Country Review Report of Samoa

Review by Oman and South Sudan of the implementation by Samoa of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015
I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Samoa of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Samoa, and supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from the Sultanate of Oman and South Sudan, by means of telephone conferences and e-mail exchanges and involving: from Oman: Mr. Abdullah Khalfan Al Abri, Mr. Khalifa Hamid Harith Al Fari, Mr. Mohammed Solaiman Al Rashdi, and Mr. Mohammed Khamis Al Hajri; from South Sudan: Mr. Akuei Mayuen Deng Dut. The representatives of the Secretariat were: Ms. Stefanie Holling and Mr. Badr El Banna.

6. A country visit, agreed to by Samoa, was conducted from 17 to 19 September 2019 in Apia.

III. Executive summary

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


Samoa has a constitutional system incorporating common law and customary laws. The Court of Appeals is the highest court; it has appellate jurisdiction only and can review the rulings of any other court (sect. 75 of the Constitution). The executive branch is comprised of the Head of State and the executive Government.
Samoa is a dualist State. Treaties are not self-executing and require to be incorporated domestically through an act of Parliament (sect. 111 of the Constitution).


Relevant institutions in the fight against corruption include the Public service Commission, the Office of the Ombudsman, the Office of the Attorney General, the Samoa Audit Office, the Samoa Police Service, the Samoa Transnational Crime Unit and the Samoa Financial Intelligence Unit.

2. Chapter III: criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

**Bribery and trading in influence (arts. 15, 16, 18 and 21)**

The active and passive bribery of public officials is criminalized (sect. 138 of the Crimes Act). An official is defined as any person in the service of the Government of Samoa, including honorary service or service abroad, or any member or employee of any local authority or public body (sect. 132 of the Crimes Act). Bribery of judicial officers, ministers, Members of Parliament and law enforcement officers is criminalized separately (sects. 133–137 of the Crimes Act). Acts of indirect bribery are covered, as are third-party benefits. The definition of a bribe is not interpreted as including immaterial benefits. While the promise of a bribe is not explicitly criminalized, it is covered by the modality of “attempting to obtain” a bribe. All bribery offences contain a mental element of acting “corruptly”, interpreted to mean intent.

The consent of the Attorney General is required for the prosecution of bribery of a minister or a member of the legislative assembly (sects. 135–136 of the Crimes Act), but the decision must be delegated to another prosecutor in cases of conflict of interest.

The active bribery of foreign public officials and officials of public international organizations is criminalized under sections 150 and 151 of the Crimes Act. Section 15, paragraph 2, provides an exception for offences committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action, when the value of the benefit is small (“facilitation payments”). Section 152, paragraph 1, provides an exception if the offence was committed abroad and was not an offence under the laws of the country in which the bribee was situated. Passive foreign bribery is not criminalized.

While there have been no cases, the broad wording of the bribery offences covers active trading in influence. Passive trading in influence is not criminalized.

Bribery in the private sector is not criminalized.
Money-laundering, concealment (arts. 23 and 24)
Samoa criminalizes the laundering of proceeds of crime, including the different aspects of criminal participation and attempt (sect. 11 of the Proceeds of Crime Act and sect. 152 A of the Crimes Act).

Samoa has adopted a threshold approach; predicate offences must be serious offences under domestic law, defined as any act or omission that constitutes an offence and that is punishable by a maximum period of not less than 12 months of imprisonment (sect. 2 of the Proceeds of Crime Act). This includes the relevant offences established in accordance with the Convention (Convention offences).

Predicate offences include offences committed in another State when the relevant conduct is a criminal offence under the domestic law of that State and would constitute a serious offence under Samoan law.

Samoa has criminalized self-laundering.

Samoa has furnished a copy of the Proceeds of Crime Act in the course of the review.

No money-laundering cases have been brought for prosecution or are pending investigation.

Section 167 of the Crimes Act criminalizes as a separate offence the act of “receiving”, which covers the possession of, or control over, property obtained by any crime or helping in concealing or disposing of that property.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)
In the absence of a stand-alone offence of embezzlement, theft, theft by a person in a special relationship, criminal breach of trust and obtaining by deception or causing loss by deception (sects. 161, 162, 170 and 172 of the Crimes Act) are criminalized in the public and private sectors.

The abuse of functions is partially criminalized through the offences of general dishonesty against the Government and corrupt use of official information (sects. 47 and 147 of the Crimes Act).

Illicit enrichment is not criminalized.

Obstruction of justice (art. 25)
While there is no stand-alone offence of obstruction of justice, several provisions cover the relevant conduct, including unlawful intimidation, injuring in the course of criminal conduct, aggravated assault, using a firearm against a law enforcement officer, perjury, fabricating evidence, conspiring to defeat justice, threatening words or behaviour to a Member of Parliament or an officer and contempt of court (sects. 46, 121, 122, 127, 139–141, 145 and 222 of the Crimes Act) and impersonating a member of the police service (sect. 70 of the Police Service Act 2009).

Liability of legal persons (art. 26)
The definition of person in the Acts Interpretation Act 2015 encompasses natural persons as well as bodies of persons, whether corporate or unincorporated. If a body corporate commits an offence for which the only penalty prescribed is a term
of imprisonment, the body corporate is liable to a fine instead (sect. 56, para. 2, of the Acts Interpretation Act).

The Proceeds of Crime Act establishes criminal liability for money-laundering offences committed by legal persons (sects. 11, 12, 54, 64, 69 and 77). Nothing in Samoan law prejudices a natural person’s criminal liability. For the offence of money-laundering, a legal person’s liability for acting in an official capacity for or on behalf of a body of persons brings with it the natural person’s culpability (sect. 12 of the Proceeds of Crime Act). No case law is available regarding the liability of legal persons.

Civil action can also be brought against legal persons.

**Participation and attempt (art. 27)**
The Crimes Act covers ancillary offences, including conspiracy, incitement, accessory before and after the fact, counselling and procuring (sects. 33 and 35–38). The attempt to commit or procure the commission of an offence is criminalized (sect. 39), but not the mere preparation of an offence.

**Prosecution, adjudication and sanctions: cooperation with law enforcement authorities (arts. 30 and 37)**
Sanctions for Convention offences range from up to 50 penalty units (one penalty unit is 100 tala, that is, approximately $37) or up to two years’ imprisonment for the bribery of customs officials, to up to seven years’ imprisonment for bribery of all other public officials and money-laundering. For theft in a special relationship, sentences depend on the value of the property and are aggravated for offences committed by a public official. Sentences for passive bribery of judicial officers, ministers, associate ministers or chief executive officers of the Government are also aggravated (up to 14 years’ imprisonment).

The Head of State enjoys absolute immunity while holding office, except for crimes under the Rome Statute of the International Criminal Court (sect. 5 of the Head of State Act). A member of the legislative assembly may be convicted of a criminal offence but may not be arrested during attendance of the assembly or a committee thereof, in accordance with section 4 of the Legislative Assembly Powers and Privileges Ordinance 1960. Functional immunities are granted to specific public officials where it is established that they acted in good faith and properly exercised their power, as provided for, for example, in sections 75 and 83 of the Proceeds of Crime Act.

The decision to prosecute or not is bound by the outcome of a three-step test consisting of a prima facie case test, a reasonable prospects test and a public interest test. Any element of “official corruption” or abuse of authority by the defendant is a pro-prosecution factor. A decision against prosecution can be reversed in justifiable circumstances (sect. 9 of the Prosecution Guidelines). Private prosecution exists in accordance with section 2 of the Crimes Act, and the division for police complaints of the Office of the Ombudsman can be called upon, in accordance with section 18 of the Ombudsman Act 2013.

A defendant may be granted bail under the conditions laid out in sections 99 et seq. of the Criminal Procedure Act. While not codified, in practice, parole decisions depend on the seriousness of an offence and behaviour and time spent in prison.
The Public Finance Management Act 2001 provides for the suspension of authority, including of a head of department, from dealing with public funds or public property, pending an investigation (sect. 14). An employee or officer suspected of breaching the code of conduct or charged with or convicted of the commission of an offence may be suspended from duty, temporarily assigned to other duties within a ministry or removed (sects. 43–47 of the Public Service Act 2004). Procedures for the disqualification from or relinquishment of posts following a conviction exist for Members of Parliament, the Electoral Commissioner, the Ombudsman and directors of public bodies. No disqualification procedure exists for other public offices or offices in State-owned enterprises, for which applications are handled on a case-by-case basis and objective decisions are provided for by a selection panel consisting of one commissioner and at least one private sector representative. The possibility of parallel criminal and disciplinary measures is not precluded by legislation.

The rehabilitation and the reintegration of offenders into society appear to be an overarching concept in the criminal justice system. If considered practicable and safe for the community (sect. 5 of the Community Justice Act 2008), sentences of community work or supervision are preferred to prison sentences, and participation in a medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or re-integrative programme may be ordered in addition.

An early guilty plea or efforts to make amends by the defendant may be taken into account by the court when sentencing. Collaboration with law enforcement is encouraged through the possibility of plea bargains or provision of immunity from prosecution. A co-defendant acting as a witness is subject to the protection measures for witnesses (under bail conditions not to contact prosecution witnesses) described in the section below on article 32.

Protection of witnesses and reporting persons (arts. 32 and 33)
Samoa provides for the protection of witnesses and their relatives or close associates, including physical protection or relocation, and measures are in place to ensure safety when giving testimony, such as testimony provision through video link (sect. 48 of the Criminal Procedure Act and sects. 93–97 of the Evidence Act 2015). Possible witness tampering is grounds for bail revocation. Victims’ rights are specifically protected through a memorandum of understanding with a victim support group, and victims’ participation in criminal proceedings was cited by Samoa as one of the most important requirements of its system.

Samoa has not adopted legislation on the protection of reporting persons against unjustified treatment or retaliation. In practice, it was stated that the identities of reporting persons were protected upon request and that complaints were treated confidentially.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)
Property considered by the court as “tainted” may be forfeited to the State under the Proceeds of Crime Act. Recoverable property includes any proceeds of crime or instruments, or portions thereof, whether situated within or outside Samoa (sect. 2). Proceeds of crime means any property wholly or partly derived or realized, whether directly or indirectly, from a serious offence or terrorist act (sect. 6). If the proceeds
of crime are intermingled with other property from which they cannot be readily separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime (sect. 6, para. 2). Forfeiture is also possible where the accused has absconded (sects. 18 and 22). Value-based confiscation is provided for in sections 24 and 25. Before issuing a forfeiture order, the court may set aside or void any transfer of the property that occurred for the purpose of avoiding the forfeiture (sect. 26). Pecuniary penalty orders against a person for benefits derived from the commission of an offence are also possible (sect. 14).

Law enforcement authorities have access to several registers to facilitate asset tracing. The Proceeds of Crime Act and the Criminal Procedure Act provide for the possibility of search warrants that extend to seize, as well as restraining orders (sect. 37–57 of the Proceeds of Crime Act and sect. 33 of the Criminal Procedure Act). Property seized on the basis of a search warrant must be returned if no forfeiture order is made within 28 days (sect. 42 of the Proceeds of Crime Act). An application for a restraining order may be made if the defendant is about to be charged with a serious offence within five days (sect. 48 of the Proceeds of Crime Act). Prior to issuing a restraining order, notice must be given to persons who may have an interest in the property. Upon request by the Attorney General, the court may consider the application for a restraining order without notice having been given, but a subsequently issued restraining order may only stay in effect for 14 days or any lesser period that the court may specify in the order (sect. 47, para. 3, of the Proceeds of Crime Act).

Bank, financial and commercial records can be requested or seized (sect. 33 of the Criminal Procedure Act and sect. 27, para. 3 (c), of the Financial Institutions Act). Bank secrecy is not an obstacle to effective criminal investigations (sect. 3 of the Money-Laundering Prevention Act).

Seized objects are to be kept and reasonably maintained by the head of the enforcement agency executing a restraining order as the responsible custodian (sect. 39 of the Proceeds of Crime Act). No guidelines exist in this regard. Forfeited assets are deposited in the Confiscated Assets Fund (sects. 34–38 of the Money-Laundering Prevention Act).

An offender is not required to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.

The Proceeds of Crime Act provides for the protection of bona fide third parties through notice requirements prior to the issuance of restraining (sect. 47) or forfeiture orders (sect. 15). A person claiming to have an interest in property subject to forfeiture may apply for an appeal for return of the property or compensation if the period allowed for appeals has expired (sect. 21).

Statute of limitations; criminal record (arts. 29 and 41)
No statute of limitations exists for offences with a maximum penalty of more than three months’ imprisonment (sect. 16 of the Criminal Procedure Act).

A previous conviction or acquittal by a Samoan or foreign court may be presented as evidence in criminal proceedings (sects. 2 and 107 of the Evidence Act).
Jurisdiction (art. 42)
Samoa has established jurisdiction regarding the circumstances referred to in article 42 of the Convention, except for Convention offences committed against Samoan citizens or against Samoa (sects. 3–8 of the Crimes Act). Samoa has not established jurisdiction over such offences, except for the active bribery of foreign public officials (sect. 8, para. 1 (c), of the Crimes Act), when the alleged offender is present in its territory and it does not extradite him or her.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)
The determination of corrupt, fraudulent, collusive, coercive or obstructive conduct by a government contractor can be a reason for the rejection of proposals, the cancellation of portions of funding, the termination of contracts or the disqualification or sanctioning of the person or company, including their debarment from participation in procurement, be it as the tenderer or a subcontractor, supplier or other to the tenderer (part K, Treasury Instructions 2013 and subsequent amendments).
Nothing in the law prevents an entity or a person from initiating legal proceedings to obtain compensation for damages.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)
The police (fraud squad), the Attorney General, the Samoa Transnational Crime Unit and the Samoa Financial Intelligence Unit are primary investigative authorities for Convention offences. The independence of the Attorney General, the Auditor General and the Ombudsman are established by law. Training and resources for domestic investigations and prosecutions are limited.

No formal mechanism for inter-agency cooperation among law enforcement and other authorities exists, but informal cooperation takes place. For money-laundering, the Samoa Financial Intelligence Unit refers reports to law enforcement agencies, which may in turn request necessary information from the Unit (sect. 7 of the Money-Laundering Prevention Act). Cooperation also takes place between the central bank and the financial sector.

There is no legal requirement for public officials to report corruption and other misconduct to the investigating and prosecuting authorities; however, authorities stated that this is encouraged in practice. Financial institutions are obliged to report suspicious transactions (sect. 23 of the Money-Laundering Prevention Act).

2.2. Successes and good practices

• Samoa uses a pragmatic and needs-specific and needs-based approach to address capacity issues as they arise, such as the placement of foreign prosecutors in cases of possible conflicts of interest.

• The rehabilitation and reintegration system, including through tailored community sentences instead of prison sentences, has a high success rate and few convicts reoffend (art. 30, para. 10).

• No statute of limitations exists for Convention offences.
2.3. Challenges in implementation

It is recommended that Samoa:

- Consider harmonizing the sanctions for bribery of members of the police service with those for bribery of other public officials (art. 15 (a) and art. 30, para. 1).
- Amend its legislation to cover immaterial benefits (arts. 15–16).
- Monitor that the additional element of “corruptly” constitutes no obstacle to prosecution. If the judiciary does not interpret the law in this way in the future, legislative reform is required (arts. 15, 16 and 18).
- Abolish the exception for so-called “facilitation payments” and for offences committed abroad that are not criminalized in the country where the bribee was situated (art. 16).
- Consider criminalizing the passive bribery of foreign public officials and officials of public international organizations (art. 16).
- Monitor that embezzlement, misappropriation or other diversion are covered under section 162 of the Crimes Act. If the judiciary does not interpret the law in this way in the future, legislative reform is required (art. 17).
- Monitor the application of the legislation to ensure that active trading in influence is criminalized (art. 18).
- Consider criminalizing passive trading in influence (art. 18).
- Consider broadening its legislation to include any act or omission by a public official, in violation of laws, for the purpose of obtaining an undue advantage (art. 19).
- Consider criminalizing illicit enrichment (art. 20).
- Consider criminalizing bribery in the private sector (art. 21).
- Assess the necessity of absolute criminal immunity of the Head of State during his or her term of office (art. 30, para. 2).
- Consider codifying the conditions to be taken into account when deciding on parole and include as a condition the gravity of the offence (art. 30, para. 5).
- Consider establishing procedures for the disqualification of public officials convicted of corruption offences from holding public office or holding office in an enterprise owned by the State (art. 30, para. 7 (a)–(b)).
- Assess whether extending the period between applying for a restraining order and filing criminal charges to more than five days and issuing a longer restraining order when not having given notice would be conducive to effective restraint (art. 31, para. 2).
- Adopt additional measures to improve the regulation of administration of frozen, seized and confiscated property (art. 31, para. 3).
- Consider adopting measures requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31, para. 8).
• Consider incorporating appropriate measures on the protection of reporting persons and provide for their effective enforcement (art. 33).

