transfers regardless of the amount.</p> <p>Authorities should pay particular attention to financial institutions compliance with the above obligations as a matter of some priority, through onsite and offsite supervision, feedback and training.</p>

<p>Monitoring of transactions and relationships (R.11 &amp; 21)</p>	<p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to require financial institutions to:</p> <ul style="list-style-type: none"> <li>• pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose,</li> <li>• examine as far as possible the background and purpose of such transactions and to set forth their findings in writing, and to keep such findings available for competent authorities and auditors for at least five years.</li> <li>• implement mechanism for ensuring financial institutions being advised of concerns about weaknesses in the AML/CFT systems of other countries, and for applying counter-measures if those countries not to apply or insufficiently apply the FATF Recommendations. The possible counter-measures include:</li> <li>• stringent requirements for identifying customers and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;</li> <li>• enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;</li> <li>• in considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking in to account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;</li> <li>• warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering; and</li> <li>• limiting business relationships or financial transactions with the identified country or persons in that country.</li> </ul>
<p>Suspicious transaction reports and other reporting (R.13-14, 19, 25 &amp; SR.IV)</p>	<p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to cover suspicious transactions involving proceeds of crimes from all offences punishable by a maximum penalty of more than one year's imprisonment, suspicious transactions linked or related to terrorist financing, any attempted transactions, and suspicious transactions regardless of being thought, among other things, to involve tax matters.</p> <p>Although border cash and foreign remittance reporting systems are in place, Implementation of a large currency reporting system should be considered for financial institutions to report all domestic transactions in currency above a fixed threshold to the FIU.</p> <p>Revised guidelines should be issued to sufficiently cover CFT;</p> <p>Further resources should be allocated to FIU for enhancing its capacity to provide feedback (statistics, typologies and cases) to financial institutions and DNFBPs.</p> <p>Revised guidelines should be issued requiring STR to cover any suspicious transactions linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism linked or related to FT.</p>
<p>Internal controls, compliance, audit</p>	<p>Authorities should ensure that current obligations regarding Internal controls, compliance and audit are fully implemented by financial</p>

<p>and foreign branches (R.15 &amp; 22)</p>	<p>institutions.</p> <p>Revised Guidelines should be issued to cover</p> <ul style="list-style-type: none"> <li>• internal procedures, policies, controls and training, with an emphasis on both AML and CFT, in particular:</li> <li>• screening procedures to ensure high standards when hiring employees;</li> <li>• ensuring that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local laws and regulations permit, especially in countries which do not or insufficiently apply the FATF Recommendations</li> <li>• financial institutions informing their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.</li> </ul> <p>The MLP Amendment Bill should be passed and requirements for independent audits to include AML/CFT compliance for financial institutions should be implemented as a matter of priority.</p>
<p>Shell banks (R.18)</p>	<p>SIFA should require those international banks operating without a physical presence in Samoa to take steps to immediately establish the required physical presence.</p> <p>SIFA should not grant any further extension periods to those existing offshore banks that yet to meet the physical presence requirement.</p> <p>Those remaining international banks which do not meet the physical presence requirements of the IBA 2005 should be de-licensed as early as possible and no longer be permitted to operate in Samoa.</p> <p>Onsite inspections should be conducted to confirm compliance with the obligations to establish a physical presence as well as to confirm the winding up of those de-licensed international banks.</p> <p>Regulations should be implemented as soon as possible requiring financial institutions to:</p> <ul style="list-style-type: none"> <li>• not enter into, or continue, correspondent banking relationships with shell banks.</li> <li>• Be satisfied that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>
<p>The supervisory and oversight system - competent authorities and SROs</p> <p>Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 &amp; 25)</p>	<p>The supervisory authority should make use of the existing powers to apply dissuasive sanctions on those financial institutions which fail to comply with Samoa's AML/CFT requirements.</p> <p>Consideration should be given to providing powers for enabling the Regulator to apply administrative sanctions for not complying with AML/CFT requirements.</p> <p>Samoa should increase the frequency and scope of supervision to ensure financial institutions are subject to adequate AML/CFT regulation.</p> <p>Sufficient further staffing resources should be obtained to ensure that the FID is able to performing its duties as AML/CFT supervisor in addition to its FIU functions.</p> <p>Consideration could be given to extending a requirement for all financial institutions to submit a compliance certificate on a yearly basis to enhance the monitoring of financial institutions.</p> <p>In recognition of the real capacity constraints in Samoa, the authorities could consider encouraging various industry associations and SROs to assist financial institutions and DNFBPs to coordinate appropriate training, to</p>

	<p>promote best practices for the financial sector and to undertake aspects of supervision;</p> <p>The data collected from border cash declarations, foreign remittances, foreign exchange including money change and transfer, and STRs should be consolidated and analysed to assist the FIU and other competent authorities combating money laundering and terrorist financing.</p> <p>Revised Regulations and Guidelines should be issued to sufficiently cover all aspects of CFT, including supervision, guidance, monitoring and sanctions.</p>
Money value transfer services (SR.VI)	<p>Regular AML/CFT onsite inspections should be undertaken to ensure that proper CDD measures, record keeping and suspicious transaction reporting requirements are followed by all money transfer agents in Samoa.</p> <p>An assessment should be conducted as soon as possible to ascertain the extent, vulnerabilities and risks from continuing unlicensed remittance activities and determine necessary regulatory and enforcement actions.</p> <p>Specific AML/CFT training and awareness raising for all remittance agents should be undertaken across Samoa.</p> <p>The authorities should consider supporting the formation of a remittance agent's association to support sector-wide training, internal controls, awareness raising and consultation with the FIU to better enable the sector to comply with AML/CFT obligations.</p>
<b>4. Preventive Measures –Non-Financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<p>DNFBPs should be required to fully implement the existing obligations contained in the MLP Act, Regulations and Guidelines.</p> <p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible to give adequate legislative support to enhance the preventive measures for DNFBP, and to include those activities of the dealers in precious metals and stones in the designated activities subject to the AML/CFT regime.</p> <p>In relation to dealings with politically exposed persons, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 6.</p> <p>In relation to technological developments, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 8.</p> <p>In relation to relying on third parties to perform elements of CDD, and in addition to the provisions under paragraph 10 of the Guidelines, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 9.</p> <p>In relation to record keeping, DNFBPs should be required to put in place measures in keeping with FATF Recommendation 10.</p> <p>Legislative amendments should ensure that authorities have effective proportionate and dissuasive criminal, civil or administrative sanctions available to deal with DNFBPs that fail to comply with the AML/CFT requirements.</p> <p>Appropriate measures and mechanism should be in place to ensure oversight of those DNFBPs not having physical presence or management</p>