• Adopt measures to strengthen or formalize cooperation and coordination between the various bodies involved in the fight against corruption, which may include a regular round table or the implementation of the envisaged integrity office network (art. 38).

• Samoa may wish to require public officials to report corruption and other misconduct to the authorities (art. 38).

• Adopt effective measures to encourage effective cooperation between law enforcement authorities and entities of the private sector (art. 39).

• Consider establishing jurisdiction over Convention offences committed against Samoan citizens or against Samoa (art. 42, para. 2 (a)–(d)).

• Consider establishing jurisdiction over Convention offences, beyond the active bribery of foreign public officials, when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).

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

• Assistance with quantifying corruption in Samoa (statistical and qualitative).

• Trainings on cybercrime, fraud, money-laundering and financial investigation (art. 30).

3. Chapter IV: international cooperation

Samoa has a framework in place to combat corruption through international cooperation. However, owing to the absence of detailed statistics, it was difficult to assess in detail its practice regarding international cooperation in corruption cases.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated by the provisions of the Extradition Act. The Act applies, with necessary modifications, where a bilateral agreement or arrangement exists (sect. 20). Samoa is bound by the London Scheme for Extradition within the Commonwealth.

Extradition is only available to and from other countries pursuant to a bilateral extradition treaty and, in the absence of a treaty, to Commonwealth countries designated by order of the Head of State (sect. 2 of the Extradition Act). Samoa has not concluded any bilateral extradition treaties, and only 10 Commonwealth countries have been designated as extradition countries. Samoa does not consider the Convention as a basis for extradition.

The extradition procedure involves both a judicial and an administrative procedure. Requests for extradition must be submitted through the diplomatic channel for transmission to the Minister of Justice, who may issue an authority to proceed
unless an order for extradition could not be made in accordance with the provisions of the Extradition Act (sect. 7).

An arrest warrant of the person sought for extradition may be issued by a district court judge (sect. 8 of the Extradition Act). The arrested person should be brought before a court of committal as soon as practicable. After hearing any evidence tendered, the court should commit the person to custody to await extradition or discharge that person from custody (sect. 9). The order of committal is subject to appeal before the Supreme Court (sect. 10).

Where a person is committed to await extradition and is not discharged by order of the Supreme Court, the Minister may order the person to be extradited or decide otherwise, for example, if the person could be or has been sentenced to death in the requesting country or if the person is a citizen of Samoa (sect. 11 of the Extradition Act). Although the Act does not mandate the submission of the case for prosecution if extradition is not granted, Samoa adopts the principle aut dedere aut judicare based on the principle of the legality of prosecution coupled with the provisions on active personal jurisdiction.

The Extradition Act is silent on the procedures to follow if an arrest warrant was not issued pursuant to its section 8.

Samoa requires dual criminality with a minimum penalty of 12 months’ imprisonment in the requesting country as a precondition for extradition (sect. 2 of the Extradition Act). For extradition to a Commonwealth country, the minimum penalty required is two years in Samoa and the requesting country (art. 2 of the London Scheme). On the basis of dual criminality, some Convention offences are not subject to extradition because they have not been criminalized in Samoa.

The Extradition Act is silent on the matter of extradition requests covering several separate offences, some of which are not extraditable by reason of their period of imprisonment.

Samoa’s legal framework does not guarantee that Convention offences are included as extraditable offences in existing and future extradition treaties.

“Extradition offence” includes offences of a purely fiscal character (sect. 2 of the Extradition Act), thus preventing the refusal of an extradition request on the sole ground that the offence is also considered to involve fiscal matters.

Samoa has not taken sufficient measures to expedite extradition procedures and to simplify evidentiary requirements relating thereto.

The Constitution guarantees fundamental rights for all persons regardless of their nationality, including the rights to personal liberty, a fair trial and freedom from discriminatory legislation (sects. 6, 9 and 15). A person shall not be extradited if that person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions (sect. 6, para. 1 (c), of the Extradition Act). The Extradition Act also provides for procedures that allow the persons sought for extradition to defend themselves (sects. 9–12).

The legislation does not provide for the enforcement of foreign penal judgments (except for confiscation, sect. 49 of the Mutual Assistance in Criminal Matters Act), nor does it provide for the requirement to consult with the requesting State before refusing extradition.
The transfer of sentenced persons to and from Samoa is regulated by the provisions of the International Transfer of Prisoners Act 2009 and relevant treaties. Transfer is possible with the consent of the Cabinet, regardless of the existence of a treaty. Samoa is only party to the Scheme for the Transfer of Convicted Offenders within the Commonwealth and has not concluded any other relevant bilateral or multilateral agreements.

There are no provisions governing the transfer of criminal proceedings.

**Mutual legal assistance (art. 46)**

Mutual legal assistance is regulated by the provisions of the Mutual Assistance in Criminal Matters Act. Samoa is bound by the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and has not concluded any bilateral or multilateral mutual legal assistance treaty.

Samoa could provide assistance regardless of the existence of a treaty and the authorities can exchange information spontaneously.

The Office of the Attorney General is the central authority of Samoa for mutual legal assistance. The acceptable language for requests for mutual legal assistance is English. The Mutual Assistance Act does not determine the acceptable language or languages for such requests. The Secretary-General of the United Nations has not been notified in this regard. Section 23 of the Act implies that a request must be made in writing.

Outgoing requests for mutual legal assistance must be made by or through the Attorney General, while incoming requests must be made to the Attorney General or a person authorized by him or her (sect. 22 of the Mutual Assistance Act). Upon receiving a request, the Attorney General will determine whether the Act requirements are met. If so, the Attorney General will authorize the request to be executed by the appropriate authorities.

Requests for mutual legal assistance should be submitted through the diplomatic channel.

The Mutual Assistance Act requires dual criminality for all mutual legal assistance, including that not involving coercive actions (sect. 2 of the Proceeds of Crime Act).

In case of refusal of mutual legal assistance, the Attorney General should provide the requesting State with the notice of and reasons for refusal (sect. 25 of the Mutual Assistance Act).

The Mutual Assistance Act provides for a wide range of mutual legal assistance, including locating or identifying persons, obtaining evidence, arranging attendance of persons to give evidence abroad, search and seizure, arranging service and the enforcement of foreign confiscation and restraining orders (sects. 27, 28, 33, 39, 46, 49 and 50). However, the application of those provisions is limited to cases where dual criminality as a requirement for mutual legal assistance is available.

The Act permits examination or cross-examination through a video or Internet link from the requesting country of any person giving evidence or producing a document or other article (sect. 31).

Requests for mutual legal assistance regarding natural and legal persons are treated equally.
Section 20 of the Mutual Assistance Act, on restriction on use of evidence, appears to prevent Samoan authorities from disclosing received information that is exculpatory to an accused person. Section 23 outlines the requirements that a requesting State must meet in a request for mutual legal assistance. The Act does not prevent the Attorney General from requesting additional information that appears necessary for the execution of the request or when it can facilitate such execution.

Bank secrecy and the fact that an offence also involves fiscal matters are not recognized as a ground for refusal of assistance (sect. 24 of the Mutual Assistance Act). Requests for mutual legal assistance are executed in accordance with the domestic law of Samoa and, where possible, the procedures specified in the request (sect. 46, para. 3).

Samoan law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Samoa Financial Intelligence Unit can also cooperate with its foreign counterparts through its membership in the Egmont Group of Financial Intelligence Units. The Samoa Financial Intelligence Unit is a member of the Association of Pacific Island Financial Intelligence Units. The Samoa Transnational Crime Unit is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre is hosted by the Government of Samoa.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Samoan law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Samoa Financial Intelligence Unit can also cooperate with its foreign counterparts through its membership in the Egmont Group of Financial Intelligence Units. The Samoa Financial Intelligence Unit is a member of the Association of Pacific Island Financial Intelligence Units. The Samoa Transnational Crime Unit is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre is hosted by the Government of Samoa.

Samoan law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Samoa Financial Intelligence Unit can also cooperate with its foreign counterparts through its membership in the Egmont Group of Financial Intelligence Units. The Samoa Financial Intelligence Unit is a member of the Association of Pacific Island Financial Intelligence Units. The Samoa Transnational Crime Unit is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre is hosted by the Government of Samoa.

Australia and New Zealand have placed liaison officers who, as appropriate, act as advisers or mentors to the Samoa Police Service and help with cooperation at the operational level. Samoa has been involved in exchanges of personnel.

Samoan law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Samoa Financial Intelligence Unit can also cooperate with its foreign counterparts through its membership in the Egmont Group of Financial Intelligence Units. The Samoa Financial Intelligence Unit is a member of the Association of Pacific Island Financial Intelligence Units. The Samoa Transnational Crime Unit is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre is hosted by the Government of Samoa.
Part 18 of the Crimes Act (sects. 205–220) is dedicated to crimes involving electronic systems, which allows for cooperation in cases of offences covered by the Convention committed through the use of modern technology. The Fraud Squad of the Criminal Investigation Division has specialized personnel to handle cybercrimes.

The Samoa Police Service is able to work jointly with foreign counterparts pursuant to part IV of the Police Powers Act and has done so.

Special investigative techniques envisaged under the Police Powers Act may be used in relation to offences covered by the Convention, including communication interception and surveillance. Those methods can be made available in the context of international cooperation.

Samoa does not regulate undercover operations. Controlled delivery is only possible in relation to terrorist offences.

Samoaan legislation does not prevent the conclusion of appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques.

3.2.Challenges in implementation

It is recommended that Samoa:

• Adapt its information system to allow it to collect data and provide more detailed statistics on international cooperation.

• Samoa may wish to allow extradition for offences related to those established in accordance with the Convention (art. 44, para. 3).

• Take necessary measures to guarantee that Convention offences are included as extraditable offences in existing and future extradition treaties, including by ensuring that offences that still have to be criminalized (see sect. 2.3 above) are considered extraditable offences (art. 44, para. 4).

• Seek, where appropriate, to conclude treaties on extradition with other States (art. 44, para. 6 (b)).

• Clarify the procedures to follow if a warrant has not been issued; and endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto (art. 44, para. 9).

• Provide for the requirement to consult with the requesting State before refusing extradition (art. 44, para. 17).

• Seek, where appropriate, to conclude agreements or arrangements on extradition (art. 44, para. 18).

• Explicitly provide for the disclosure of received information that is exculpatory to an accused person (art. 46, para. 5).

• Allow for the provision of mutual legal assistance that does not involve coercive action in the absence of dual criminality (art. 46, para. 9).

• Notify the Secretary-General of the United Nations of the designated central authority and acceptable language or languages for requests for mutual legal assistance (art. 46, paras. 13–14).
• Ensure that requests for mutual legal assistance are executed in a timely manner, taking into account any deadlines requested, including by giving thought to adopting a manual and procedures or guidelines on mutual legal assistance that would outline in greater detail the steps to be followed by authorities in executing and making such requests, as well as any requirements and time frames to be followed, for further clarity, for the benefit of Samoan authorities and of requesting States (art. 46, para. 24).

• Determine the responsibility for the costs of executing requests for mutual legal assistance (art. 46, para. 28).

• Consider establishing a framework for transferring criminal proceedings (art. 47).

• Take measures to widen the scope of special investigative techniques to allow for the use of controlled deliveries and, where appropriate, undercover operations, and make those methods available in the context of international cooperation (art. 50, paras. 1–4).

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

• Capacity-building on handling requests for mutual legal assistance (art. 46).

• Assistance in developing a case management system in the Office of the Attorney General (art. 46).

IV. Implementation of the Convention

A. Ratification of the Convention

Samoa acceded to the UN Convention against Corruption on 16 April 2018. Workshops have been held for Samoan Parliamentarians as well as senior government officials on the requirements and good practices of anti-corruption implementation under the joint UNDP-UNODC ‘UN regional Anti-Corruption’ (UNPRAC) Project.

B. Legal system of Samoa

(A) National Government: Samoa follows the Westminster form of Government (influenced by colonial administrations). This form of Government features the separation of powers of the three branches of government. This is reflected in Parts IV, V and VI of the Constitution of the Independent State of Samoa 1960.

Only those who hold matai titles can run for elections. Members of Parliament are elected or voted in by Samoans who have attained the age of 21 years (majority age). From the elected MPs, the Cabinet Ministers are chosen by the person appointed as Prime Minister (as per Article 32 of the Constitution of the Independent State of Samoa 1960).
(i) Executive Branch:

**Head of State:** O le Ao o le Malo - from 1 January 1962, 2 traditional kings, nominated by the Constitution, held the office jointly. On the death of one the other, Chief Susuga Malietoa Tanumafili II, became sole Head of State. Subsequent Heads of State will be elected by a majority of the members of the Legislative Assembly for a five-year term.

**Head of Government:** Prime Minister - the Head of State appoints the Prime Minister, being a Member of Parliament who has the confidence of a majority in the Parliament.

**Cabinet:** Cabinet of Ministers - 8-12 Ministers appointed by the Head of State on the advice of the Prime Minister, responsible to Parliament.

**Executive Council:** consisting of the Head of State, the Prime Minister and the Cabinet.

**Fonos - Village Councils,** formally recognised by the Village Fono Act 1990 (Samoa), deal exclusively with village affairs such as culture, customs, development, and traditions, including all customary land matters. See more information below in judicial branch (the Fono has executory and judicial power).

**Village Mayor (sui-o-le-nu'u/sui-o-le-mālō)** - Village representatives that are appointed by Government on three-year terms; Represents the village in government meetings and programs and also represents the government within village meetings. The two titles are commonly used interchangeably but there is a subtle difference between the two. Sui-o-le-nuu (Village representative) is the title given to the mayor of a traditionally recognized/structured village and sui-o-le-malo (Government representative) is for villages that are not traditionally recognized/structured and do not have a functioning village council (mostly those located near and around the urban area). The duties of the village mayor are stipulated under section 15 of the Internal Affairs Act 1995.

**Village Women’s Committee Representative (sui-o-tamaitai-o-le-Nuu)** - Nominated by the women’s committee from different villages and appointed by government for three-year terms; The roles and duties of the Women’s committee representative are provided for under section 16B of the Ministry of Women Affairs Act 1990.

(ii) Legislative Branch:

**Parliament** - Parliament consists of the Head of State together with the Legislative Assembly; unicameral Parliament with usually 49 seats. However, following an amendment to the Constitution in 2013 that mandated at least 10% of parliament to be females, the 2016 elections resulted in 50 Members of Parliament. Out of the 50 MPs, 47 are Matai who perform dual roles as tribal chiefs and modern politicians. Two seats are reserved for non-Samoans to represent the non-native population. An extra seat was added to satisfy the required 10% representation of female MPs as per the Constitution amendment in 2013. Members serve a five-year term, are elected by universal suffrage and their role is to pass laws, approve the expenditure of money, conduct debates on bills, enact statutes and serve as a forum for political debates. The Standing Orders of the Parliament of Samoa 2016 are the permanent rules, unless otherwise amended by Parliament, that guide and regulate the proceedings of parliament.

(iii) Judicial Branch: Responsible for interpreting and applying Parliament’s laws

**Fonos - Village Councils,** formally recognised by the Village Fono Act 1990 (Samoa), deal exclusively with village affairs such as culture, customs and traditions and including all customary land matters. It is not a court, but a rule making body which is highly regarded. The Village Fono have the power to deal with matters of the village, in
accordance with the custom and usage of that village as provided for in the Village Fono Act 1990. They are free to create their own “laws” and guidelines for how village life should be carried out. The Village Fono are headed by a collection of Matais and they act as the judicial and executive authority of each village. Jurisdiction of the Village Fono is limited to the residents of each particular village, except those on government, freehold, or leasehold lands. Power is given to the Village Fono to punish any resident, in accordance with custom and usage of the village, who fails to obey any direction of the Fono or acts contrary to customary law. Customary law is defined as “any custom or usage which has acquired the force of law in Samoa under the provisions of any Act or under a judgment of a Court of competent jurisdiction”. Customary law must also be consistent with the Constitution and if it comes into conflict, the Constitution prevails. Punishments handed down by the Village Fono for violations of customary law include fines in money, animals, foods, finely woven mats, as well as the order of the offender to undertake any work on village land, and in the most severe cases, banishment. Decision making in the Village Fono is based on consensus using the ‘gentleman’s agreement’ approach; debate will continue until unanimity is reached and all signify their agreement. Unlike the Land and Titles Court and other courts, the Village Fono Act 1990 further allows matters to be resolved without a written record. Its decisions are appealable to the Land and Titles Court.

The Land and Titles Court - The Land and Titles Court is set up under the Land and Titles Act 1981 with jurisdiction over “all matters relating to Samoan names and titles, and claims and disputes between Samoans relating to customary land, and right of succession to property held in accordance with the customs and usages of the Samoan race” (section 34 of the LTC Act 1981 (Samoa)) and includes refusing to hear a matter if a party has not undertaken Samoan conciliation (section 34C of the LTC Act 1981 (Samoa)). Also, section 34D of the LTC Act 1981 (Samoa) provides for LTC’s power to consider a dispute resolution process to assist parties resolves their issues before coming back to court. No legal representation is permitted in the Land and Titles Court and villagers represent themselves before a panel of judges to argue their claims. Judgments in this court are made against the land and therefore are binding on all people affected, whether they are parties to the case or not. Decisions must give reasons, be pronounced in open court and be published. Finally, the Land and Titles Court has appellate jurisdiction over both its own decisions and decisions of the Village Fono. Land and Title Courts may hear appeals if there is:
1) new evidence
2) misconduct by a party or a witness
3) misconduct or mistake on the part of the court
4) lack of jurisdiction
5) error of law or
6) a decision against the weight of the evidence.

District Court – Originally established under the Magistrate's Court Act 1969 which was later amended in 1992 as the District Court Act. The District Court has jurisdiction over both civil and criminal matters with the below prescribed limitations;

Civil matters:
(a) If the debt, demand or damage, or the value of the chattels claimed is not more than $20,000; and
(b) if the debt or demand claimed consists of a balance not exceeding $20,000, after a set-off of any debt or demand claimed or recoverable by the defendant
from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his or her claim or demand.

(2) A judge has jurisdiction to hear and determine any action for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any law, if both of the following apply:
(a) is it no expressly provided by that or any law that the demand is only recoverable in some other Court; and
(b) the amount claimed in the action does not exceed the sum of $20,000.

**Criminal matters**

(a) an offence of any nature which is punishable only by a fine or forfeiture of an amount permitted under this Act permitted under this Act; and
(b) an offence of any nature which is punishable by a term of imprisonment which does not exceed 7 years, whether or not it is also punishable by a fine, penalty of forfeiture:

The District Court consists of six other courts: Family Court, Youth Court, Family Violence Court, Faamasino Fesoasoani (FF Court), Coroners Court (special court) and the Alcohol and Drugs Court;

**Faamasino Fesoasoani Court (FF Court):** It is presided over by an appointed judge of the Land and Titles Court. It has civil jurisdiction to hear and determine any action where the debt, demand or damage, or the value of the chattels claimed, is under $2,000 or an imprisonment term of not more than 12 months. It also hears and determines Land Transport Authority matters.

**Family Violence Court:** Established following the passage of the Family Safety Act in 2013. It operates as a closed court and its proceedings differ from standard court procedures particularly if there are vulnerable mothers, children or victims of family violence.

**Coroners Court:** The Coroners Court is run by a District Court judge and is less formal than other Courts. It is not bound by the laws of evidence and is not too technical or legalistic. It is not the Coroners role to establish whether a crime has been committed or to find a person guilty of that crime. Nor is it the Coroner’s role to make judgements about matters of civil liability. Its purpose is to hear inquests and assist bereaved families on investigations into sudden, unexplained or unnatural deaths.

**Family Court:** Established as a division of the District Court under the Family Court Act 2014. It has authority to hear and determine proceedings under any of the following enactments: Infants Ordinance 1961, Family Safety Act 2013, Maintenance and Affiliation Act 1967, Divorce and Matrimonial Causes Ordinance 1961, Marriage Ordinance 1961, Births, Deaths and Marriages Registration Act 2002.

**Youth Court:** Established pursuant to the Young Offenders Act 2007 and is mainly for young persons (accused) between the ages of 10 and 17. Cases are conducted in a manner consistent with Samoan customs and tradition and in the Samoan language unless the young person’s first language is other than Samoan.
**Alcohol and Drugs Court (ADC):** ADC was officially launched in 2016. It is a therapeutic Court and is designed to supervise offenders whose offending is driven by alcohol or drug dependency.

**Customary land is excluded from the District Court’s jurisdiction although it can enforce decisions, or sanction breaches of decisions of the Land and Titles Court.**

**Supreme Court** - has unlimited original, appellate and revisional jurisdiction over cases dealing with fundamental rights or other constitutional matters. The Head of State appoints the Chief Justice on the advice of the Prime Minister; other judges are appointed by the Head of State acting on the advice of the Judicial Service Commission. This “superior” court may hear cases on appeal in the following circumstances:

1) Civil appeals from a District Court where:
   a. There has been a decision involving $1,000 or more;
   b. The title to land is in question and the court can determine whether land is freehold land, customary land or public land if it is in dispute; and
   c. Leave has been granted by District Court.

2) Criminal appeals brought by an appellant who has:
   a. Been convicted; or
   b. Had an order made against him/her other than for payment of costs on the dismissal of information.

**Court of Appeal** – this is the highest court of the land and hears appeals from the Supreme Court. It is comprised of the Chief Justice and other judges of the Supreme Court and such other persons as are appointed by the Head of State, acting on the advice of the Judicial Service Commission. It can hear cases that meet one of the following circumstances:

1) The Supreme Court certifies that the case involves a substantial question of law involving the interpretation or effect of any provision in the Constitution;

2) The Supreme Court refuses to certify that the case involves a substantial question of law involving the interpretation or effect of any provision in the Constitution and the Court of Appeal grants special leave, thus overriding the Supreme Court’s refusal to grant a certificate of Appeal;

3) Proceedings involving Article 4 of the Constitution which regards remedies for the enforcement of any fundamental right established by the Constitution; and

4) Criminal proceedings originated in the District Court and the Supreme Court has heard the appeal and the Court of Appeal grants special leave.

**(B) Legal system**

Samoa is a Constitutional system incorporating common law and customary laws - Constitution is the supreme law.

**(i) Civil System**

Samoa has a civil jurisdiction and it encompasses non-criminal disputes between two individuals or between an individual and the State.

**(ii) Criminal System**

A crime in Samoa is 1) the commission of an act that is forbidden by Statute; 2) the omission of an act that is required by Statute; or 3) an offense against the State. There are different categories of crime and the penalty for an individual crime determines which
court has jurisdiction to hear and decide the matter. Criminal prosecutions are generally brought by the State against a person who is alleged to have committed an offense, but an individual may also bring a private prosecution.

Every person charged with an offense is presumed innocent until proven guilty and is entitled to a fair and public hearing in a reasonable time by an independent and impartial tribunal (Article 9 of the Samoan Constitution). No person shall be convicted of an offense unless it is defined by law, and a penalty cannot be imposed that is heavier than at the time the offense was committed. Though criminal jurisdiction is reserved for Supreme, District and Appeal Courts, the Village Fono does at times hear and pass down their own judgments within the villages on criminal matters and this will be discussed more in depth later in this paper.

Also, Samoa provides for extra-territorial jurisdiction when it comes to certain types of offences. Section 8 of the Crimes Act 2013 (Samoa) states that acts or omissions alleged to constitute the offence occurred wholly outside Samoa are covered under the jurisdiction of the Supreme Court of Samoa and may be dealt with under the Crimes Act 2013 or Counter Terrorism Act 2014 (section 8 of the Crimes Act 2013 (Samoa)). This extra-territorial jurisdiction applies to such acts or omissions with transnational aspects. There is also jurisdiction of the Supreme Court to deal with crimes on ships or aircrafts beyond Samoa (section 7 of Crimes Act 2013 (Samoa)).

Another significant development in Samoa’s legal system is that Samoa no longer has capital punishment. This was removed by the Crimes (Abolition of Death Penalty) Amendment Act 2004. Sentences to death were later commuted to imprisonment for life. Importantly, this change continues in Samoa's current Crimes Act 2013 and Criminal Procedure Act 2016.

The Court System is hierarchal, meaning decisions of the higher courts are binding on lower courts.

The government of Samoa has three branches.

The Legislative branch is Parliament, comprised of the Head of State and the Legislative Assembly.

Laws are enacted when Bills are passed by the Legislative Assembly, assented to by the Head of State and published in the Samoa Gazette (official Government newspaper, now known as the Savali Newspaper). The Speaker of the Legislative Assembly is the chief presiding officer of Parliament.

The Executive Branch is comprised of the Head of State and the Executive Government – of which the Prime Minister is head, supported by Cabinet Ministers. The Executive Government is responsible for the day-to-day management of the State, including the enforcement of the laws of Samoa.

The Judiciary interprets the law, ensures that the rule of law prevails and is the guardian of the Constitution as the supreme law of Samoa. The Chief Justice is the judicial and administrative head of the Judiciary.

In addition, Samoa has a Constitution which was written in 1960.

(Samoa’s official government website at http://www.samoagovt.ws/about-government/#)
C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

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

Samoa provided the following information regarding the implementation of this provision:

The Crimes Act, as amended in 2013, (‘the Act’/CA) criminalizes bribery both by an official and by members of the public in dealings with officials.

Active bribery is covered under provisions of the Crimes Act:

7. judicial officers (section 134(1));
8. Minister, Associate Minister or Chief Executive Officer of the Government of Samoa (section 135);
9. Member of Parliament (section 136);
10. any law enforcement officer (section 137);
11. any official (section 138).

Under the Crimes Act, the act of bribery must be made “corruptly” which is defined in section 132.


Crimes Act 2013

PART II – CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

132. Interpretation –

In this Part, unless the context otherwise requires:

“bribe” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;
“corruptly” means a person acts corruptly in relation to any bribe where he or she knows or is reckless to the fact that the bribe is intended to influence the person bribed to act or omit to act in breach of any oath of office, or otherwise than in accordance with his or her legal obligations or duties in relation to any public office;

“judicial officer” means a Judge of any court, or a District Court Judge, Coroner, Faamasino Fesofoani, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

“law enforcement officer” means any constable, or any person employed in the detection or prosecution or punishment of offenders;

“official” means any person in the service of the Government of Samoa (whether that service is honorary or not, and whether it is within or outside Samoa), or any member or employee of any local authority or public body.

134. Bribery of judicial officer, etc

(1) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by a judicial officer in his or her judicial capacity.

(2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any other person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any court in respect of any act or omission by him or her in his official capacity, not being an act, or omission to which subsection (1) applies.

135. Corruption and bribery of a Minister of the Government of Samoa –

(1) A Minister, Associate Minister or Chief Executive Officer of the Government of Samoa is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.

(2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any other person with intent to influence any Minister, Associate Minister or Chief Executive Officer of the Government of Samoa in respect of any act or omission by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.

(3) No person shall be prosecuted for an offence against this section without the consent of the Attorney-General of Samoa. Notice of the intention to apply for the consent is to be given to the person whom it is intended to prosecute, and the person shall have an opportunity of being heard against the application.

136. Corruption and bribery of member of Parliament –

(1) A Member of Parliament is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Member of Parliament.

(2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any
Member of Parliament in respect of any act or omission by him or her in his or her capacity as a Member of Parliament.

(3) No person shall be prosecuted for an offence against this section without the consent of the Attorney-General of Samoa. Notice of the intention to apply for the consent is to be given to the person whom it is intended to prosecute, and the person shall have an opportunity of being heard against the application.

137. Corruption and bribery of law enforcement officer –

(1) A law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity.

(2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by the law enforcement officer in his or her official capacity.

138. Corruption and bribery of official –

(1) An official is liable to imprisonment for a term not exceeding 7 years who, whether within Samoa or another country, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the official in his or her official capacity.

(2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by the official in his or her official capacity.

Electoral Act 1963

Police Service Act 2009

71. Bribing member of the Service –

(1) A person who, not being a member of the Service, by words, conduct or demeanour bribes a member of the Service so as to induce the member to forgo, evade or in any other way act in a manner contrary to the member’s duties under this Act and any other Act, commits an offence and is liable on conviction to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(2) In this section, “bribe” means to give, offer or promise to offer a thing of value, whether pecuniary or otherwise in return for a benefit, whether directly or indirectly, to the person offering the bribe.

54. Bribing, influencing or resisting officer –

A person who:

(a) corruptly gives or offers or agrees to give a bribe to an officer with intent to influence the officer in respect of an act or omission by the officer in the discharge of his or her duty; or

(b) by threats or demands, attempts to influence or does influence an officer in the discharge of his or her duty; or
(c) assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate an officer or a person acting in the officer’s aid in the execution of his or her duties,—

commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 5 years, or both.

56. Penalty for abuse of authority —

An officer who:

(a) corruptly accepts or obtains, or agrees or offers to accept, or attempts to obtain a bribe for himself or herself or any other person in respect to an act done or omitted, or to be done or omitted in the discharge of his or her duty;

(b) conspires or connives with a person to do an act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his or her duty;

(c) makes an agreement not to deliver up or seize an aircraft or ship or other means of conveyance or any goods liable to seizure;

(d) knowingly demands from a person an amount in excess of the authorised excise duty;

(e) withholds for his or her own use or otherwise, a portion of the amount of excise duty collected;

(f) renders a false return, whether orally or in writing, of the amounts of excise duty collected or received by him or her;

(g) defrauds a person, embezzles any money, or otherwise uses his or her position to deal fraudulently with excise duty; or

(h) not being authorised under this Act to do so, collects or attempts to collect excise duty, —

commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

Legislative Assembly Powers and Privileges Ordinance 1960

20. Acceptance of bribes by members —

12. A member of the Assembly who accepts or agrees to accept or obtains or attempts to obtain for himself or herself, or for any other person, any bribe, fee, compensation, reward, or benefit of any kind for speaking, voting, or acting as such member or for refraining from so speaking, voting, or acting or on account of his or her having so spoken, voted, or acted or having so refrained commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years.

Examples of cases:


(b) Observations on the implementation of the article
Samoa has criminalized active and passive corruption and bribery of public officials in sections 133 to 138 of the Crimes Act (CA).

A bribe is defined as any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect. A bribe may be accepted or obtained, or agreed to or offered to be accepted or attempted to be obtained for the public official or any other person in respect of any act done or omitted, or to be done or omitted, by the public official in his or her official capacity. Thus, acts of indirect bribery, for example through an intermediary or third party, are covered. Immaterial benefits do not appear to be covered by the definition of benefits in sec. 149 CA.

A public official is defined as any person in the service of the Government of Samoa whether that service is honorary or not, and whether it is within or outside Samoa, or any member or employee of any local authority or public body. Samoa stated that officials who are elected or appointed, such as mayors or members of local councils, as well as officials working for SOEs, are appointed as government officials in line with the Internal Affairs Act, and fall under the definition of public official. Bribery of judicial officers, ministers, members of parliament and law enforcement officers is criminalized separately in sections 133 to 137 of the Crimes Act. The sanctions for bribery of police officers are lower than for other public officials, as those cases are dealt with through disciplinary rather than criminal proceedings.

It is criminalized to give, offer, or agree to give a bribe. While the promise of a bribe is not explicitly covered, it is criminalized as attempted bribery.

All offences require a perpetrator to act “corruptly”, which is defined as the knowledge of or recklessness to the fact that the bribe is intended to influence the person bribed to act or omit to act in breach of any oath of office, or otherwise than in accordance with his or her legal obligations or duties in relation to any public office. The term is in line with the Convention’s term of “intentional” and is thus interpreted to mean intent.

The consent of the Attorney-General is required for prosecution of bribery of a Minister or a member of the Legislative Assembly (sects. 135, 136 CA), but the decision must be delegated in cases of conflict of interest. Samoa cited case examples and described that prosecutors from overseas have been brought in to prosecuted in cases where the AG had declared a conflict of interest and was subsequently removed from prosecution.

It is recommended that Samoa amend its legislation to cover immaterial benefits, and that the additional element of “corruptly” does not constitute an obstacle to prosecution. If the judiciary does not interpret the law in this way in the future, legislative reform is required.

It is further recommended that Samoa remove the requirement of consent by the Attorney General in sections 135, 136 of the Crimes Act.

It is further recommended that Samoa consider harmonizing the sanctions for bribery of members of the service and [police] officers with that of bribery of other public officials.

**Article 15 Bribery of national public officials**

**Subparagraph (b)**
Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

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

Samoa provided the following information regarding the implementation of this provision:

Passive bribery is an offence under the Crimes Act and Excise Tax (Domestic Administration) Act.

**Crimes Act 2013**

132. Interpretation –

In this Part, unless the context otherwise requires:

“bribe” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“corruptly” means a person acts corruptly in relation to any bribe where he or she knows or is reckless to the fact that the bribe is intended to influence the person bribed to act or omit to act in breach of any oath of office, or otherwise than in accordance with his or her legal obligations or duties in relation to any public office;

“judicial officer” means a Judge of any court, or a District Court Judge, Coroner, Faamasino Fesosoani, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

“law enforcement officer” means any constable, or any person employed in the detection or prosecution or punishment of offenders;

“official” means any person in the service of the Government of Samoa (whether that service is honorary or not, and whether it is within or outside Samoa), or any member or employee of any local authority or public body.

133. Judicial corruption –

(1) A judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the judicial officer in his or her judicial capacity.

(2) A judicial officer, and every Registrar or Deputy Registrar of any court, is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity, not being an act or omission to which subsection (1) applies.

135. Corruption and bribery of a Minister of the Government of Samoa –

(1) A Minister, Associate Minister or Chief Executive Officer of the Government of Samoa is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any
other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.

136. Corruption and bribery of member of Parliament –

(1) A Member of Parliament is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Member of Parliament.

137. Corruption and bribery of law enforcement officer –

(1) A law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity.