	<p>stationed in Samoa.</p> <p>Given the difference of the business nature of DNFBP and financial institutions, separate guidelines should be issued according to the characteristics of DNFBP to assist with AML/CFT compliance.</p>
Suspicious transaction reporting (R.16)	<p>The MLP Amendment Bill 2003 should be passed and regulations and guidelines issued as a matter of priority.</p> <p>Samoa should conduct DNFBP sector-specific AML/CFT awareness raising and training in particular in relation to STR obligations and practices.</p> <p>Regular onsite inspections should be extended to all relevant DNFBP to ensure their compliance with the AML/CFT regime.</p>
Regulation, supervision and monitoring (R.24-25)	<p>The MLA (FIU) should extend its supervision and monitoring of AML/CFT compliance to effectively cover all DNFBP on a risk sensitive basis.</p> <p>Specific guidelines according to the business characteristics of DNFBP should be issued as soon as possible to assist DNFBP to effectively implement and comply with AML/CFT requirements.</p> <p>Competent authorities should provide general and case by case feedback to DNFBPs.</p>
Other designated non-financial businesses and professions (R.20)	<p>The authorities may consider formally assessing vulnerabilities of pawn shops and consider the need for any further regulatory AML/CFT coverage of this area.</p> <p>Although the small market and economy size may not justify immediate application of new technologies such as e-money or automated transfer systems, measures should be in place to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.</p>
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<p>The Companies Act 1955 allows for information about the legal ownership and control of companies to be available to competent authorities in a timely fashion, except where companies have issued share warrants. Samoa should take steps to ensure that information about beneficial ownership of share warrants (while they remain available under the legislation) is available in a timely manner to authorities, eg by requiring the bearer to be listed in the share register. The evaluation team notes that the Companies Act 2001 which is awaiting commencement does not contain any provision for share warrants.</p> <p>No information is maintained about beneficial owners where these differ from the legal owner. Samoa should consider amending the Companies Act 2001 to allow notices of trusts to be entered in companies' share registers.</p>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<p>Samoa authorities should take steps to raise awareness of the obligation to identify ultimate beneficial owner and beneficiaries when establishing or administering trusts amongst lawyers and accountants. This should be supplemented by increased AML/CFT oversight of the legal and accounting professions.</p>

	<p>The vague and optional nature of the provisions in the MLP Guidelines related to the identification of beneficiaries undermines the ability of the MLP Authority to have timely access to adequate, accurate and current information on the beneficial ownership of trusts. These provisions should be clarified and strengthened to ensure that, at the least, all major beneficiaries of express trusts must be identified.</p> <p>Measures should be taken to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that the commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.</p> <p>Regular and effective supervision should also be take place to ensure the availability of adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts.</p>
Non-profit organisations (SR.VIII)	<p>Samoa should review the adequacy of its laws and regulations relating to NPOs that can be abused for the financing of terrorism.</p> <p>Samoa should consider implementing measures consistent with the Interpretative Note to Special Recommendation VIII to ensure that terrorist organisations cannot pose as legitimate NPOs, and to ensure that funds or other assets collected by, or transferred through, NPOs are not diverted to support the activities of terrorists or terrorist organisations.</p>
<b>6. National and International Co-operation</b>	
National co-operation and coordination (R.31 & 32)	<p>Samoa authorities should finalise the MOUs for seamless cooperation and information exchange between relevant agencies involved in AML/CFT;</p> <p>Establish formal and informal mechanisms to support cooperation and coordination at policy and operational levels. Such mechanisms could include:</p> <p>the inclusion of the FIU and relevant competent authorities on the committees overseeing the TCU and National Border Management; and</p> <p>Establishment of operational task forces to include the FIU at an early stage of investigations of criminal matters involving the proceeds of crime, money laundering and terrorist financing.</p> <p>Secondment (part time) of FIU staff to the TCU and vice versa;</p> <p>The MLP Amendment Bill 2003 should be passed and implemented as soon as possible for policy makers, the FIU, law enforcement and supervisors and other competent authorities to have effective mechanisms in place to enable them to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.</p> <p>Mechanisms should established or strengthened for consultation between competent authorities, the financial sector and other sectors (including DNFBP) on implementation of the AML/CFT laws, regulations, guidelines or other measures.</p> <p>Consideration should be given to inviting larger financial institutions to second appropriate staff to the FIU to build government and private sector capacity and reinforce good cooperation.</p> <p>A review of the effectiveness of the cooperation and coordination systems for AML/CFT should be conducted as soon as possible and thereafter on a</p>

	regular basis.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Samoa should become a party to the Palermo Convention. Samoa should fully implement the Vienna and Palermo Conventions, including taking steps outlined elsewhere in this report with respect to measures to freeze and forfeit the proceeds of crime, mutual legal assistance and extradition. Samoa should reduce the threshold for predicate offences for money laundering to include all offences punishable by a maximum period of imprisonment of 12 months or more as is proposed in the draft Proceeds of Crime Bill.</p> <p>Samoa should consider reviewing the Narcotics Act to ensure that all activities set in Article 3(1) of the Vienna Convention are criminalised under Samoan law.</p> <p>Samoa should review the Prevention and Suppression of Terrorism Act to bring funding for offences under Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (criminalised by Part X of the Civil Aviation Act) within the scope of the financing of terrorist acts offence, and should consider doing the same for funding of offences set out in the Convention on the Physical Protection of Nuclear Material and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.</p> <p>Samoa should also review the freezing and forfeiture provisions in the Prevention and Suppression of Terrorism Act to bring them into line with international standards, particularly with regards to identification and tracing of terrorist funds and proceeds and the protection of bona fide third parties.</p> <p>Samoa should enact and implement legislation allowing for the assets of persons and entities designated under UN Security Council Resolution 1267, its successor resolutions and UN Security Council Resolution 1373 to be frozen without delay. Samoa should also implement mechanisms for designating persons or entities under UN Security Council Resolution 1373.</p>
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	<p>The draft Mutual Assistance in Criminal Matters Bill should be enacted and implemented as a matter of urgency.</p> <p>The limited scope of the current mutual legal assistance powers in the MLP Act, which apply only to the investigation and prosecution of money laundering, means that no mutual legal assistance capacity exists for other predicate offences or the financing of terrorism.</p> <p>Samoa should enact and implement legislation allowing for mutual legal assistance for, in addition to money laundering, the full range of predicate offences for money laundering as well as terrorist financing.</p> <p>It is noted that the Mutual Assistance in Criminal Matters Bill would allow for mutual legal assistance to be given to any country for the investigation or prosecution of any offence that would, if it had occurred in Samoa, be punishable by a maximum period of imprisonment of 12 months or more.</p> <p>Freezing and forfeiture measures pursuant to mutual legal assistance requests should be extended to apply to instrumentalities used for, or intended for use in the commission of an offence, as well as property of corresponding value.</p> <p>It is noted that the draft Mutual Assistance in Criminal Matters Bill in combination with the draft Proceeds of Crime Bill, if both enacted and implemented, would achieve this.</p> <p>Mutual legal assistance should be available for effecting the service of judicial documents, along the lines of section 46 of the draft Mutual</p>