138. Corruption and bribery of official –

(1) An official is liable to imprisonment for a term not exceeding 7 years who, whether within Samoa or another country, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the official in his or her official capacity.

Excise Tax (Domestic Administration) Act 1984

54. Bribing, influencing or resisting officer –

A person who:

(a) corruptly gives or offers or agrees to give a bribe to an officer with intent to influence the officer in respect of an act or omission by the officer in the discharge of his or her duty; or

(b) by threats or demands, attempts to influence or does influence an officer in the discharge of his or her duty; or

(c) assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate an officer or a person acting in the officer’s aid in the execution of his or her duties, commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 5 years, or both.

56. Penalty for abuse of authority –

An officer who:

(a) corruptly accepts or obtains, or agrees or offers to accept, or attempts to obtain a bribe for himself or herself or any other person in respect to an act done or omitted, or to be done or omitted in the discharge of his or her duty;

(b) conspires or connives with a person to do an act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his or her duty;

(c) makes an agreement not to deliver up or seize an aircraft or ship or other means of conveyance or any goods liable to seizure;

(d) knowingly demands from a person an amount in excess of the authorised excise duty;
(e) withholds for his or her own use or otherwise, a portion of the amount of excise duty collected;

(f) renders a false return, whether orally or in writing, of the amounts of excise duty collected or received by him or her;

(g) defrauds a person, embezzles any money, or otherwise uses his or her position to deal fraudulently with excise duty; or

(h) not being authorised under this Act to do so, collects or attempts to collect excise duty, –

commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

Samoa provided the following cases as examples of the implementation of those measures:


The **Police v Taylor Miti** case would also be relevant here as those defendants were convicted of the theft which they were able to perpetrate as a result of the advantage they gave to Feepo and Peseta. They gained the advantage because they bribed Feepo and Peseta to approve the false invoices. Feepo and Peseta being Government employees and therefore being able to use their official employment to allow the theft to occur.

**Police v Maiava [2017] WSSC 39 (4 April 2017)** bribery of an immigration official in exchange for processing permits even though not all required documents were submitted.

**Police v Tausili [2015] WSSC 70 (14 July 2015)** – one of the defendants was charged with official corruption under section 137 of the Crimes Act 2013. He was a police officer.

**National Prosecution Office v Stowers [2016] WSCA 6 (19 February 2016)**

(b) **Observations on the implementation of the article**

Accepting, obtaining, agreeing or offering to accept a bribe are explicitly criminalized. The attempt to obtain a bribe is also criminalized, matching the requirement of the Convention to criminalize the solicitation of a bribe.

Acts of indirect bribery by a public official, such as demanding a bribe through a third person intermediary, are covered through the definition of bribery, as noted above.

In addition, please cf. observations and recommendations made under art. 15(a).
Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

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

Samoa provided the following information regarding the implementation of this provision:

Section 150 of the Crimes Act criminalises bribery of foreign public officials. The Diplomatic Privileges and Immunities Act also allows for the withdrawal of immunities and privileges of foreign officials by the Head of State on advice by Cabinet to an extent that appears proper to the Head of State.

A foreign public official is defined under section 149 and includes a member of the executive, judiciary, or legislature of a foreign country; a person employed by a foreign government, foreign public agency, foreign public enterprise, or public international organization; and person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organization.

Crimes Act 2013

149. Bribery of foreign public official: definitions –

For the purposes of this part of the Act:

“benefit” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“foreign country” includes:

(a) a territory for whose international relations the government of a foreign country is responsible; and

(b) an organised foreign area or entity including an autonomous territory or a separate customs territory;

“foreign government” includes all levels and subdivisions of government, such as local, regional, and national government;

“foreign public agency” means any person or body, wherever situated, that carries out a public function under the laws of a foreign country;

“foreign public enterprise” means:

(a) a company, wherever incorporated, that—

(i) a foreign government is able to control or dominate (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b)(i) apply; or
(b) a person or body (other than a company), wherever situated, that—
(i) a foreign government is able to control or dominate (whether by reason of its ability to appoint the person or 1 or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
(ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a)(i) applies;

“foreign public official” includes any of the following:
(a) a member or officer of the executive, judiciary, or legislature of a foreign country;
(b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation;
(c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation.

“public international organisation” means any of the following organisations, wherever situated:
(a) an organisation of which 2 or more countries or two (2) or more governments are members, or represented on the organisation;
(b) an organisation constituted by an organisation to which paragraph (a) applies or by persons representing 2 or more such organisations;
(c) an organisation constituted by persons representing 2 or more countries or 2 or more governments;
(d) an organisation that is part of an organisation referred to in any of paragraphs (a) to (c).

“routine government action”, in relation to the performance of any action by a foreign public official, does not include:
(a) any decision about—
(i) whether to award new business; or
(ii) whether to continue existing business with any particular person or body; or
(iii) the terms of new business or existing business; or
(b) any action that is outside the scope of the ordinary duties of that official.

150. Bribery in Samoa of foreign public official –

(1) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give a bribe to a person with intent to influence a foreign public official in respect of any act or omission by that official in his or her official capacity, whether or not the act or omission is within the scope of the official’s authority, in order to:
(a) obtain or retain business; or
(b) obtain any improper advantage in the conduct of business.
(2) This section does not apply if:

(a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and

(b) the value of the benefit is small.

(3) This section is subject to section 146.

151. Bribery outside Samoa of foreign public official –

(1) A person commits an offence who, being a person described in subsection (2), does, outside Samoa, any act that would, if done in Samoa, constitute an offence against section 150.

(2) Subsection (1) applies to a person who is:

(a) a citizen of Samoa; or

(b) ordinarily resident in Samoa; or

(c) a body corporate incorporated in Samoa; or

(d) a corporation sole incorporated in Samoa.

(3) A person who is convicted of an offence against this section is liable to the same penalty to which the person would have been liable if the person had been convicted of an offence against section 150.

(4) This section is subject to section 152.

152. Exception for lawful acts in country of foreign public official –

(1) Sections 150 and 151 do not apply if the act that is alleged to constitute an offence under either of those sections:

(a) was done outside Samoa; and

(b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

(2) If a person is charged with an offence under sections 150 or section 151, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the laws of the foreign country referred to in subsection (1)(b).

There are no examples of bribery of a foreign public official.

(b) Observations on the implementation of the article

Active foreign bribery is criminalized under sections 150, 151 of the Crimes Act. Section 150 (2) contains an exception for offences committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action, when the value of the benefit is small ("facilitation payments").

In addition, section 152 (1) contains an exception if the offence was done outside Samoa and was not an offence under the laws of the foreign country in which the bribee was situated.

The observations and recommendations made under article 15 are referred to.
It is recommended that Samoa amend its legislation to abolish the exception established for so-called facilitation payments.

It is further recommended that Samoa abolish the exception of an offence not being criminalized as domestic bribery in the country where the bribee was situated.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 2**

> 2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

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

Samoa provided the following information regarding the implementation of this provision:

Passive bribery of foreign public officials and officials of public international organizations is not criminalized in Samoa. Under domestic bribery statutes, an official is defined as any person in the service of the Government of Samoa, or any member or employee of any local authority or public body, meaning foreign public officials are not covered by domestic bribery regulations either.

(b) **Observations on the implementation of the article**

It is recommended that Samoa consider criminalizing the bribery of foreign public officials and officials of public international organizations.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

> Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

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

Samoa provided the following information regarding the implementation of this provision:

The Public Finance Management Act 2001 (PFM Act) makes provision against fraud in relation to tax and fiscal evasion, and the National Revenue Board is authorised to determine ways to counter this (see section 37 of PFM Act.)

The PFM Act makes further provision against misuse and misappropriation of funds, failing to account for public funds, breaching procurement procedures, etc. and there are penalties and provision on how to deal with these.
115. Offences – (1) A person commits an offence who:
   (c) refuses or wilfully neglects to pay any public money or trust money into the
account or fund into which it is payable;
(2) A person who commits an offence under subsection (1) is liable on conviction to a
fine not exceeding 10 penalty units and where the person is a body corporate to a fine
not exceeding 50 penalty units.

Additionally, section 161 of the *Crimes Act 2013* defines theft as the act of dishonestly
taking any property with intent to deprive any owner permanently of that property or of
any interest in that property; or dishonestly, using or dealing with any property with
intent to deprive any owner permanently of that property or of any interest in that
property after obtaining possession of, or control over, the property in whatever manner.

Section 165 explains the punishment for theft by a public servant: (f) if the property stolen is
property in the possession of the offender as a clerk or servant, or as an officer or employee of
the Government of Samoa or of any local authority or public body, or as a constable, to
imprisonment for a term not exceeding 10 years.

*Crimes Act 2013*

162. Theft by person in special relationship –
(1) This section applies to any person who has received or is in possession of, or has
control over, any property on terms or in circumstances that require the person:
   (a) to account to any other person for the property, or for any proceeds arising from
the property; or
   (b) to deal with the property, or any proceeds arising from the property, in
accordance with the requirements of any other person.
(2) A person to whom subsection (1) applies commits theft who fails to account to the
other person as so required or deals with the property, or any proceeds of the property,
otherwise than in accordance with those requirements.
(3) This section applies whether or not the person was required to deliver over the
identical property received or in the person’s possession or control.
(4) For the purposes of subsection (1), it is a question of law whether the circumstances
required any person to account or to act in accordance with any requirements.

165. Punishment of theft –
A person who is convicted of theft is liable as follows:
   (a) in the case of a theft by person in special relationship under section 162, to
imprisonment for a term not exceeding 10 years; or
   (b) if the value of the property stolen exceeds $1,000, to imprisonment for a term not
exceeding 7 years; or
   (c) if the value of the property stolen exceeds $500 but does not exceed $1,000, to
imprisonment for a term not exceeding 2 years; or
   (d) if the value of the property stolen does not exceed $500, to imprisonment for a
term not exceeding 1 year; or
   (e) if the property stolen is property stolen by a clerk or servant which is owned by
his or her employer or is in the possession of his or her employer, to imprisonment
for a term not exceeding 10 years; or
(f) if the property stolen is property in the possession of the offender as a clerk or servant, or as an officer or employee of the Government of Samoa or of any local authority or public body, or as a constable, to imprisonment for a term not exceeding 10 years.

There are also laws in place to ensure the Custom Services do not embezzle or illegally obtain money. The Comptroller is the “CEO” of the Ministry responsible for the Custom Service (who run the collection of taxes). An officer is an employee of the Customs Service. The Customs Act 2014 goes into detail about the penalties for officers who embezzle or otherwise wrongly obtain funds.

170. Criminal breach of trust – (1) A person commits a criminal breach of trust who, as a trustee of any trust, dishonestly and contrary to the terms of that trust, converts anything to any use not authorised by the trust.

(2) A trustee who commits a criminal breach of trust is liable to imprisonment for a term not exceeding 7 years.

172. Obtaining by deception or causing loss by deception – (1) A person commits the offence of obtaining by deception or causing loss by deception who, by any deception:

(a) obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or

(b) in incurring any debt or liability, obtains credit; or

(c) induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or

(d) causes loss to any other person.

(2) In this section, “deception” means:

(a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—

(i) knows that it is false in a material particular; or

(ii) is reckless as to whether it is false in a material particular; or

(b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or

(c) a fraudulent device, trick, or stratagem used with intent to deceive any person.

173. Punishment of obtaining by deception or causing loss by deception – A person who is convicted of obtaining by deception or causing loss by deception is liable as follows:

(a) if the loss caused or the value of what is obtained or sought to be obtained exceeds $1,000, to imprisonment for a term not exceeding 7 years;

(b) if the loss caused or the value of what is obtained or sought to be obtained exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 2 years;

(c) if the loss caused or the value of what is obtained or sought to be obtained does not exceed $500, to imprisonment for a term not exceeding 1 year.
Excise Tax (Domestic Administration) Act 1984

56. Penalty for abuse of authority –

An officer who:

(a) corruptly accepts or obtains, or agrees or offers to accept, or attempts to obtain a bribe for himself or herself or any other person in respect to an act done or omitted, or to be done or omitted in the discharge of his or her duty;

(b) conspires or connives with a person to do an act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his or her duty;

(c) makes an agreement not to deliver up or seize an aircraft or ship or other means of conveyance or any goods liable to seizure;

(d) knowingly demands from a person an amount in excess of the authorised excise duty;

(e) withholds for his or her own use or otherwise, a portion of the amount of excise duty collected;

(f) renders a false return, whether orally or in writing, of the amounts of excise duty collected or received by him or her;

(g) defrauds a person, embezzles any money, or otherwise uses his or her position to deal fraudulently with excise duty; or

(h) not being authorised under this Act to do so, collects or attempts to collect excise duty, – commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

Samoa provided the following case examples:

Police v Taylor Miti (unreported judgment 02 August 2010) of a Senior Police Accountant convicted of embezzlement sentenced to 4½ years. His junior colleague Matau Milosia (unreported judgment 20 September 2010) received an 18 months sentence

Police v Tevaga [2012] WSSC 29 (23 April 2012)

NOTE this was an offence tried under the Crimes Ordinance 1961 sections 85 and 86 however it is good law to establish that while the term “misappropriation” is not used in the Act, it is nonetheless an offence as the act of misappropriation meets the physical and mental elements of the crime of theft.

Police v Chankay [2009] WSSC 72 (19 June 2009) defendant convicted of theft of monies while employed at NPF (government corporation)


Police v Faatoia [2011] WSSC 7 (31 January 2011) misappropriation by employee of Samoa Housing Corporation

(b) Observations on the implementation of the article
For officers employed in the Samoa Customs Service, embezzlement of money or the withholding for his or her own use or otherwise, a portion of the amount of excise duty collected is criminalized under section 56 of the Excise Tax (Domestic Administration) Act 1984.

While for public officials, misappropriation was criminalized under the Crimes Ordinance 1961, misappropriation or embezzlement is not explicitly criminalized under Samoan law. However, the Crimes Act 2013 criminalizes “criminal breach of trust” (section 170), “obtaining by deception or causing loss by deception” (section 172) and “theft by person in special relationship” (section 162). A person who has received, is in possession of or has control over any property and has to account for or deal with the property or any proceeds arising from the property to any other person, is criminally liable when failing to account to the other person as required or deals with the property or any proceeds of it other than in accordance with the requirements. Sentences for offences committed by public officials are aggravated (imprisonment not exceeding ten years).

As the offences are worded broadly and no typical requirements of the offence of theft are listed, such as a breach of custody or a physical removal of property, the offence can be interpreted as a form of misappropriation.

Case law from the Crime Ordinance 1961 was presented. Case law showing that embezzlement, misappropriation or other diversion is covered by section 162 was not presented.

It is thus recommended that Samoa monitor that these offences are covered by section 162 CA. If the judiciary does not interpret the law in this way in the future, legislative reform is required.

**Article 18 Trading in influence**

> Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

> (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

> (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

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

Samoa provided the following information regarding the implementation of this provision:

The offence of trading in influence would be covered by the bribery provisions in the Crimes Act, Electoral Act, Excise Tax (domestic Administration) Act (please refer to citations of acts under art. 15(a) above), National Health Service Act 2014, National Provident Fund Act 1972.

In addition, the following legal instruments do not impose criminal penalties but are useful to note Samoa’s position on trading in influence: section 19(i), Public Service Act 2004, section
5(6)(i) and the Medical Council and Nursing Midwifery legislation which have identical provisions to the Dental Practitioners Act.

(b) Observations on the implementation of the article

Samoa has not explicitly criminalized trading in influence.

The offence of bribery includes the giving or offering of a bribe to any person with intent to influence any official in respect of any act or omission by the official in his or her official capacity.

While Samoa’s existing bribery provisions could partially address the relevant conduct, they do not clearly cover the concept of abuse of “real or supposed influence” or the benefit sought from a public authority.

It is thus recommended that Samoa monitor the application of the legislation to ensure that active trading in influence is criminalized. If the judiciary does not interpret the law in this way in the future, legislative reform shall be considered.

Passive trading in influence is not criminalized. It is recommended that Samoa consider adopting a specific provision criminalizing passive trading in influence in accordance with article 18(b).

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

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

Samoa provided the following information regarding the implementation of this provision:

Sections 47 and 147 of the Crimes Act 2013 address abuse of functions regarding the corrupt use of official information and general dishonesty against the Government.

Crimes Act 2013

47. General dishonesty against the Government – A person is guilty of an offence and is liable to imprisonment to a term not exceeding 5 years if the person does anything with the intention of dishonestly causing a loss to the Government of Samoa.

147. Corrupt use of official information – An official is liable to imprisonment for a term not exceeding 7 years who, whether within Samoa or elsewhere, corruptly uses of discloses any information, acquired by him or her in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person.

(b) Observations on the implementation of the article

Under the Crimes Act 2013, any act with the intention of dishonestly causing a loss to the Government of Samoa is criminalized (General dishonesty against the Government, section
47). In addition, it is criminalized for an official to corruptly use or disclose information acquired in official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or herself or any other person (Corrupt use of official information, section 147).