	<p>Assistance in Criminal Matters Bill.</p> <p>Police should be given the power to take witness statements [<i>and other investigative power/power of arrest?</i>] pursuant to a mutual legal assistance request.</p> <p>Consideration should be given to removing the requirement for dual criminality for mutual legal assistance, particularly less intrusive, non compulsory measures. The Mutual Assistance in Criminal Matters Bill would improve on the current requirement by broadening the scope of offences for which mutual legal assistance can be provided and lowering the penalty threshold to a maximum period of imprisonment of 12 months or more.</p>
Extradition (R.39, 37, SR.V & R.32)	<p>Samoa should take steps to designate Commonwealth countries and enter into extradition treaties with foreign countries including, as a matter of priority, those who have previously sought assistance with regard offenders in Samoa.</p>
Other Forms of Co-operation (R.40, SR.V & R.32)	<p>The Mutual Assistance in Criminal Matters Bill 2003 should be passed and implemented as soon as possible for providing sufficient legal support to mutual legal assistance in widest range and for AML and CFT as well. The MLP Amendment Bill 2003 should be passed and implemented as soon as possible for broadening the scope of mutual assistance to CFT, administrative investigation, inquiries and information exchange</p>

**Table 3: Authorities' Response to the Evaluation (if necessary)**

Relevant sections and paragraphs	Country Comments

## **ANNEXES**

### **Annex 1: List of abbreviations**

**ADB** – Asian Development Bank  
**AML** – Anti-Money Laundering  
**APG** – Asia/Pacific Group on Money Laundering  
**CBS** – Central Bank of Samoa  
**CDD** – Customer Due Diligence  
**CFT** – Combating the Financing of Terrorism  
**DBS** – Development Bank of Samoa  
**DNFBP** – Designated Non-financial Business and Professions  
**FATF** – Financial Action Task Force  
**FI** – Financial Institutions  
**FIA** – Financial Institutions Act (1996)  
**FID** – Financial Institutions Department of the Samoa Central Bank  
**FIU** – Financial Investigation Unit  
**FT** – Financing of Terrorism  
**GDP** – Gross Domestic Product  
**IBA** – International Banking Act (2005)  
**IBC** – International Business Company  
**IMF** – International Monetary Fund  
**KYC** – Know Your Customer  
**ML** – Money Laundering  
**MLA** – Money Laundering Authority  
**MLRO** – Money Laundering Reporting Officer  
**MOU** – Memorandum of Understanding  
**NPF** – National Provident Fund  
**NPOs** – Non Profit Organisations  
**OCO** – Oceania Customs Organisation  
**OGBS** – Offshore Group of Banking Supervisors  
**PEPs** – Politically Exposed Persons  
**PIANGO** – Pacific Islands Association of Non-Governmental Organisations  
**ROSC** – Report on Standards and Codes  
**SAT** – Samoan tala  
**SIFA** – Samoa International Finance Authority  
**SROs** – Self Regulatory Organisations  
**STR** – Suspicious Transaction Report  
**SUNGO** – Samoa Umbrella for Non-Governmental Organisations  
**TCU** – Trans-national Crime Unit  
**TI** – Transparency International  
**UNSCR** – United Nations Security Resolution  
**WCO** – World Customs Organisation

## **Annex 2: Details of all bodies met on the on-site mission**

### **Ministries, other government authorities or bodies, private sector representatives and others**

The Honourable Deputy Prime Minister and Minister of Finance

The Attorney General's Office

Central Bank of Samoa – *The Governor, Financial Institutions Department, Statistics and Research Department, Banking and Corporate Services Department*

Samoa Financial Intelligence Unit (FIU)

Samoa International Finance Authority

Samoa Police

The Transnational Crime Unit

Ministry of Commerce, Industry and Labour

Ministry of Finance

Ministry of Foreign Affairs, Trade and Commerce

Ministry of Justice

The Prime Minister's Department - *Immigration Department and National Border Management Committee*

Ministry of Revenue - *Customs and Inland Revenue*

Samoa Port Authority

Office of the Public Trustee

The Office of the Ombudsman

ANZ Bank (Samoa) Ltd

Westpac Bank (Samoa) Ltd

National Bank of Samoa Ltd

Samoa Commercial Bank Ltd

Samoa Bankers Association

Pacific Holdings Ltd (Western Union Samoa and Global Exchange Samoa)

Samoa Finance

Samoa Development Bank Credit Union

Asiaciti Ltd

Portcullis Trust Net Ltd

Samoa National Provident Fund.

National Pacific Insurance

Samoa Life Assurance

Samoa Accountants Society

Samoa Bar Association

A real Estate agent

A jewellery dealer

## **Annex 3: Copies of key laws, regulations and other measures**

### **Money Laundering Prevention Act 2000 (MLP Act)**

**Text of the Notice of Determination of the Minister of Finance Concerning the Definition of Financial Institution under the MLP Act, 28 November 2002**

### **MLP Guidelines 2002 – Suspicious Transaction Reporting Form**

### **Money Laundering Prevention Act 2000 (MLP Act)**

#### **2. Interpretation - (1) In this Act, unless the context otherwise requires:**

“Authority” means the Money Laundering Prevention Authority appointed under section 10;

“business transaction” means any arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person;

“business transaction record” includes where relevant to a business transaction:

- (a) The identification records of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

“competent authority” means the Attorney General, and includes any person authorised by him in that behalf;

“Court” means the Supreme Court of Samoa;

“Document” means any record of information, and includes -

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which there are marks figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (d) a map, plan, drawing or photograph.

“financial institution” means any person whose regular occupation or business is the carrying out of -

- (a) any activity listed in the First Schedule to this Act; or
- (b) any other activity determined by the Minister published by notice in the Savali, which activity shall then be deemed to be included in the First Schedule.

“freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property by order of a court:

“forfeiture” means the permanent deprivation of property by order of a court:

“identification record” means -

- (a) Where the person is a corporate body, the details -
  - (i) of the certificate of incorporation, such certificate to be notarized where the corporate body is incorporated outside of Samoa;
  - (ii) of the most recent annual return, if any, filed at the Registry of Companies, such return to be notarized where the corporate body is incorporated outside of Samoa;
  - (iii) of any officer of the corporation as required in subparagraph (b) of this definition;

- (b) Otherwise, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” shall include any person who is a nominee, agent beneficiary or principal in relation to a business transaction:

“Judge” means a Judge of the Supreme court of Samoa:

“Minister” means the Minister of Finance:

“money laundering” means –

- (a) Engaging 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
- (b) 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.

“person” means any entity, natural or juridical, including among others, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group, capable of acquiring rights or entering into obligations:

“prescribed offence” means any activity, whenever or wherever carried out, which under the laws of Samoa or any other law, amounts to an offence listed in the Second Schedule to this Act. The Attorney General may from time to time by notice published in the Savali, determine that prescribed offences be added to the Second Schedule:

“proceeds of crime” means the proceeds of unlawful activity wherever committed (and whether derived or obtained directly or indirectly through such activity), and includes any property that is mingled with property that is proceeds of unlawful activity:

“property” includes money, investments, holdings, possessions, assets and all other property real or personal, heritable or moveable including things in action and other intangible or incorporeal property wherever situate, whether in Samoa or elsewhere, and includes any interest in such property:

“requesting state” means any State that makes a request under the provisions of Part V:

“unlawful activity” means any activity which under any law anywhere is a crime and is punishable by death or imprisonment for a maximum period of not less than five years, but does not include any crimes that relate, directly or indirectly, to the regulation, imposition, calculation or collection of taxes or the enforcement of exchange control regulations.

- (2) A reference in this Act to a document includes a reference to -

- (a) Any part of a document;
- (b) Any copy, reproduction or duplicate of the document or of any part of the document; or
- (c) Any part of such copy, reproduction or duplicate.

**3. Offence of money laundering** (1) A person who, after the commencement of this Act, engages in money laundering is guilty of an offence.

(2) Where a person discloses to the Authority a suspicion or belief that any funds or investments are derived from or used in connection with the proceeds of crime, or discloses to such Authority any matter on which such a suspicion or belief is based -

- (a) The disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil or criminal liability; and
- (b) If he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –
  - (i) the disclosure is made before he does the act concerned;
  - or
  - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

**4. Offence Committed by a Body of Persons** - Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the

commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a director, manager, secretary or other similar office, or was purporting to act in such capacity, shall be guilty of that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

**5. Attempts, Aiding and Abetting and Conspiracy** - Any person who attempts or who aids, abets, counsels, or procures the commission of, or who conspires to commit the offence of, money laundering is guilty of an offence.

**6. Penalties** - A person guilty of an offence under the provisions of section 3, 4 or 5 shall be liable on conviction to a fine not exceeding 10,000 penalty units, or to imprisonment for a period not exceeding 7 years, or to both such fine and imprisonment.

**7. Jurisdiction** - Any act –

- a. Done by a citizen of Samoa anywhere;
- b. Done by a person on a ship or aircraft registered in Samoa; or
- c. Done by a person outside Samoa with intent to do that act within Samoa,

Shall, if it would be an offence by that person within the jurisdiction of Samoa under the provisions of this Act, be an offence under those provisions.

**8. Secrecy Obligations Overridden** - The provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

**9. Disclosure Protected** - It shall not be unlawful for any person to make any disclosure in compliance with this Act. A financial institution, its employees, staff, directors, owners or other representatives as authorised by law shall be exempted from criminal, civil and/or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the disclosure, where the disclosure was made in good faith.

**10. Minister of Finance to Appoint a Money Laundering Authority** - (1) The Minister may appoint a person or persons to be known as the Money Laundering Authority to supervise financial institutions in accordance with this Act.

(2) Until such time as the Minister makes an appointment under subsection (1), the functions of the Money Laundering Prevention Authority as provided in this Act shall be carried out by the Governor of the Central Bank of Samoa, or by any person authorised by him in writing in that behalf.

**11. Powers and Duties of the Money Laundering Authority** -

(1) The Money Laundering Authority –

- (a) Shall receive the reports issued by financial institutions pursuant to the provisions of section 12(b);
- (b) Shall send any such report to the Attorney General and the Commissioner of Police if, having considered the report, the Authority also has reasonable grounds to suspect that the business transaction involves proceeds of crime/or that a money laundering offence is being, has been or is about to be committed.

(2) A person authorised by the Authority for such a purpose, may enter into the premises of any financial institution during normal working hours to inspect any business transaction record kept by that financial institution pursuant to the provisions of section 12(a) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record.

- (c) Shall send to the Attorney General and the Commissioner of Police any information derived from an inspection carried out pursuant to the provisions of subsection (2) of this section if it gives the Authority reasonable grounds to suspect that a business transaction involves proceeds of crime or that a money laundering offence is being, has been, or is about to be committed;

- (d) Shall destroy any note or copy thereof made or taken pursuant to the provisions of subsection (2) within three years of the inspection save where any such note or copy has been sent to the Attorney General and the Commissioner of Police;
- (e) May instruct any financial institution to take such steps as may be appropriate to facilitate any investigation anticipated by the Authority following a report or investigation made under the provisions of this section;
- (f) May - (i) compile statistics and records, provide information to law enforcement agencies and regulatory bodies within or without Samoa in accordance with Part V;
  - (ii) make recommendations arising out of any information received;
  - (iii) issue guidelines to financial institutions; and
  - (iv) advise the Minister and the Attorney General with regard to any matter relating to money laundering;
- (g) Shall create training requirements and provide such training for any financial institution in respect of the business transaction record keeping and reporting obligations as provided in sections 12(a) and 12(b);
- (h) May consult with any relevant person, institution or organisation for the purposes of the exercise of its powers or duties under subparagraphs (f), (g) and (h);
- (i) Shall not conduct any investigation into money laundering other than for the purpose of ensuring compliance by a financial institution with the provisions of section 12.