It is noted that sections 47 and 147 of the Crimes Act 1961 are not entirely consistent with article 19 of the Convention as section 47 requires the intent to cause a loss to the Government, which is narrower than article 19, and section 147 requires the act to consist in using or disclosing information.

It is recommended that Samoa consider broadening its legislation to include any act or omission by a public official, in violation of laws, for the purpose of obtaining an undue advantage.

**Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

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

Samoa provided the following information regarding the implementation of this provision:

Samoa considers the criminalization of illicit enrichment unconstitutional. Each person is innocent until proven guilty beyond reasonable doubt (article 9(3)). Article 9(5) further makes it unlawful for a person to be compelled to give witness against themselves.

However this article of the convention requires:
- Increase in assets
- Lack of explanation
- Assumption that there is illegality if the increase cannot be explained.

This breaches the Constitution as
- Automatic assumption of illegal nature of an increase in assets
- Requiring a person to explain themselves is forcing them to give evidence in their own case
- Burden of proof is put on the suspect instead of prosecution

The *Cabinet Handbook* contains provisions on conflict of interest. Section 1.35 requires that before a meeting of Cabinet, a Minister should declare to the Prime Minister a potential conflict of interest and ask not to be present during consideration of a particular item, if he or she has a direct personal interest in the outcome of Cabinet’s consideration of it.

*Cabinet Handbook 2011*

**AVOIDING CONFLICT OF INTEREST**

1.32 In carrying out their duties and responsibilities, all Ministers are required to maintain the highest standard of probity and propriety. A Minister’s loyalty to the Prime Minister means that he or she must uphold the high ethical standards that the Prime Minister expects from all Ministers. This includes acting within the law at all times. It also means exercising statutory powers with integrity and an abiding sense of fairness and equity.
1.33 A Minister must always make a clear distinction when he or she is acting in a ministerial capacity from his or her political and constituency interests as a Member of Parliament. A Minister must ensure that no conflict exists, or appears to exist, between one’s public duty and one’s private interests.

1.34 On assuming office, a Minister should so organize his or her private affairs as not to allow a situation to arise in which personal or business interests interfere with the proper performance of the duties of his or her office.

1.35 As Ministers are expected to devote the whole of their time to duties of their offices and receive remuneration from public funds, it is incumbent on them, from the outset of their appointment, to declare to the Prime Minister their private pecuniary interests. Further, before a meeting of Cabinet, a Minister should declare to the Prime Minister a potential conflict of interest and ask not to be present during consideration of a particular item, if he or she has a direct personal interest in the outcome of Cabinet’s consideration of it.

Cabinet Directives have also been issued instructing all Government employees who intend on contesting the elections to resign from their Government posts prior to entering election. There is also a Cabinet Directive on managing and avoiding conflicts of interest. (need to confirm FK numbers)

By means of example, there is an ongoing investigation where questions and issues of conflicts of interest arises and have yet to be determined.

(b) Observations on the implementation of the article

Illicit enrichment is not criminalized in Samoa, due to constitutional concerns.

Samoa may wish to consider criminalizing this offence, subject to its Constitution and fundamental principles of its legal system.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

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

Bribery in the private sector is not criminalized in Samoa.

(b) Observations on the implementation of the article
Neither active nor passive bribery in the private sector is criminalized. It is recommended that Samoa consider adopting a relevant provision criminalizing bribery in the private sector in accordance with article 21 subparagraphs (a) and (b).

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

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

Samoa cited the following provisions regarding the implementation of this provision:

Sections 162, 165 and 172 of the Crimes Act criminalise theft.

Crimes Act 2013

162. Theft by person in special relationship –

(1) This section applies to any person who has received or is in possession of, or has control over, any property on terms or in circumstances that require the person:

(a) to account to any other person for the property, or for any proceeds arising from the property; or

(b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.

(2) A person to whom subsection (1) applies commits theft who fails to account to the other person as so required or deals with the property, or any proceeds of the property, otherwise than in accordance with those requirements.

(3) This section applies whether or not the person was required to deliver over the identical property received or in the person’s possession or control.

(4) For the purposes of subsection (1), it is a question of law whether the circumstances required any person to account or to act in accordance with any requirements.

165. Punishment of theft –

A person who is convicted of theft is liable as follows:

(a) in the case of a theft by person in special relationship under section 162, to imprisonment for a term not exceeding 10 years; or

(b) if the value of the property stolen exceeds $1,000, to imprisonment for a term not exceeding 7 years; or

(c) if the value of the property stolen exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 2 years; or

(d) if the value of the property stolen does not exceed $500, to imprisonment for a term not exceeding 1 year; or
(e) if the property stolen is property stolen by a clerk or servant which is owned by his or her employer or is in the possession of his or her employer, to imprisonment for a term not exceeding 10 years; or

(f) if the property stolen is property in the possession of the offender as a clerk or servant, or as an officer or employee of the Government of Samoa or of any local authority or public body, or as a constable, to imprisonment for a term not exceeding 10 years.

170. Criminal breach of trust – (1) A person commits a criminal breach of trust who, as a trustee of any trust, dishonestly and contrary to the terms of that trust, converts anything to any use not authorised by the trust.

(2) A trustee who commits a criminal breach of trust is liable to imprisonment for a term not exceeding 7 years.

172. Obtaining by deception or causing loss by deception

(1) A person commits the offence of obtaining by deception or causing loss by deception who, by any deception:

(a) obtains ownership or possession of, or control over, any property, or privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly: or

(b) in incurring any debt or liability, obtains credit; or

(c) induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive pecuniary advantage; or

(d) causes loss to any other person.

(2) In this section, “deception” means:

(a) a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and –

(i) knows that it is false in a material particular;

Or

(ii) is reckless as to whether it is false in a material particular: or

(b) an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or

(c) a fraudulent device, trick, or stratagem used with intent to deceive any person

Samoa cited the following case example:

Police v Tapuai [2007] WSSC 46 (14 June 2007)

An employee of the Lotto Samoa Games Ltd on 68 separate occasions stole money from her employer’s daily bankings which were entrusted to her to deposit in the bank.
Embezzlement is not explicitly criminalized under Samoan law. However, the Crimes Act 2013 criminalizes “criminal breach of trust” (section 170), “obtaining by deception or causing loss by deception” (section 172) and “theft by person in special relationship” (section 162). A person who has received, is in possession of or has control over any property and has to account for or deal with the property or any proceeds arising from the property to any other person, is criminally liable when failing to account to the other person as required or deals with the property or any proceeds of it other than in accordance with the requirements.

Due to the broad wording of the offences, the actus reus of private sector embezzlement appears to be covered.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i) and (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a)(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a)(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

Sections 6, 9, 10, 11 and 13 of the Proceeds of Crime Act establish the offence of money laundering.

Proceeds of Crime Act 2007

2 Interpretation –

In this Act, unless the context otherwise requires:

“assets” means assets of every kind whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets; (as amended in 2018 by the MLPA)

“proceeds of crime” has the meaning given in section 6;

“property” includes currency, investments, holdings, possession, assets, property used or dealt with in any way to facilitate, provide, receive, promote or fund terrorist acts listed in section 3 of the Counter Terrorism Act 2014 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, whether whole or in part and includes an interest in such property; (as amended in 2018 by the MLPA)

“serious offence” means an offence:
(a) against a law of Samoa that would constitute unlawful activity; or
(b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa;

“unlawful activity” means an act or omission that constitutes an offence and that is punishable, under the laws of Samoa, for a maximum period of not less than 12 months.

6. Meaning of “proceeds of crime”–

(1) In this Act, “proceeds of crime” means any property wholly or partly derived or realised, whether directly or indirectly, from a serious offence or terrorist act, whether situated within or outside of Samoa, including:

(a) property into which any property derived or realised from the offence is later successively converted, transformed or intermingled; or
(b) income, capital or other economic gains derived or realised from that property at any time since the offence or terrorist act; or
(c) property wholly or partly derived or realised from a disposal or other dealing with proceeds of the serious offence or wholly or partly acquired using proceeds of the serious offence or terrorist act, including because of a previous application of this section; or
(d) property which is proceeds of crime and has been credited to an account or disposed of or otherwise dealt with.

(2) If property that is proceeds of crime (the original proceeds) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime.

(3) Property can be proceeds of crime even if no person has been convicted of the offence or terrorist act.

9. Meaning of gift

(1) In this Act, “gift” includes (directly or indirectly) of property by one person to any other person for a consideration that is significantly less than the value of the property.

(2) In the circumstances mentioned in subsection (1), section 10 applies as if the person had made a gift of the transferred property to the extent of the difference between the market value of the property and value of the consideration provided by the transferee.

10. When a gift is caught by the Act

A gift made by a person convicted of or charged with a serious offence, including a gift made before the commencement of this Act, is caught by this Act, it is was made, by the person convicted or charged:

(a) after the commission of the offence or, is more than one offence, the earliest of the offences, and the Court considers it appropriate in all the circumstances to take the gift into account; or
(b) at any time, and was itself a gift of property –

(i) received by the person; or
(ii) that in whole or in part, directly or indirectly, represented in the persons hands property received by the person, -
in connection with the commission of any other serious offence committed by the person or by any other person.

11. **Money Laundering Offences**— (reiterated in the new section 152A of the CA)

(1) A person commits the offence of money-laundering if the person:

(a) engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime; or

(b) acquires, possesses, uses, receives or brings into Samoa property, knowing or having reason to believe that the property is derived directly or indirectly from the proceeds of crime; or

(c) converts or transfers property derived directly or indirectly from the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof; or

(d) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the proceeds of crime; or

(e) renders assistance to any other person for any of the above.

(2) Knowledge, intent or purpose required as an element of the activities, referred to in subsection (1), may be inferred from objective factual circumstances.

(3) Any person who, without lawful or reasonable excuse, 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.

(4) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of the crime which generated the proceeds alleged to have been laundered.

12. **Offence committed by a body of persons**—

Where an offence under the provisions of section 11 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 officer, or was purporting to act in such capacity, shall be guilty of that offence, unless the person adduces evidence to show that the offence was committed without the person’s knowledge, consent or connivance.

13. **Penalties**

A person guilty of an offence under the provisions of sections 11 or 12 shall be liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a period not exceeding seven years, or both.

**Samoa provided the following examples of the implementation of those measures:**

No money laundering cases have been investigated or brought for prosecution. The Asia Pacific Group on Money Laundering notes that this is due to a lack of resources, limited understanding on how to use financial intelligence to investigate and prosecute money laundering, limited operational co-ordination between the Financial Intelligence Unit and
law enforcement, and a lower penalty for money laundering when compared to a range of other serious offences.¹

(b) Observations on the implementation of the article

Samoa has implemented the provision under review (ss. 11(1)(c) and (d) of POCA and 152A(1)(d) and (e) of CA).
No money laundering cases have been brought for prosecution or pending investigation.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (b) Subject to the basic concepts of its legal system:

   (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

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

Samoa provided the following information regarding the implementation of this provision:

Section 11 of the Proceeds of Crime Act establishes the offence of money laundering. Section 11(1)(a) provides that a person commits the offence of money-laundering if the person engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime. The term “transaction” is undefined in the Act. Section 11(1)(b) covers the acquisition, possession and use of property derived directly or indirectly from the proceeds of crime.
Section 167 of the Crimes Act 2013 criminalises the conduct of “receiving” stolen property or property obtained through the commission of a crime.

(b) Observations on the implementation of the article

Samoa has implemented the provision under review (ss. 11(1)(b) of POCA and 152A(1)(b) of CA).

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (b) Subject to the basic concepts of its legal system:

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

*Samoa provided the following information regarding the implementation of this provision:*

Section 11(1)(e) and section 11(3) of the *Proceeds of Crime Act* provides that any person who renders assistance, 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.

In addition, Part 5 of the *Crimes Act* establishes as a party to an offence, any one who aids, abets, incites, counsels, or procures any person to commit the offence.

**Crimes Act 2013**

**PART 5 - PARTIES TO THE COMMISSION OF OFFENCES**

33. **Parties to offences**

   (1) A person is a party to and guilty of an offence who:

   (a) actually commits the offence; or

   (b) does or omits an act for the purpose of aiding any person to commit the offence; or

   (c) abets any person in the commission of the offence; or

   (d) incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to carry into effect any unlawful purpose and to assist each other in that object, each of them is a party to every offence committed by any one of them in carrying into effect that unlawful purpose if the commission of that offence was or ought to have been known to be a probable consequence of carrying into effect that common purpose.

(3) Nothing in this section prevents the charging of a person as a party to any offence under both subsections (1) and (2) or in the alternative.

34. **Party to crime outside Samoa**

   (1) A person who, in Samoa, aids, incites, counsels or procures the doing or omission outside Samoa of any act which, if done in Samoa would be a crime is liable to imprisonment for a term not exceeding that prescribed for the crime, or 7 years, whichever is the less.

(2) Despite subsection (1), where the crime alleged in relation to subsection (1) is murder, the term of imprisonment shall be life.

(3) A person charged under this section is not liable to be convicted in any case where it is proved that the act or omission to which the charge relates was not an offence in the place where it was, or was to be, done or omitted.

35. **Party to offences other than that intended**

   A person who incites, counsels or procures another to be party to an offence is a party to every offence which that other commits in carrying into effect that which was incited, counselled or procured and which the person charged as a party pursuant to this section knew or ought to have known to be a likely consequence of that incitement counselling or procuring.
36. Accessory before the fact –

(1) A person is an accessory before the fact who, without becoming a party to any offence, knowingly helps any person to commit an offence.

(2) A person is an accessory before the fact in terms of subsection (1) despite the fact that the offence was committed in a manner different from that understood by that person.

(3) A person who is an accessory before the fact commits an offence of accessory before the fact and is liable to imprisonment for a term not exceeding 10 years, if the maximum penalty for that offence is imprisonment for life, or in any other case is liable to not more than half the maximum punishment to which the person would have been liable if the person had committed that offence.

37. Accessory after the fact –

An accessory after the fact to an offence is a person who, knowing or believing any person to have been a party to an offence:

(a) harbours or otherwise assists that person; or

(b) tampers or otherwise interferes directly or indirectly with any evidence against him or her,—

for the purpose of enabling that person to avoid arrest or conviction or escape from arrest.

38. Conspiracy to commit an offence –

(1) A person who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omitting in Samoa would be an offence, commits the crime of conspiracy to commit that offence and is liable to imprisonment for a term not exceeding 7 years, if the maximum penalty for that offence exceeds 7 years, or in any other case is liable to the punishment as if he or she had committed that offence.

(2) The provisions of subsection (1) as to the penalty for conspiring to commit an offence do not apply where the punishment for the conspiracy is prescribed in any other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside Samoa, it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

39. Attempt to commit or procure commission of offence –

(1) A person who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum penalty for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum penalty to which he or she would have been liable if he or she had committed that offence.

(2) A person who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable:

(a) to imprisonment for a term not exceeding 5 years if such maximum penalty is imprisonment for 10 years or more; and
(b) Observations on the implementation of the article
Sections 11(1)(e) and 11(3) of POCA and sections 152A(1)(f) and 152A(3) of CA criminalize the different aspects of criminal participation as well the attempt.

Article 23 Laundering of proceeds of crime

Paragraph 2

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

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

(b) Observations on the implementation of the article
Samoa has adopted a threshold approach; predicate offences include any act or omission that constitutes an offence and that is punishable, under the laws of Samoa, for a maximum period of not less than 12 months (s. 2, POCA). This includes the relevant offenses covered by the Convention (see information under art. 30(1)).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

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

Samoa provided the following information regarding the implementation of this provision:

Section 2 of the Proceeds of Crime Act 2007 defines a serious offence to include any offence against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa.

See also section 34 of the Crimes Act 2013 which criminalizes conduct inciting/aiding/counseling/procuring the commission of an offence outside of Samoa.

See also sections 5 and 9 of the Crimes Act discussing the criminal liability of persons for offences committed outside of Samoa and only criminalizing conduct which would be
recognized as criminal if it is also criminal under Samoan law. Section 8 also provides helpful guidance on the treatment of offences with a transnational aspect.

**Proceeds of Crime Act 2007**

2 **Interpretation** –

In this Act, unless the context otherwise requires:

“serious offence” means an offence:

(a) against a law of Samoa that would constitute unlawful activity; or

(b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa;

“unlawful activity” means an act or omission that constitutes an offence and that is punishable, under the laws of Samoa, for a maximum period of not less than 12 months.

(b) **Observations on the implementation of the article**

Predicate offences include offences committed abroad when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence punishable for a maximum period of not less than 12 months had it been committed in Samoa.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

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

A copy of laws that give effect to this article have not yet been submitted to the Secretary General, but it is envisaged that with the completion of this 1st round peer review, a complete list of relevant legislations with copies will be compiled and submitted. Tentative date for completion of this 1st round of peer review is February 2019.