**12. Obligations of Financial Institutions** - A financial institution shall –

- (a) Keep a business transaction record of any new business transaction exceeding \$30,000 for a period of seven years after the termination of the business transaction so recorded;
- (b) As soon as the suspicion hereinafter referred to is formed, report to the Authority, any business transaction where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves proceeds of crime;
- (c) Comply with any instruction issued to it by the Authority pursuant to section 11(f);
- (d) Permit any member of the Authority upon request to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to the provisions of subsection (1) and to make any notes or take any copies of the whole or any part of any such record or to answer any questions of the Authority in relation to such records;
- (e) Develop and apply internal policies, procedures and controls to combat money laundering and develop audit functions to evaluate such policies procedures and controls
- (f) Comply with the guidelines and training requirements issued and provided by the Authority respectively in accordance with sections 11(f), 11(g) and 11(h);
- (g) Develop a procedure to audit compliance with this section.

**13. Offence of Wilful Failure to Make Report** - (1) An offence is committed by a financial institution or its employees, staff, directors, owners or other authorised representatives who, acting as such, wilfully fail to comply with the obligations in section 12(b), or who wilfully make a false or falsified report to the Authority.

(2) Without prejudice to criminal and/or civil liabilities for offences connected to money laundering, a person guilty of an offence under the provisions of subsection (1) shall on conviction be liable to a fine not exceeding 500 penalty units and in addition the licence of such financial institution to operate as such may be revoked by the Central Bank of Samoa or the Minister, as the case may be, pursuant to the provisions of the Offshore Banking Act 1987 and the Financial Institutions Act 1996.

**14. Money Laundering Authority's Power to Obtain Search Warrant** - The Money Laundering Authority, or a commissioned Officer of the Police Service, upon application to a Judge and satisfying him that there are reasonable grounds to believe that-

- (a) A financial institution has failed to keep a business transaction record as provided by the provisions of section 12(a);
- (b) A financial institution has failed to report any business transaction as provided by the provisions of section 12(b); or
- (c) An officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence;

may obtain a warrant to enter any premises belonging to, in the possession or under the control of the financial institution or any officer or employee of such institution and to search the premises and remove any document, material or other thing therein for the purposes of the Authority or the Police Service as ordered by the Judge and specified in the warrant.

**15. Property Tracking and Monitoring Orders** – The Money Laundering Authority or a commissioned officer of the Police Service upon application to a Judge and satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence may obtain an order -

- (a) That any document relevant to –
  - (i) identifying, locating or quantifying any property; or
  - (ii) identifying or locating any document necessary for the transfer of any property;

Belonging to, or in the possession or under the control of that person be delivered forthwith to the Authority or Commissioner of Police; and

- (b) That a financial institution forthwith produce to the Authority or Commissioner of Police all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Judge directs.

**16. Mandatory Injunction to Enforce Compliance** – (1) All officers and employees of a financial institution shall take all reasonable steps to ensure the compliance by that financial institution with its obligation under this Part of this Act.

(2) The Authority upon application to a Judge and satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligations as provided in sections 12(a), 12(b), 12(c), 12(d) or 12(e) may obtain an injunction against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(3) In granting an injunction pursuant to subsection (2) of this section the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty in the sum and in the manner directed by the Court.

**17. Tipping-off** – (1) It is an offence for any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(2) It is an offence for any person who knows or suspects that a disclosure by a financial institution has been made to the Authority under section 12(b) to divulge that fact or other information to another whereby any investigation that might be conducted following the disclosure is likely to be prejudiced.

(3) A person guilty of an offence under the provisions of subsection (1) or subsection (2) of this section shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

**18. Falsification, Concealment of Document** – (1) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering.

(2) A person guilty of an offence under the provisions of subsection (1) above shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

**19. Currency Reporting at the Border** – (1) Any person who leaves or enters Samoa with more than \$10,000 in cash or negotiable bearer instruments (in Samoa currency or equivalent foreign currency) without first having reported the fact to the Money Laundering Authority commits an offence and shall be liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 5 years, or to both such fine and imprisonment.

(2) For the purpose of this section, the term –

(a) “authorised officer” means –

(i) a commissioned officer of the Police Services; or

(ii) an Customs Officer or

(iii) an employee of the Central Bank authorised by the Governor; or

(iv) an employee of the Airport Authority authorised by the Airport Manager.

(b) “negotiable bearer instrument” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, made payable to the bearer.

(3) Where a person –

(a) Is about to leave Samoa or has arrived in Samoa; or

(b) Is about to board or leave, or has boarded or left, any ship or aircraft an authorised officer may, with such assistance as is reasonable and necessary –

(c) Examine any article which a person has with him or in his luggage; and

(d) If the officer has reasonable grounds to suspect that an offence under subsection (1) may have been or is being committed, search the person, for the purpose of finding out whether the person has with him or on him or in his clothing, any cash or negotiable bearer instruments in respect of which a report under subsection (1) is required.

(4) A person shall not be searched except by a person of the same sex.

(5) An authorised officer, and any person assisting such officer, may board any ship or aircraft for the purposes of exercising the powers conferred by subsection (3).

(6) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (3), may afford evidence as to the commission of an offence under this section, the officer may seize the cash or negotiable bearer instruments.

#### **PART IV FREEZING AND FOREFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING**

(20) **Freezing of Property** – (1) Where a person (hereinafter referred to as the “defendant”) has been charged or is about to be charged with a money laundering offence, the competent authority may make an application to a Judge in accordance with subsection (2) for an order (hereinafter referred to as a “freezing order”) freezing the property of, or in the possession or under the control of that person, which is alleged to be the proceeds of crime, wherever such property may be.

- (2) An application made under subsection (1) may be made ex parte to a Judge in chambers and shall be accompanied by an affidavit sworn on the information and belief of the competent authority or any other person deposing to the following matters, namely -
- (a) The offence or matter under investigation;
  - (b) The person who is believed to be in possession of the property;
  - (c) The grounds for the belief that a freezing order may be made under this Act; and
  - (d) A description of the property.
- (3) Where an application for a freezing order is made under subsection (1), the Judge may make an order -
- (a) Prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in such manner as may be specified in the order; and
  - (b) At the request of the competent authority where the Judge is of the opinion that the circumstances so require -
    - (i) appointing a person to take control of and to manage or otherwise deal with all or part of that property in accordance with directions of the Judge; and
    - (ii) requiring any person having possession of that property to give possession of the property to the person appointed under subparagraph (i).
- (4) The Judge in making any order freezing the property of the defendant may give directions as to -
- (a) The period of effect of the freezing order; or
  - (b) The disposal of the property for the purpose of
    - (i) determining any dispute as to the ownership of or other interest in the property or any part thereof;
    - (ii) its proper administration during the period of freezing;
    - (iii) the payment of debts incurred in good faith due to creditors prior to the making of the order;
    - (iv) the payment of moneys to the defendant for his reasonable subsistence and that of his family;
    - (v) the payment of the reasonable business and legal expenses of the defendant; and
    - (vi) permitting the use of the property in order to enter into a recognizance required of the defendant by a court.
- (5) For the purpose of determining the reasonableness of business and legal expenses referred to in subsection (4)(b)(v), a Judge may hold a hearing in chambers.
- (6) An order made under the provisions of this section shall provide for notice to be given to persons affected by the order in such manner as the Judge directs or as may be prescribed by the Rules of Court.
- (7) An order made under the provisions of this section shall cease to have effect at the end of the period of seven days, following the hour the order was made, if the person against whom such order was made has not been charged with a money laundering offence within that time.
- (8) The Government of Samoa, the competent authority, the Money Laundering Authority or any of their staff shall not be liable for any damages or costs arising directly or indirectly from the making of a freezing order unless it is proved that the application for the freezing of the property was not made in good faith.
- (9) Where the Court makes an order for the administration of frozen property, the person charged with the administration of the property shall not be liable for any loss or damage to the property or for the cost of proceedings taken to establish a claim to the property or to an interest in the property, unless the Court in which the claim is made is of the opinion that the person has been guilty of negligence in respect of the taking of custody and control of the property.
- (10) Any person who knowingly acts in contravention of or fails to comply with the provisions of an order made under this section is, without prejudice to any other remedy provided at law, guilty of an offence and any act so made shall be null and void and without effect at law.

21. **Forfeiture of Property** – (1) Upon application by the competent authority to a Judge, any property of or in the possession or under the control of any person who is convicted of a money laundering offence and any property of that person the subject of a freezing order shall, unless proved to the contrary, be deemed to be derived from money laundering, and forfeited by order of the Court.

- (2) In determining whether or not any property is derived from money laundering the Court will apply the standard of proof required in civil proceedings.
- (3) In making a forfeiture order the Court may give directions
  - (a) For the purpose of determining any dispute as to the ownership of or other interest in the property or any part thereof; and
  - (b) As to the disposal of the property.
- (4) Upon application to a Judge by a person against whom a forfeiture order has been made under the provisions of this section, the Court may order that a sum deemed by the Court to be the value of the property so ordered to be forfeited by paid by that person to the Court and upon satisfactory payment of that sum by that person the property ordered to be forfeited shall be returned to him.

22. **Property Tracking and Monitoring** – (1) For the purpose of determining whether any property belongs to, is in the possession or under the control of any person, the Court may upon application by the competent authority and if satisfied that there are reasonable grounds for so doing, order -

- (a) That any document relevant to –
  - (i) identifying, locating or quantifying property of that person; or
  - (ii) identifying or locating any document necessary for the transfer of property of that person, be delivered forthwith to the competent authority; and
- (b) That a financial institution forthwith produces to the competent authority all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the order as the Court directs.

(2) Upon being satisfied by the competent authority that any person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with the provisions of subsection (1), the Court may order that the competent authority may enter any premises of that person, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

(3) Where a person produces or delivers a document pursuant to an order made under this section, the production or delivery of the document or any information, document or thing obtained as a direct or indirect consequence of the production or delivery of the document, is not admissible against that person in any proceedings, except a proceeding for an offence of failing to comply with an order of a Court.

23. **Offences** – (i) It is an offence for any person to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of section 22(1).

(2) It is an offence for a person who is the subject of an order made under section 22(1) to disclose the existence or operation of the order to any person except to an officer of the law enforcement authority named in the order, an officer or agent of the financial institution, for the purposes of ensuring that the order is complied with or a barrister or solicitor, for the purpose of obtaining legal advice or representation in relation to the order.

(3) A person guilty of an offence under the provisions of subsection (1) or subsection (2) shall be liable on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

24. **Limitations on Freezing and Forfeiture of Property** -

The provisions of sections 20 and 21 shall only apply to property coming into the possession or under the control of a person after the commencement of this Act.

25. **Appeals** – Nothing in this Part of this Act shall prevent the operation of any appeal normally available against orders made by the Court.

## PART V

## MUTUAL ASSISTANCE IN RELATION TO MONEY LAUNDERING

**26. Co-operation with a Foreign State** – Subject to the provisions of section 31, where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offence, the competent authority shall -

- (a) Take all action necessary to implement the request forthwith; or
- (b) Inform the foreign State making the request of any reason –
  - (i) for not executing the request forthwith; or
  - (ii) for delaying the execution of the request.

**27. Competent Authority's Power to Obtain Search Warrant** – The competent authority upon application to a Judge and upon production to the Judge of a request may obtain a warrant -

- (a) To enter any premises belonging to, in the possession or control of any person named in the warrant and search the premises; and
- (b) To search the person of any person named in the warrant, and remove any document, material or other thing for the purpose of executing the request as directed in the warrant.

**28. Property Tracking and Monitoring Orders** – The competent authority upon application to a Judge and upon production to the Judge of a request may obtain an order

- (a) That any document relevant to –
  - (i) Identifying, locating or quantifying any property; or
  - (ii) Identifying or locating any document necessary for the transfer of any property, belonging to, in the possession or under the control of any person the subject of the request be delivered to the competent authority; and

(b) That a financial institution forthwith produces to the competent authority all information obtained by the institution about any business transaction conducted by or for a person the subject of the request with the institution during such period before or after the date of the order as the Judge directs.