(b) **Observations on the implementation of the article**

Samoa has furnished copies of its laws in the course of the review process.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (e)**

2. For purposes of implementing or applying paragraph 1 of this article:
(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

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

Samoa provided the following information regarding the implementation of this provision:

Proceeds of Crime Act 2007

11. Money Laundering Offences-

(1) A person commits the offence of money-laundering if the person:

(a) engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime; or

(b) acquires, possesses, uses, receives or brings into Samoa property, knowing or having reason to believe that the property is derived directly or indirectly from the proceeds of crime; or

(c) converts or transfers property derived directly or indirectly from the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof; or

(d) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the proceeds of crime; or

(e) renders assistance to any other person for any of the above.

(2) Knowledge, intent or purpose required as an element of the activities, referred to in subsection (1), may be inferred from objective factual circumstances.

(3) Any person who, without lawful or reasonable excuse, 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.

(4) Any person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of the crime which generated the proceeds alleged to have been laundered.

No money laundering cases have been investigated or brought for prosecution.

(b) Observations on the implementation of the article

Samoa also criminalized self-laundering since, as it has been confirmed during the country visit, there is no requirement that the predicate offence giving rise to the proceeds of crime must be committed by a person other than the person charged.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the
concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Concealment is covered under section 167 of the Crimes Act 2013.

Crime Act 2013

167. Receiving –
(1) A person commits the offence of receiving who receives any property stolen or obtained by any other crime, knowing that property to have been stolen or so obtained, or being reckless as to whether or not the property had been stolen or so obtained.
(2) For the purposes of this section, property that was obtained by any act committed outside Samoa that, if it had been committed in Samoa, would have constituted a crime is, subject to subsection (5), to be regarded as having been obtained by a crime.
(3) The act of receiving any property stolen or obtained by any other crime is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of, or control over, the property or helps in concealing or disposing of the property.
(4) If:
   (a) any property stolen or obtained by any other crime has been returned to the owner; or
   (b) legal title to any such property has been acquired by any person.
A subsequent receiving of it is not an offence, even though the receiver may know that the property had previously been stolen or obtained by any other crime.
(5) If a person is charged with an offence under this section and the property was obtained by an act committed outside Samoa, it is to be presumed, unless the person charged puts the matter at issue, that the doing of the act by which the property was obtained was an offence under the law of the place where the act was done.

(b) Observations on the implementation of the article

Section 167 of the CA criminalizes as a separate offence “Receiving” which covers the possession of, or control over, property obtained by any crime or helping in concealing or disposing of that property.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

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

Samoa provided the following information regarding the implementation of this provision:
Obstruction of justice is covered under sections 46, 139, 140, 141 and 222 of the Crimes Act, section 194 of the Criminal Procedure Act 2016 and section 54 of the Excise Tax (Domestic Administration) Act 1984.

**Crimes Act 2013**

46. **Unlawful intimidation** – A person commits an offence and is liable to imprisonment for a term not exceeding 1 year or to a fine of 2 penalty units who:
   (a) imposes or attempts to impose or authorises or directs the imposition or attempted imposition upon any other person (whether in respect of a particular person or generally) of any punishment, fine, or penalty or payment in money or goods for having disobeyed any prohibition imposed by any person or body of persons against the doing or abstaining from doing any act which such other person has a legal right to do or abstain from doing; or
   (b) with a view to compel any other person to do or to abstain from doing any act which that person has a legal right to do or abstain from doing—
      (i) uses violence to or by words or acts intimidates such other person or damages or threatens to damage his or her property; or
      (ii) follows such other person about from place to place or in or along any public place; or
      (iii) watches or besets any house, shop, or other place or the approach thereto where such other person or any person whosoever resides or works or carries on business or happens to be.

139. **Perjury** – (1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of witness’s evidence upon oath or affirmation, whether such evidence is given in open court or by affidavit or otherwise, such assertion being known to the witness to be false.
   (2) A proceeding is judicial within the meaning of this section which is held before any Court, or before any judicial officer or other person having power to take evidence on oath or affirmation.
   (3) A person who commits perjury is liable to imprisonment for a term not exceeding 5 years.

140. **Fabricating evidence** – A person is liable to imprisonment for a term not exceeding 3 years who, with intent to mislead any Court of Justice or any judicial officer in the exercise of his or her functions as such, fabricates evidence by any means other than perjury.

141. **Conspiring to defeat justice** –

   A person is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

222. **Contempt of court** – (1) If any person:
   (a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any assessor, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or
   (b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or
   (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings, any constable or officer of the court, with or
without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain the person until the rising of the court.

(2) In any such case as aforesaid, the Judge, if he or she thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him or her to pay a fine not exceeding 10 penalty units for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

Criminal Procedure Act 2016

194. Contempt of Court - (1) If a person, in any criminal or civil proceeding:
   (a) assaults, threatens, intimidates, or wilfully insults a Judge, District Court Judge, Fa’amasino Fesoasoani or any Registrar, or any officer of the court, or any assessor, or any witness, or any constable during his or her sitting or attendance in court, or in going to or returning from the court; or
   (b) wilfully interrupts or obstructs the proceedings of the Court or otherwise misbehaves in court; or
   (c) wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings; or
   (d) wilfully aids, abets, counsels, procures, or incites any other person to do any a constable or officer of the court, with or without the assistance of any other person, may, by order of the court, take the person into custody and detain the person until the rising of the court.

(2) In any such case in subsection (1), the Court (excluding, however, a Court presided over by a Fa’amasino Fesoasoani without extended jurisdiction granted pursuant to section 18 of the District Courts Act 1969), if it convicts the person after giving the person a reasonable opportunity of being heard in his or her defence, may, for each such offence, sentence the person:
   (a) to pay a fine not exceeding 100 penalty units; or
   (b) to imprisonment for a term not exceeding 12 months imprisonment,
   and in default of payment of the fine, may direct that the defendant be imprisoned for a term not exceeding 12 months, unless the fine is sooner paid.

(3) Nothing in this section affects any power or authority of a Court to punish a person for contempt of Court in any case to which this section does not apply.

(b) Observations on the implementation of the article

While Samoa has not established a standalone offence of obstruction of justice, several provisions of the Crimes Act address relevant conduct, namely unlawful intimidation (section 46), perjury (139), fabricating evidence (section 140), conspiring to defeat justice (section 141) and contempt of court (section 222).

According to section 140 of the Crimes Act (Conspiring to defeat justice), a person is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal. Given the broad wording, both actus rei of article 25 (a) appear to be covered.
While not specifically referring to witnesses or specific motive, it is unlawful to intimidate another person through words or acts to compel the person to do or abstain from doing any act which that person has a legal right to do or abstain from (unlawful intimidation, section 46).

**Article 25 Obstruction of Justice**

**Subparagraph (b)**

> Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

> (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

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

Samoa provided the following information regarding the implementation of this provision:

Sections 46, 141, 145, 181 and 222 of the *Crimes Act* criminalise the attempt to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter. The terms “obstruct, prevent, pervert, or defeat” are not defined in the Act.

In addition, section 70 of the *Police Service Act* creates the offence of impersonating a member of the Service and section 71, bribery of a member of the Service.

Section 75 of the Casino and Gambling Control Act 2010 criminalizes conduct of obstructing an officer in the performance of his official duties.

Section 194 of the Criminal Procedure Act 2016 criminalized contempt of court for threatening or intimidating court officers.

Section 10(1)(c) of the Police Offences Ordinance 1961 on resisting and misleading police including by threatening constables in the exercise of their duties.

Section 26 of the Police Powers Act 2007 on refusing to allow a forensic procedure is an offence.

**Crimes Act 2013**

46. **Unlawful intimidation** – A person commits an offence and is liable to imprisonment for a term not exceeding 1 year or to a fine of 2 penalty units who:

(a) imposes or attempts to impose or authorises or directs the imposition or attempted imposition upon any other person (whether in respect of a particular person or generally) of any punishment, fine, or penalty or payment in money or goods for having disobeyed any prohibition imposed by any person or body of persons against the doing or abstaining from doing any act which such other person has a legal right to do or abstain from doing; or

(b) with a view to compel any other person to do or to abstain from doing any act which that person has a legal right to do or abstain from doing—

(i) uses violence to or by words or acts intimidates such other person or damages or threatens to damage his or her property; or

(ii) follows such other person about from place to place or in or along any public place; or
(iii) watches or besets any house, shop, or other place or the approach thereto where such other person or any person whosoever resides or works or carries on business or happens to be.

121. **Injuring in the course of criminal conduct** – (1) A person is liable to imprisonment for a term not exceeding 10 years who with intent:

(a) to commit or facilitate the commission of any crime; or

(b) to avoid the detection of himself or herself or of any other person in the commission of any crime; or

(c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any crime,—

wounds, maims, disfigures, or causes grievous bodily harm to any person, or stupefies or renders unconscious any person, or by any violent means renders any person incapable of resistance.

(2) A person is liable to imprisonment for a term not exceeding 7 years who, with any such intent under subsection (1), injures any person.

122. **Aggravated assault** – (1) A person is liable to imprisonment for a term not exceeding 5 years who assaults any other person with intent:

(a) to commit or facilitate the commission of any crime; or

(b) to avoid the detection of himself or herself or of any other person in the commission of any crime; or

(c) to avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission or attempted commission of any crime.

(2) A person is liable to imprisonment for a term not exceeding 7 years who assaults any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his or her duty.

127. **Using firearm against law enforcement officer** – (1) A person is liable to imprisonment for a term not exceeding 7 years who uses any firearm in any manner whatever against any police officer, or any traffic officer, or any prison officer, acting in the course of the police officer’s duty knowing that, or being reckless whether or not, that person is a police or a traffic officer or a prison officer so acting.

(2) A person is liable to imprisonment for a term not exceeding 7 years who uses any firearm in any manner whatever with intent to resist the lawful arrest or detention of himself or herself or of any other person.

141. **Conspiring to defeat justice** –

A person is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

145. **Threatening words or behaviour to member of parliament or officer**
A person is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 500 penalty units who uses any threatening, abusive or insulting words or behaviour towards or in respect of any member of parliament or any officer or employee of the Government, while he or she is performing any official duty or exercising any official power.

215. Identity fraud –

(1) A person commits an offence and is liable to imprisonment for a term not exceeding 5 years who knowingly obtains, transfers or possesses another person’s identity information in circumstances giving rise to a reasonable inference that the information is intended to be used to commit an offence that includes fraud, deceit, or falsehood as an element of the offence.

(2) A person commits an offence and is liable to imprisonment for a term not exceeding 10 years who dishonestly or fraudulently personates another person, living or dead:

(a) with intent to gain advantage for himself, herself or another person; or

(b) with intent to obtain any property or an interest in any property; or

(c) with intent to cause disadvantage to the person being personated or another person; or

(d) with intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

(3) A person is liable to imprisonment for a period not exceeding 7 years who, intentionally without lawful excuse or justification or in excess of a lawful excuse or justification, by using an electronic system in any stage of the offence, transfers, possesses, or uses a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a crime.

(4) A person is liable to imprisonment for a term not exceeding 7 years who intentionally, without authorisation and with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person, causes a loss of property to another person by:

(a) any input, alteration, deletion or suppression of electronic data; or

(b) any interference with the functioning of an electronic system.

222. Contempt of court –

(1) If any person:

(a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any assessor, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or

(b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or

(c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings, any constable or officer of the court, with or without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain the person until the rising of the court.
(2) In any such case as aforesaid, the Judge, if he or she thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him or her to pay a fine not exceeding 10 penalty units for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid.

(3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

70. Impersonating a member of the Service –

(1) A person who, not being a member of the Service, by words, conduct or demeanour:

(a) pretends that he or she is a member of the Service; or

(b) puts on or assumes the dress, name, designation or description of a member of the Service intending to persuade any other person that he or she is a member of the Service, –

commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months, or both.

No examples or case law were available.

(b) Observations on the implementation of the article

It is unlawful to intimidate another person through words or acts to compel the person to do or abstain from doing any act which that person has a legal right to do or abstain from (unlawful intimidation, section 46).

Under section 122 of the Crimes Act, it is considered aggravated assault to assault any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his or her duty.

Please cf. observations under article 25(a).

Article 26 Liability of legal persons

Paragraphs 1, 2 and 4

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

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

Samoa provided the following information regarding the implementation of this provision:
The Crimes Act 2013 is silent on its application to natural or legal persons. There are certain offences (example murder, rape, etc) whose physical aspects (actus reus) can only be actioned by a natural person however other offences (parties to, conspiracy, etc) where a legal person could be tried and found guilty. The definition of “person” under the Acts Interpretation Act is not restrictive in that it “includes” bodies corporate and not only natural persons.

Please see section 3(1) of the Acts Interpretation Act 2015 which defines the following:

“offence” means an act or omission for which a person can be punished under an Act or law;
“party” has the same meaning as “person”;
“person” includes a corporation sole, or a body of persons, whether corporate or unincorporated;

Furthermore, the Crimes Act 2013 does not specifically disallow the prosecution of legal entities.

For the offence of money laundering, there are no separate criminal sanctions for a legal person, meaning the criminal penalties for a natural person apply; the maximum available fine ($100,000 Tala) or an imprisonment sentence of 7 years or a combination of imprisonment and fine. The provisions are sufficient and also note this Article 26 does not apply only to money laundering but to other offences established by the Convention. Noting our previous responses on the offences there is sufficient material in national law to dissuade from committing offences. This is not dissuasive.

Proceeds of Crime Act 2007
12. Offence committed by a body of persons –
Where an offence under the provisions of section 11 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 officer, or was purporting to act in such capacity, shall be guilty of that offence, unless the person adduces evidence to show that the offence was committed without the person’s knowledge, consent or connivance.

13. Penalties –
A person guilty of an offence under the provisions of sections 11 or 12 shall be liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a period not exceeding seven years, or both.

(b) Observations on the implementation of the article

The definition of person in the Acts Interpretation Act 2015 encompasses natural persons as well as a body of persons, whether corporate or unincorporated.

While a legal person could thus theoretically be found guilty of most offences listed in previous articles, sanctions only include imprisonment for most offences, which is not applicable to legal persons.
If a body corporate commits an offence for which the only penalty prescribed is a term of imprisonment, the body corporate is liable to a fine instead (sect. 56 para 2 Acts Interpretation Act 2015). No case law is available regarding the liability of legal persons.

Civil action may also be brought against legal persons.

**Article 26 Liability of legal persons**

**Paragraph 3**

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

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

Samoa provided the following information regarding the implementation of this provision:

**Proceeds of Crime Act 2007**

11. **Money Laundering Offences** – (1) A person commits the offence of money laundering if the person:
   
   (a) engages in a transaction that involves property, knowing or having reason to believe that the property is the proceeds of crime; or
   
   (b) acquires, possesses, uses, receives or brings into Samoa property, knowing or having reason to believe that the property is derived directly or indirectly from the proceeds of crime; or
   
   (c) converts or transfers property derived directly or indirectly from the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding a person involved in the commission of the offence to evade the legal consequences thereof; or
   
   (d) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from the proceeds of crime; or
   
   (e) renders assistance to any other person for any of the above.

   (2) Knowledge, intent or purpose required as an element of the activities, referred to in subsection (1), may be inferred from objective factual circumstances.

   (3) A person who, without lawful or reasonable excuse, 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.

   (4) A person may be convicted of a money laundering offence under this section notwithstanding the absence of a conviction in respect of the crime.

12. **Offence committed by a body of persons** –

Where an offence under the provisions of section 11 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 officer, or was purporting to act in such capacity, shall be guilty of that offence, unless the person adduces evidence to show that the offence was committed without the person’s knowledge, consent or connivance.

13. **Penalties** –
A person guilty of an offence under the provisions of sections 11 or 12 shall be liable on conviction to a fine not exceeding 1,000 penalty units or to imprisonment for a period not exceeding seven years, or both.

(b) Observations on the implementation of the article

There is nothing in Samoan law prejudicing a natural person’s criminal liability.

For the offence of money laundering, section 12 POCA establishes the liability of a person acting in an official capacity for on behalf of a body of persons, with the possibility of exculpation.

There is nothing in Samoan law prejudicing a natural person’s criminal liability. For the offence of money-laundering, the liability of a legal person acting in an official capacity for or on behalf of a body of persons brings with it the natural person’s culpability (sect 12 POCA). No case law is available regarding the liability of legal persons.

Article 27 Participation and attempt
Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Part V of the Crimes Act 2013 outlines parties to offences who include a person who aides, abets, incites, counsels, or procures any person to commit the offence.

Crimes Act 2013

33. Parties to offences

(1) A person is a party to and guilty of an offence who:

(a) actually commits the offence; or

(b) does or omits an act for the purpose of aiding any person to commit the offence; or

(c) abets any person in the commission of the offence; or

(d) incites, counsels, or procures any person to commit the offence.

(2) Where 2 or more persons form a common intention to carry into effect any unlawful purpose and to assist each other in that object, each of them is a party to every offence committed by any one of them in carrying into effect that unlawful purpose if the commission of that offence was or ought to have been known to be a probable consequence of carrying into effect that common purpose.

(3) Nothing in this section prevents the charging of a person as a party to any offence under both subsections (1) and (2) or in the alternative.

34. Party to crime outside Samoa – (1) A person who, in Samoa, aids, incites, counsels or procures the doing or omission outside Samoa of any act which, if done in
Samoa would be a crime is liable to imprisonment for a term not exceeding that prescribed for the crime, or 7 years, whichever is the less.
(2) Despite subsection (1), where the crime alleged in relation to subsection (1) is murder, the term of imprisonment shall be life.
(3) A person charged under this section is not liable to be convicted in any case where it is proved that the act or omission to which the charge relates was not an offence in the place where it was, or was to be, done or omitted.

35. **Party to offences other than that intended** – A person who incites, counsels or procures another to be party to an offence is a party to every offence which that other commits in carrying into effect that which was incited, counselled or procured and which the person charged as a party pursuant to this section knew or ought to have known to be a likely consequence of that incitement counselling or procuring.

36. **Accessory before the fact** – (1) A person is an accessory before the fact who, without becoming a party to any offence, knowingly helps any person to commit an offence.
(2) A person is an accessory before the fact in terms of subsection (1) despite the fact that the offence was committed in a manner different from that understood by that person.
(3) A person who is an accessory before the fact commits an offence of accessory before the fact and is liable to imprisonment for a term not exceeding 10 years, if the maximum penalty for that offence is imprisonment for life, or in any other case is liable to not more than half the maximum punishment to which the person would have been liable if the person had committed that offence.

37. **Accessory after the fact** - An accessory after the fact to an offence is a person who, knowing or believing any person to have been a party to an offence:
(a) harbours or otherwise assists that person; or
(b) tampers or otherwise interferes directly or indirectly with any evidence against him or her,
for the purpose of enabling that person to avoid arrest or conviction or escape from arrest.

38. **Conspiracy to commit an offence** – (1) A person who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omitting in Samoa would be an offence, commits the crime of conspiracy to commit that offence and is liable to imprisonment for a term not exceeding 7 years, if the maximum penalty for that offence exceeds 7 years, or in any other case is liable to the punishment as if he or she had committed that offence.
(2) The provisions of subsection (1) as to the penalty for conspiring to commit an offence do not apply where the punishment for the conspiracy is prescribed in any other enactment.
(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside Samoa, it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

Examples of prosecutions for parties’ offences are limited to murder/ theft/ burglary/ deception etc.

(b) **Observations on the implementation of the article**
The CA covers ancillary offences, including conspiracy, incitement, accessory before and after the fact, counseling and procuring. Samoan authorities stated that while sanctions for participation in an offence should be identical to those for commission, there was some judicial discretion in sentencing.

**Article 27 Participation and attempt**

**Paragraph 2**

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Section 39 of the *Crimes Act* covers attempt.

**Crimes Act 2013**

39. Attempt to commit or procure commission of offence-

(1) A person who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding 10 years if the maximum penalty for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum penalty to which he or she would have been liable if he or she had committed that offence.

(2) A person who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable:

(a) to imprisonment for a term not exceeding 5 years if such maximum penalty is imprisonment for 10 years or more; and

(b) in any other case, to not more than half the maximum punishment to which the person would have been liable if the person had committed the crime.

Samoa provided the following case as an example of the implementation of those measures:

See the trial judgement for the case *Police v Gianno [2015] WSSC 198 (24 December 2015)* as relevant since Gianno and Stanfield were jointly charged with the offences.

(b) **Observations on the implementation of the article**

Attempt to commit or procure the commission of offence is criminalized

**Article 27 Participation and attempt**

**Paragraph 3**
3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Please also see section 39 (Attempt to commit or procure commission of the offence) which allows to prosecute even if the crime was not committed or failed to be committed. Furthermore, many of the provisions under the Crimes Act (including those under Part 11: Crimes Against the Administration of Justice) criminalise the action and attempting to perform that action. Therefore persons could be prosecuted for preparing to commit offences under the Crimes Act but the evidence collected would have to satisfy a Court on the required standard that the actions taken were in preparation for a criminal act.

In addition to the offences below this makes Samoa compliant with this obligation.

**Crimes Act 2013**

36. Accessory before the fact –

(1) A person is an accessory before the fact who, without becoming a party to any offence, knowingly helps any person to commit an offence.

(2) A person is an accessory before the fact in terms of subsection (1) despite the fact that the offence was committed in a manner different from that understood by that person.

(3) A person who is an accessory before the fact commits an offence of accessory before the fact and is liable to imprisonment for a term not exceeding 10 years, if the maximum penalty for that offence is imprisonment for life, or in any other case is liable to not more than half the maximum punishment to which the person would have been liable if the person had committed that offence.

38. Conspiracy to commit an offence –

(1) A person who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omitting in Samoa would be an offence, commits the crime of conspiracy to commit that offence and is liable to imprisonment for a term not exceeding 7 years, if the maximum penalty for that offence exceeds 7 years, or in any other case is liable to the punishment as if he or she had committed that offence.

(2) The provisions of subsection (1) as to the penalty for conspiring to commit an offence do not apply where the punishment for the conspiracy is prescribed in any other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside Samoa, it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

Samoa provided the following examples of the implementation of those measures:

- **Police v Luamata [2013] WSSC 61 (17 July 2013)** attempted indecent assault
- **Police v Mariota [2003] WSSC 6 (13 March 2003)** attempted possession of narcotic
- **Police v Tautalaaso [2016] WSSC 96 (10 June 2016)** attempted murder
(b) Observations on the implementation of the article

The conspiracy to commit an offence is criminalized, irrespective of whether the offence is committed (section 38 of the Crimes Act). The mere preparation by a single perpetrator of an offence is not criminalized. Given the optional nature of article 27(3), the reviewers consider the provision to be sufficiently implemented.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

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

Samoa cited the following provisions regarding the implementation of this provision:

Criminal Procedure Act 2016

13. Proceedings to commence by laying information - All criminal proceedings commence in the Supreme Court by laying of an information unless the proceeding is transferred to the District Court under section 5.

16. Time and place for laying information - (1) Any information for an offence the maximum penalty for which does not exceed 3 months imprisonment is to be laid within 12 months of the time that the offence is alleged to have been committed.
(2) Subsection (1) does not apply if any other period for the laying of an information is provided by an enactment.
(3) Any information for an offence within the jurisdiction of a District Court is to be filed in the District Court that is either closest by the most practicable route to the place where the offence was alleged to have been committed or to the place the person charged resides.
(4) Any information for an offence within the jurisdiction of the Supreme Court is to be filed in that Court.

(b) Observations on the implementation of the article

According to the Criminal Procedure Act 2016, information for offences with a maximum penalty of less than 3 months imprisonment must be laid within 12 months of the time the offence is alleged to have been committed. Beyond this provision, no statute of limitations exists for criminal offences. As the all Convention offences have a higher maximum penalty, no statute of limitations exists for Convention offences. Samoa stated that a decision can be made to decline prosecution, based on the severity of the offence and its impact on the victim.

Samoan legislation goes beyond the requirements of the Convention.

(c) Successes and good practices

The reviewing experts considered the absence of a statute of limitations as a good practice.
Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

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

Samoa provided the following information regarding the implementation of this provision:

The following table indicates the sanctions applicable to different offences covered by the Convention:

<table>
<thead>
<tr>
<th>Offence Description</th>
<th>Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bribery – Crimes Act</td>
<td>Imprisonment for a term not exceeding 7 years.</td>
</tr>
<tr>
<td>Bribery – Excise Tax Act</td>
<td>A fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 5 years.</td>
</tr>
<tr>
<td>Bribery Legislative Assembly Powers and Privileges Ordinance 1960</td>
<td>Imprisonment for a term not exceeding 2 years.</td>
</tr>
<tr>
<td>Theft/Embezzlement – Crimes Act</td>
<td>(a) in the case of a theft by person in special relationship, to imprisonment for a term not exceeding 10 years; or (b) if the value of the property stolen exceeds $1,000, to imprisonment for a term not exceeding 7 years; or (c) if the value of the property stolen exceeds $500 but does not exceed $1,000, to imprisonment for a term not exceeding 2 years; or (d) if the value of the property stolen does not exceed $500, to imprisonment for a term not exceeding 1 year; or (e) if the property stolen is property stolen by a clerk or servant which is owned by his or her employer or is in the possession of his or her employer, to imprisonment for a term not exceeding 10 years; or (f) if the property stolen is property in the possession of the offender as a clerk or servant, or as an officer or employee of the Government of Samoa or of any local authority or public body, or as a constable, to imprisonment for a term not exceeding 10 years.</td>
</tr>
<tr>
<td>Money laundering – Proceeds of Crime Act</td>
<td>Fine not exceeding 1,000 penalty units or to imprisonment for a period not exceeding seven years.</td>
</tr>
</tbody>
</table>

Further note that offences involving higher amounts carry higher maximum penalties.

Also see section 6 and 56 of the Sentencing Act 2016 which allows a Court to take into account a number of factors including the gravity of an offending when delivering a sentence. Therefore, while the maximum sentence imposed indicates the seriousness of the offence, the gravity of the offending and how it occurred can (and has) been considered by the Court in imposing appropriate penalties.

5. Purposes of sentencing or otherwise dealing with defendants - (1) The purposes for which a court may sentence or otherwise deal with a defendant are either 1 or more of the following:
(a) to hold the defendant accountable for harm done to the victim and the community by the offending;
(b) to promote in the defendant a sense of responsibility for, and an acknowledgment of, that harm;
(c) to provide for the interests of the victim of the offence;
(d) to denounce the conduct in which the defendant was involved;
(e) to deter the defendant or other persons from committing the same or a similar offence;
(f) to protect the community from the defendant;
(g) to assist in the defendant’s rehabilitation and reintegration.
(2) Nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

6. Principles of sentencing or otherwise dealing with defendants - In sentencing or otherwise dealing with a defendant, the court must:
(a) take into account the gravity of the offending in the particular case, including the degree of culpability of the defendant; and
(b) take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
(c) impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the defendant make that inappropriate; and
(d) impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the defendant make that inappropriate; and
(e) take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with defendants in respect of similar defendants committing similar offences in similar circumstances; and
(f) take into account any information provided to the court concerning the effect of the offending on the victim; and
(g) take into account any particular circumstances of the defendant that mean that a sentence or other means of dealing with the defendant that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and
(h) take into account the defendant’s personal, family, community, and cultural background in imposing a sentence or other means of dealing with the defendant with a partly or wholly rehabilitative purpose.

7. Aggravating and mitigating factors - (1) In sentencing or otherwise dealing with a defendant, the court must take into account the following aggravating factors to the extent that they are applicable in the case:
(a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon;
(b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place;
(c) that the offence was committed while the defendant was on bail or still subject to a sentence;
(d) the extent of any loss, damage, or harm resulting from the offence;
(e) particular cruelty in the commission of the offence;
(f) that the defendant was abusing a position of trust or authority in relation to the victim;
(g) that the victim was particularly vulnerable because of his or her age or health or because of any other factor known to the defendant;
(h) that the defendant committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and –
(i) the hostility is because of the common characteristic; and
(ii) the defendant believed that the victim has that characteristic;
(i) premeditation on the part of the defendant and, if so, the level of premeditation involved;
(j) the number, seriousness, date, relevance, and nature of any previous convictions of the defendant and of any convictions for which the defendant is being sentenced or otherwise dealt with at the same time.
(2) In sentencing or otherwise dealing with a defendant the court must take into account the following mitigating factors to the extent that they are applicable in the case:
(a) the age of the defendant;
(b) whether and when the defendant pleaded guilty;
(c) that there was a limited involvement in the offence on the defendant’s part;
(d) that the defendant has, or had at the time the offence was committed, diminished intellectual capacity or understanding;
(e) any remorse shown by the defendant, or action as described in section 9.
(3) As an exception to subsection (2)(d), the court must not take into account by way of mitigation the fact that the defendant was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).
(4) Nothing in subsection (1) or (2):
(a) prevents the court from taking into account any other aggravating or mitigating factor that the court thinks fit; or
(b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the court might take into account.

(b) Observations on the implementation of the article

Sanctions for Convention offences range from up to 50 penalty units (one penalty unit is one Samoan tala) or up to two years imprisonment for bribery of customs officials or members of the legislative assembly, respectively, to imprisonment up to seven years for bribery of all other public officials and money laundering. For theft in a special relationship, sentences depend on the value of the property and are aggravated for offences committed by a public official. Sentences for passive bribery by a judicial officer and by a Minister, Associate Minister or Chief Executive Officer of the Government are also aggravated (up to 14 years imprisonment).

No sentencing guidelines exist, but criteria for sentencing is established in the Sentencing Act and the Young Offenders Act. In addition, case law can provide binding precedent.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

With the exception of the Head of State Act, the laws of Samoa do not prevent criminal, civil or administrative liability for actions carried out in bad faith (i.e. contravention of the law or their responsibilities). Almost all immunities are conditional upon an external factor (good faith, proper exercise of power, etc) which if investigated and disproved will result in a loss of immunity.

- The Legislative Assembly Powers and Privileges Ordinance:
  4. Immunity from imprisonment or restraint – No member of the Legislative Assembly, unless by order or sentence of the Legislative Assembly, is liable to imprisonment during the member’s attendance at the Legislative Assembly or a committee thereof and during a period not exceeding 2 days while going to and the like period while returning from any meeting of the Legislative Assembly or a committee thereof in consequence of conviction of any criminal offence, not being an offence punishable by death or imprisonment for 2 years or more, and not being a refusal to enter into a recognisance for keeping the peace.

- The Money Laundering and Prevention Act: do not prevent public officials from being investigated for alleged breaches of their responsibilities only that they are not liable for those breaches IF they acted in good faith.

Note also the different categories of immunity:
- Money Laundering Act: immune from civil, criminal or administrative liability BUT ONLY for acts done in good faith
- Legislative Assembly Powers and Privileges: civil and criminal immunity in respect of speeches and debates (justified by the Constitutional right to freedom of speech under Article 13)
- Electricity Act: section 11 – immunity from civil liability only and only for person acting in good faith
- Broadcasting Act: section 72 – immunity from civil liability only and only for person acting in good faith
- Head of State Act: section 5(1) immunity from all civil and criminal process during his term unless charged with an offence under the Rome Statute
  5. Immunity from legal process – (1) Subject to subsection (2), the Head of State is accorded immunity from suit and legal process of any kind whether civil or criminal, including freedom from the arrest of the Head of State’s person, during the Head of State’s term of Office.
  (2) Nothing in subsection (1) affects the charging, prosecution and arrest of the Head of State where the Head of State is suspected of or is charged with a crime established under the Rome Statute of the International Criminal Court.
- Electricity Act: section 11 – immunity from civil liability only and only for person acting in good faith
- Broadcasting Act: section 72 – immunity from civil liability only and only for person acting in good faith
- Health Promotion Foundation: section 21 immunity from suit and legal proceedings for actions in good faith
- Intellectual Property Act: section 127 - immunity from civil liability only and only for person acting in good faith
- International Insurance Act: section 38 – no liability in action, suit or proceeding for person acting in good faith
- National Lotteries Act: civil and criminal immunity for actions carried out in good faith
- Prisons and Parole Board Act: section 8 limitation of liability for exercise of powers under the Act
- Proceeds of Crime Act:
  - Section 75 - no action for financial institutions and their officers for acting in compliance with monitoring orders
o Section 83 - immunity of persons acting under Act from civil liability only and only for person acting in good faith

83. Immunity—(1) No suit, prosecution or legal proceedings shall lie against the Government, the Minister, an enforcement agency, or any person exercising a function or power under this Act in respect of anything done by or on behalf of that person in good faith in the exercise of that power or the performance of that function.

(2) The legal costs of defending an action instituted against a person named in subsection (1) are borne by the Government.

➢ Public Bodies Act: section 27A(2) - immunity of whistleblower from civil suit and penalty if reporting breach of Act in good faith
➢ Public Finance Management Act: section 116(2) - immunity of whistleblower from civil suit and penalty if reporting breach of Act in good faith
➢ Tax Administration Act: section 92(7) no liability for acts done or omitted in the proper execution of member's duties as part of Tax Tribunal
➢ Telecommunications Act: section 80(2) civil protection for the Registrar and persons acting under that authority for acts in good faith

Crimes Act

8. Extraterritorial jurisdiction for offences with transnational aspects – (1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Counter Terrorism Act 2014, or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:

(a) is a Samoan citizen; or
(b) is ordinarily resident in Samoa; or
(c) has been found in Samoa and has not been extradited; or
(d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:

(a) is a Samoan citizen or an ordinary resident of Samoa; and
(b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

Samoa provided the following examples of the implementation of those measures:

A judge's common law immunity was discussed in the case of Tafililupetiamalie v Attorney General [2015] WSSC 62 (30 June 2015) where the court discussed the applicability and justification of immunity for judges but clearly noted that despite the immunity a judge can still be held criminally and administratively liable for his actions in his official capacity. Note the discussion in that case of the balancing exercise to be considered when upholding or removing immunity.