**29. Freezing and Forfeiture of Property** – Subject to the provisions of section 31, the competent authority upon application to a Judge and upon production to the Judge of a request for the freezing or forfeiture of property of or in the possession or under the control of a person named in the request may obtain an order in accordance with sections 20 and 21.

**30. Request Accompanied by an Evidence Order** – (1) Subject to the provisions of section 31, the competent authority may upon application to a Judge and upon production to the Judge of a request accompanied by an order issued by a court of the requesting State directed to any person within the jurisdiction of the Supreme Court of Samoa to deliver himself or any document or material in his possession or under his control to the jurisdiction of the court of the requesting State for the purpose of giving evidence in specified proceedings in that court, obtain an order directed to that person in the same terms as in the order accompanying the request.

(2) Upon being served with an order issued in accordance with the provisions of subsection (1), the person served shall for the purposes of the order either –

- (a) Deliver himself to the jurisdiction of the Supreme Court of Samoa; or
- (b) Deliver himself to the jurisdiction of the court of the requesting State, in accordance with the directions in the order.

(3) If a person served with an order issued in accordance with the provisions of subsection (1), elects to deliver himself to the jurisdiction of the court of the requesting State and fails to comply with any direction in the order, he shall be deemed immediately to have delivered himself to the jurisdiction of the Supreme Court of Samoa as provided in subsection (2)(a).

(4) The Supreme Court of Samoa shall conduct such proceedings as are necessary to take the evidence of any person delivering himself to the jurisdiction of the Court pursuant to the provisions of subsection (2)(a). Such evidence shall subsequently be transmitted by the competent authority to the foreign State.

**31. Limitations on Compliance with Request** – (1) Assistance to a foreign State referred to in this Part of this Act shall be provided only to those States with whom Samoa has entered into mutual assistance arrangements on a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such arrangements.

(2) The competent authority may refuse to comply with a request if –

- (a) The action sought by the request is contrary to any provisions of the Constitution of Samoa; or
- (b) The execution of the request is likely to prejudice the national interest or existing laws, policy or procedure of Samoa.

(3) The provisions of section 29 shall apply to property coming into the possession or under the control of a person after the commencement date of this Act.

**32. Requests to Other States** - The competent authority may issue to a foreign State a request accompanied, if required, by an order issued in accordance with section 33.

**33. Issuing Evidence Order Against Foreign Resident** - The competent authority upon application to a Judge may, in respect of any proceedings for a money laundering offence, apply for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to belonging to, the jurisdiction of the Court or, subject to the approval of the foreign State, to the jurisdiction of the court of the foreign State for the purpose of giving evidence in relation to those proceedings.

**34. Evidence Pursuant to a Request** - Evidence taken pursuant to an evidence order under section 33 in any proceedings in a court of a foreign State shall be received as prima facie evidence in any proceedings to which such evidence relates.

**35. Form of Requests** - A request shall be in writing, including facsimile transmitted writing, and shall be dated and signed by or on behalf of the person making the request.

**36. Content of Requests** - The request shall -

- (a) Confirm either that an investigation or prosecution is being conducted into or for a suspected money laundering offence or that a person has been convicted of a money laundering offence;
- (b) State the grounds on which any person is being investigated or prosecuted for the money laundering offence referred to in subparagraph (a) or give details of the convictions of the person referred to in subparagraph (a);
- (c) Give particulars sufficient to identify any person referred to in subparagraph (b);
- (d) Give particulars sufficient to identify any financial institution or other person believed to have information, documents or material of assistance to the investigation or prosecution referred to in subparagraph (a);
- (e) Request the competent authority to whom the request is addressed to obtain from a financial institution or other person referred to in subparagraph (d) all and any information, documents or material of assistance to the investigation or prosecution referred to in subparagraph (a);
- (f) Specify the manner in which and to whom any information, documents or material obtained pursuant to the request is to be produced;
- (g) State whether or not a freezing or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) Contain such other information as may assist the execution of the request.

**37. Request for Forfeiture** – A request for forfeiture shall have attached to it a copy of the final forfeiture order made by the court of the foreign State and a statement signed by a Judge of that court to the effect that no further appeal against such order can be made.

**38. Request not to be Invalidated** – A request shall not be invalidated for the purpose of any legal proceedings in Samoa by virtue of any failure to comply with the provisions of section 36, provided the competent authority is satisfied that there is sufficient compliance to enable it properly to execute the request.

**39. Offences – (1) It is an offence -**

- (a) For any person to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to the execution of any order made in accordance with the provisions of this Part of this Act;
  - (b) For any person who knows or suspects that an investigation into money laundering has been, is being or is about to be made, or that an order has been made or may be made requiring the delivery or production of any document, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under the provisions of subsection (1) above shall on conviction be liable to on conviction to a fine not exceeding 500 penalty units, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

**40. Asset Sharing** – Where the Minister considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Act, or the value thereof, be given or remitted to the requesting State.

## **PART VI EXTRADITION**

**41. Money Laundering an Offence for Extradition Purposes** - For the purposes of any law relating to extradition or the rendition of fugitive offenders, money laundering is an offence for which extradition or rendition may be granted.

## **PART VII MISCELLANEOUS**

**42. Regulations** - (1) The Head of State acting on the advice of Cabinet, may from time to time make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary or convenient to be prescribed or provided, for the carrying out of, or the giving full effect to, the provisions of this Act and its due administration including all or any of the following particular purposes -

- (a) To provide for the regulation and control of financial institutions for the prevention of money laundering; or
  - (b) To prescribe procedures and systems for training, identification, record keeping, internal reporting and reporting to the Authority for financial institutions.
- (2) Regulations or rules made under this section may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine of 100 penalty units or imprisonment for a term not exceeding one year or both such fine or imprisonment.

**43. General Penalty Provisions** - Any person who contravenes or fails to comply with any provision or requirement of this Act for which no offence is specifically created is guilty of an offence and shall be liable on conviction to a fine not exceeding 100 penalty units.

**SCHEDULE 1**  
**ACTIVITIES OF FINANCIAL INSTITUTIONS**  
**(SECTION 2)**

1. “Banking business” as defined in the Central Bank of Samoa Act 1984 and the Offshore Banking Act 1987.
2. “Off Shore banking business” as defined in the Off Shore Banking Act 1987.
3. Finance leasing.
4. Venture risk capital.
5. Money transmission services.
6. Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts).
7. Guarantees and commitments.
8. Trading for own account or account of customers in –
  - (a) money market instruments (cheques, bill, certificates of deposit etc);
  - (b) foreign exchange;
  - (c) financial and commodity based derivative instruments (e.g. futures, options, interest rate and foreign exchange instruments, etc.);
  - (d) exchange and interest rate instruments; and
9. Underwriting share issues and the participation in such issues.
10. Money broking.
11. Investment business
12. Insurance business transactions.
13. Real property business transactions.
14. Bullion dealing.
15. Casinos and other gambling and betting services.
16. Acting as a financial intermediary.
17. Trust business.
18. Certified Public Accountants.
19. Lawyers (Barristers and Solicitors).

**PUBLIC NOTICE**

**MONEY LAUNDERING PREVENTION ACT 2000**

**NOTICE OF DETERMINATION OF THE MINISTER OF FINANCE CONCERNING  
THE DEFINITION OF FINANCIAL INSTITUTION**

PURSUANT to Section 2 of the Money Laundering Prevention Act 2000 ('The Act'), **I THE HONOURABLE MISA TLEFONI**, Minister of Finance, give notice that I have determined that the following activity shall be deemed to be included in Schedule 1 of the Act as part of the term "**financial institution**".

"20. Trustee company business as defined by the terms "carry on business" and Trustee Company" in Section 2 of the Trustee Companies Act 1987".

**DATED** this 28<sup>th</sup> day of November 2002

*[signed in original]*

{The Honourable Misa Telefoni}  
MINISTER OF FINANCE

**Money Laundering Prevention Guidelines for the Financial Sector 2002, Appendix 4 to  
the Guidelines**

**MONEY LAUNDERING PREVENTION AUTHORITY  
(CENTRAL BANK OF SAMOA)**

**SUSPICIOUS TRANSACTION REPORT  
(Money Laundering Prevention Act 2000)**

**PLEASE WRITE IN BLOCK LETTERS**

**PART A** -IDENTITY OF CUSTOMERS AND /OR AGENTS INVOLVED IN THE SUSPICIOUS TRANSACTION

**PERSONAL ACCOUNT OR AGENT**

1	Surname	-----
2	Given Names	-----
3	Address (Home)	Country (if not Samoa)
4	Address (Work)	-----
5	Date of Birth	-----
6	Occupation / Business	-----

**COMPANY ACCOUNT**

1	Company Name	-----
2	Full Address	Country (if not Samoa)
	Telephone	-----
3	Nature of Business	-----

**PART B** – TRANSACTION DETAILS

TRANSACTION DATE	AMOUNT	CURRENCY	CASH
			Yes   or   No

NATURE OF TRANSACTION (eg. Deposit/Withdrawal, Purchase, Sale, Foreign Exchange, Telegraphic Transfer, EFTPOS, etc)

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NOTE: FOR MULTIPLE TRANSACTIONS OR MULTIPLE FACILITIES PLEASE RECORD DETAILS ON A SEPARATE SHEET

Details Of Facilities With Financial Institutions Involved

Account Name	
Account Type	
Account Number	
Names of Signatories	
1.	4.
2.	5.
3.	6.

**STAMP**

**PART C** – GROUNDS FOR SUSPICION

Give details of the nature of circumstances surrounding the transaction and the reason for suspicion

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Agent Conducting Transaction

ID Type	ID Number	Issuer

Account Holder (eg. Drivers Licence, Passport, Birth Cert, Id & etc).

ID Type	ID Number	Issuer

Description FOR PERSONAL ACCOUNT HOLDERS ONLY

Sex : Male / Female	Race
Eye Colour	Height (Feet)

**PASSPORT  
PHOTO**

Build	Skin colour
Hair style/ colour	Age

Clothing
Distinguishing marks/identifying features (tattoo, facial, hair, accent, etc)

**PART E** -

FINANCIAL INSTITUTION DETAILS AND PLACE OF TRANSACTION  
FOR MONEY LAUNDERING AUTHORITY USE ONLY

Institution Type (eg: Bank, Trust Co, Insurance Co etc)	
Name of Institution	
Address	
Telephone	
Fax number	
E-Mail Address	

Please forward this form direct to the Money Laundering Prevention Authority L5 of the Central Bank building immediately when a suspicious transaction is detected.

**Annex 4: List of all laws, regulations and other material received**

Central Bank of Samoa – Monetary Policy Statement for financial year 2004/05 – Apia September 2004

International Insurance Act 1988 (Incorporating amendments to July 1998)

The Crimes Ordinance 1961

Samoa International Finance Authority Act 2005

Trustee Companies Act 1987 (Incorporating amendments to July 1998)

International Partnership & Limited Partnership Act 1998

International Banking Act 2005

The Central Bank of Western Samoa Act 1984

The Central Bank of Western Samoa Amendment Act 1986

Financial Institutions Act 1996

Financial Institutions Amendment Act 2001

SBC Prudential Supervision of Banks, Prudential Statements 1995

SBC Prudential Supervision of Development Bank of Samoa, Prudential Statements 2004

SBC Prudential Supervision of Samoa International Provident Fund, Prudential Statements 2004

Money Laundering Prevention Act 2000

Money Laundering Prevention Amendment 2000

Money Laundering Prevention Amendment Bill 2003

Money Laundering Prevention Regulation 2002

Exchange Control Regulations 1999

Guidelines for licensing restricted foreign exchange dealers/money changers (no date)

Prevention and Suppression of Terrorism Act 2002

Crimes (Abolition of Death Penalty) Amendment 2004

Fines (Review and Amendment) Act 1998

Tourism and Hotel Development Incentive 2003

Extradition Act 1974

The Customs Act 1977

Customs Amendment Act 1998

Constitution of the Independent State of Samoa

Insurance Act 1976

Insurance Amendment Act 1988

Samoa International Companies Act 1987 – as amended 2005

Samoa International Insurance Act 1998 – as amended 2005

Samoa International Partnership and Limited Partnership Act 1998 – as amended 2005

Samoa International Trusts Act 1987 – as amended 2005

Samoa Segregated Fund International Companies Act 2000 – as amended 2005

Bank of Samoa Act 1990

Companies Act 2001

Mutual Assistance in Criminal Matters Bill 2003

Central Bank of Samoa Act 1984

Financial Institutions Act 1996

Proceeds Of Crime Bill 2003