Diplomatic immunity of a Samoan diplomat overseas was considered in the case of Police v Wendt [1998] WSSC 46 (1 May 1998) case of diplomat committing fraudulent offences on embassy premises in New Zealand.

(b) Observations on the implementation of the article

Under the section 5 of the Head of State Act, the Head of State enjoys absolute immunity except for crimes under the Rome Statute (genocide, crimes against humanity, war crimes and crimes of aggression).
A member of the Legislative Assembly may be convicted of a criminal offence, but is not liable to imprisonment during attendance during the member’s attendance at the Legislative Assembly or a committee thereof and during a period not exceeding two days while going to and the like period while returning from any meeting of the Legislative Assembly or a committee thereof, unless by order or sentence of the Legislative Assembly.

Functional immunities are granted to specific public officials acting in good faith and properly exercise their power. If good faith is rebutted in the course of the investigation, no immunity is considered to have existed in the first place.

No general immunity is granted for public officials or diplomats.

For bribery offences relating to the bribery of a Minister or a member of the Legislative Assembly, the consent of the Attorney General is required for prosecution.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 3**

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

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

Samoa provided the following information regarding the implementation of this provision:

The Prosecution Guidelines 2016 (attached) provides the guidelines to be followed when a decision to prosecute is being reconsidered, the relevant sections are sections 4, 5, 9 and 11.

*The Prosecution Guidelines 2016*

4. Investigation and Prosecution

4.1 The functions of investigation and prosecution are separate and distinct and are carried out by specialists with different sets of skills and resources. Investigators gather the evidence and other material on which prosecutors rely. Prosecutors do not investigate crime.

4.2 In no sense are investigators “clients” of prosecutors, nor do they give “instructions” to prosecutors; but it is expected that there will be ongoing close cooperative consultations between prosecutors and investigators in respect of cases and each should take into account the views expressed by the other.

*Assistance by and Advice to Investigators*

4.3 Prosecutors may request that further investigations be conducted, but cannot take charge of or direct investigations. Investigators may receive advice from prosecutors in respect of the law, charges and evidence, including:

(a) charges that may be available and appropriate;
(b) the sufficiency of evidence to proceed;
(c) the admissibility of evidence;
(d) the present state of the relevant law;
(e) the appropriate venue for trial;
(f) the disclosure of material;
(g) the institution of appeals or reviews.

5. Decision to Prosecute

5.1 It is the generally accepted and longstanding international practice in common law legal systems that the decision to prosecute is guided by a test (described here as the Test for Prosecution) that incorporates three criteria. This test is to be applied whenever a decision is made to prosecute, not to prosecute, to continue a prosecution or to discontinue a prosecution and it is the test to be applied whenever a matter is screened or assessed in order to determine its future conduct.

5.2 The Test for Prosecution

The three criteria of the Test for Prosecution are:
- The admissible evidence available is sufficient to enable the offence to be proved: the Prima Facie Case Test;
- the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction: the Reasonable Prospects Test; and
- prosecution is required in the public interest: the Public Interest Test.

Each aspect of the Test for Prosecution must be separately and progressively considered and satisfied before a decision is taken. The Prima Facie Case Test must be satisfied before the Reasonable Prospects Test is considered and then the Public Interest Test. The prosecutor must analyse and evaluate all of the evidence and relevant information in a thorough and critical manner when applying these tests.

5.3 Prima Facie Case Test

This test is satisfied if the admissible evidence available to the prosecutor, on its face and without more, is sufficient to enable proof of each of the elements of the offence. This may be posed as: “Is there evidence that is capable of proving the charge?”

5.4 Reasonable Prospects Test

This is considered only after the Prima Facie Case Test is satisfied. A reasonable prospect of conviction exists if, in relation to an identifiable individual, there is credible, reliable, legally admissible evidence of a criminal offence which, together with reasonable inferences able to be drawn from it, would enable an impartial Judge or Assessors, properly directed in accordance with the law, to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed the criminal offence. The Prima Facie Case Test asks “could” the offence be proved; the Reasonable Prospects Test asks “would” the offence be proved.

5.5 This requires an exercise of judgment on the part of the prosecutor which will depend upon an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in the light of any available defence, the anticipated course of the proceedings and the circumstances in which they will take place.

5.5.1 To address the Reasonable Prospects Test a prosecutor must make prospective judgements about matters such as:
(a) the evidence available and its legal admissibility;
(b) any challenge that may be made to the admissibility and/or reliability of the evidence;
(c) the availability, competence and credibility of witnesses and their likely assessment by the court;
(d) any contrary evidence that may reasonably be anticipated;
(e) likely defences to be raised;
(f) the way in which a reasonable tribunal of fact, properly instructed as to the law, will be likely to act on all of the evidence and arguments in the case.

5.5.2 A prosecutor will need to consider in relation to witnesses: the reliability of memory; any suggestion of exaggeration; any association with the defendant (favourable or unfavourable); any motive not to tell the whole truth; availability; psychological or other personal characteristics (including in the case of a child or incapacitated witness); vulnerability to attack by the defence.

5.6 The public interest is not served by proceeding with cases that do not satisfy this test. The resources required to prosecute must be responsibly applied only to proceedings that will be fair and that are likely to be effective.

5.7 Each aspect of this definition may be examined when considering the Reasonable Prospects Test in each particular case:

<table>
<thead>
<tr>
<th>Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifiable individual</td>
<td>There will be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. A prosecution can only take place where the evidence sufficiently identifies that a particular person is responsible individually or jointly with another or others. Where no such person can be identified, there can be no prosecution.</td>
</tr>
<tr>
<td>Credible and reliable evidence</td>
<td>This means evidence which is capable of belief and reliable (able to be relied upon). It may be necessary to confer with a witness before coming to a decision as to whether the evidence of that witness could be accepted as credible or reliable. It may be that a witness is plainly at risk of being so discredited (in cross-examination or by other evidence) that no court could safely rely on his/her evidence. In such a case it may be concluded that there is, having regard to all the evidence, no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably rely on the evidence of a witness, notwithstanding any particular deficiencies, then such evidence must be taken into account. Where there are substantial concerns as to the credibility or reliability of essential evidence, criminal proceedings may not be appropriate as the Reasonable Prospects Test may not be able to be satisfied. Where there are credibility issues, prosecutors must look closely at all the evidence (not just the evidence of that witness) when deciding if there is a reasonable prospect of conviction.</td>
</tr>
<tr>
<td>Legally admissible evidence</td>
<td>Only evidence which is, or is reasonably expected will be, available and legally admissible can be taken into account in considering the Prosecution Test. Prosecutors should seek to anticipate, even without pre-trial matters being raised, whether it is likely that evidence will be admitted or excluded by the court. For example, is it reasonably foreseeable that the evidence will be excluded because of the way it was obtained? If so, prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.</td>
</tr>
</tbody>
</table>
Enabling the court to be satisfied

What is required by the Reasonable Prospects Test is that there is an objectively reasonable prospect of a conviction on the evidence – of satisfaction beyond reasonable doubt of the elements of the offence. The apparent cogency and credibility of evidence is not a mathematical science, but rather a matter of judgment for the prosecutor. In forming his or her judgment the prosecutor shall endeavour to anticipate and evaluate likely defences and attacks upon the evidence.

Beyond reasonable doubt
Commission of the criminal offence

The evidence available to the prosecutor must be capable of enabling the court to reach the high standard of proof required by the criminal law. This requires that careful analysis is made of the law in order to identify what offence or offences may have been committed and to consider the evidence available of each of the elements or ingredients which establish the particular offence.

5.8 Public Interest Test

Once a prosecutor is satisfied that the Reasonable Prospects Test has been met, the next consideration is whether or not the public interest requires a prosecution. It is not the rule that all offences for which the Reasonable Prospects Test has been met must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the general public interest.

In a time-honoured statement made in 1951 Sir Hartley Shawcross QC MP, the then United Kingdom Attorney-General, made the following statement to Parliament in relation to prosecutorial discretion: “It has never been the rule in this country ... that suspected criminal offences must automatically be subject of prosecution. [The prosecutor should] prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration.”

It is initially presumed that the public interest requires prosecution where the Reasonable Prospects Test has been satisfied. In some instances the serious nature of the case will make the presumption a very strong one. However, there will be circumstances in which, although there is determined to be a reasonable prospect of conviction, prosecution is not required in the public interest. Prosecutors, for instance, should positively consider the severity of the offence, the likely penalty, the nature and circumstances of the offence (including any aggravating or mitigating circumstances), the subjective circumstances of the defendant, the appropriateness of any diversionary option available (particularly if the defendant is a youth) among other factors.

5.8.1 This section lists some public interest considerations in favour of prosecution which may be relevant in particular cases and require consideration by a prosecutor when determining where the public interest lies. The list is illustrative only and not exhaustive and is not to be applied in a mathematical sense, either internally or by comparison with the list that follows at 5.8.2.

Public Interest Considerations in Favour of Prosecution

- The seriousness of the offence and the severity of the anticipated penalty, if high, are likely to be strong factors in determining that a prosecution should proceed.
- Where the legislation provides a mandatory penalty such as a disqualification or confiscation order.
- Where the offence is prevalent and general deterrence is required.
- Where the offence involved serious or substantial violence.
- Where the offence was carried out in company.
- Where the offence was an incident of organised crime or required substantial organisation.
- Where there is any element of official corruption.
- Where the offence was committed against a person serving the public: for example, a doctor, nurse, member of the ambulance service, member of the fire service or a member of the police service.
- Where the offence was motivated by hostility against a person because of his/her race, ethnicity, sexual orientation, disability, religion, political beliefs, age, the office held, or other factors indicating a motive of unfair discrimination.
- Where the victim was vulnerable (for example because of age, sex, physical or intellectual incapacity). The more vulnerable the victim, the more serious the offence and the greater the public interest in proceeding.
- Where there is a marked difference between the actual or mental ages of the defendant and the victim and where the defendant took advantage of this.
- Where the victim of the offence, or his or her family, has been put in fear, or suffered personal, psychological or physical attack, damage or disturbance.
- Where the offence has resulted in serious financial loss to an individual, corporation, trust person or society.
- Where the offence was premeditated.
- Where there are reasonable grounds for believing that the offence is likely to be continued or repeated; for example, where there is a history of recurring offending by the defendant.
- Where the defendant was a ringleader or an organiser of the offence.
- Where the defendant was in a position of authority or trust and the offence is an abuse of that position.
- Where the defendant has relevant previous convictions, pre-charge warnings, diversions or cautions.
- Where the defendant is alleged to have committed an offence whilst on bail or subject to a sentence, or otherwise subject to a court order restricting his or her conduct.
- Where it is a domestic violence offence.

5.8.2 This section lists some public interest considerations against prosecution which may be relevant in particular cases and require consideration by a prosecutor when determining where the public interest lies. The following list is illustrative only and not exhaustive and is not to be applied in a mathematical sense (see 5.8.1 above).

Public Interest Considerations against Prosecution
- Where the court is likely to impose a very small or nominal penalty.
- Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake of fact.
- Where the offence is not of a serious nature and is unlikely to be repeated.
- The offence is trivial, technical in nature, obscure or obsolete.
- Where there has been a long passage of time between an offence taking place and the likely date of trial, such as to give rise to undue delay or an abuse of process - unless:
  - the offence is serious;
  - delay has been caused in part by the defendant;
  - the offence has only recently come to light; and/or
  - the complexity of the offence has necessarily resulted in a lengthy investigation.
- Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness.
- Where the defendant has co-operated with law enforcement or tangibly demonstrated significant remorse.
- Where information may be made public that could disproportionately harm sources of information, international relations or national security.
- Where the defendant, a victim or an essential witness was at the time of the offence or trial suffering from significant mental or physical ill-health.
- Where the defendant has no previous convictions.
- Where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants must not be able to avoid prosecution simply by paying compensation or engaging in ifoga).
- Where the recovery of the proceeds of crime can more effectively be pursued by civil action.
- Where any proper alternatives to prosecution are appropriately available.
- Where to proceed would necessarily involve unfairness to the defendant.

5.8.3 These considerations (on both sides) are not comprehensive or exhaustive and, as stated above, are not to be applied in a mathematical sense (by tallying those that apply on either side). In each case where the Reasonable Prospects Test has been met, the prosecutor will weigh the relevant public interest factors that are applicable and make a determination. The public interest considerations which may properly be taken into account when deciding whether the public interest requires prosecution will vary from case to case.

5.9 No Prosecution

If a prosecutor decides that there is insufficient evidence, no reasonable prospect of conviction or that it is not in the public interest to prosecute, a decision will be taken not to prosecute.

The making of such a decision does not preclude further consideration of a case by a prosecutor if new and/or additional evidence becomes available, material circumstances change or a review of the original decision is required for any reason.

9 Review and Discontinuation

9.1 A prosecutor remains under a continuing duty until the finalisation of proceedings to keep a prosecution that has been commenced under review. The prosecution must be discontinued if, for any good reason, a reapplication of the prosecution test at any stage indicates that the evidence is no longer sufficient to show a reasonable prospect of conviction or the general public interest no longer requires the prosecution to proceed.

9.2 If a decision has been taken not to prosecute in a particular instance or to discontinue a prosecution, that decision will be reversed only in justifiable circumstances which may include:

(a) cases in which some error or oversight has resulted in a decision which, on review, is seen to have been clearly wrong;
(b) cases where unanticipated significant evidence first becomes available at a later time;
(c) cases that are temporarily discontinued while evidence continues to be gathered (where the defendant will have been warned of the possible reversal);
(d) cases in which the discontinuance was obtained by fraud, dishonesty or impropriety.

11 Charge Negotiation

11.1 The prosecution may be invited by the defence or may propose to the defence to resolve a matter by agreeing to the defendant pleading guilty to fewer or lesser charges.
than those being prosecuted at the time. In these circumstances three tests must be satisfied before agreement may be reached:
(a) that there is admissible evidence available to prove the charges to which pleas are offered;
(b) that those charges adequately reflect the criminality of the conduct alleged against the defendant;
(c) that the charges give to the court adequate scope to impose penalties appropriate to address that criminality.

11.2 The court plays no role in the conduct of such negotiations.
11.3 Considerable time and expense on all sides can be saved by accepting pleas to appropriate charges. Victims and witnesses can be spared the stress and inconvenience of testifying. The criminal justice process operates more efficiently with such a resolution, without compromising its effectiveness and public support.
11.4 Negotiated pleas must not be accepted if the defendant maintains his or her innocence of the charge(s).
11.5 In all cases where negotiations are under way, the prosecutor should consult, where appropriate, with the investigator in charge of the case and with any victim of crime, so as to inform them of the action being contemplated and of the reasons for it. The prosecutor must receive their views and take them reasonably into account when decisions are being made – not by way of instructions, but as another means of informing such decisions. Records of such consultations must be kept on the relevant file.

(b) Observations on the implementation of the article

The decision to prosecute or to continue or discontinue prosecution is subject to a three-step test, consisting of a prima facie case test, a reasonable prospects test and a public interest test. Following the determination of a reasonable prospect of conviction, the public interest of prosecution is analysed. Factors to be weighed include the severity of the offence, the likely penalty, the nature and circumstance of the offence, the subjective circumstances of the defendant, and the appropriateness of any diversionary option available.

The necessity of general deterrence is listed as a factor for prosecution, as is any element of official corruption or abuse of authority by the defendant.

Factors against prosecution include a likely small or nominal penalty or the possibility of a more effective recovery of proceeds of crime through civil action.

The decision to prosecute is bound by the results of the three-step test.

Private prosecution is possible, and has been pursued in the past. The Ombudsman has an investigation division for police complaints that can be called upon. The Ombudsman reports to a minister or prime minister their findings and recommendations, the Ministry could then order police to continue investigation. Samoa stated that this instrument is used quite frequently, including in high profile cases, and presented a case example.

(c) Successes and good practices
Samoa employs a pragmatic and needs-specific and -based approach to arising capacity issues, such as the placement of foreign prosecutors in cases of possible conflicts of interests.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 4**

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

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

Samoa cited the following provisions regarding the implementation of this provision:

The *Criminal Procedure Act* outlines the rules for bail.

**Criminal Procedure Act 2016**

98. **Rules as to granting bail** –

(1) A defendant is bailable as of right who is charged with an offence that is not punishable by imprisonment.

(2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years’ imprisonment, unless the offence is one that relates to assault on a child, or by a male on a female.

(3) Despite anything in this section, a defendant who is charged with an offence punishable by imprisonment is not bailable as of right if the defendant has been previously convicted of an offence punishable by imprisonment.

(4) A defendant charged with an offence and is not bailable as of right is bailable at the discretion of the Court unless the Court is satisfied that there is just cause for the defendant to be remanded in custody.

99. **Factors relevant to decision as to bail** –

In considering whether there is just cause for the defendant to be remanded in custody or for continued detention, a Court must take into account the following:

(a) whether there is a risk that the defendant may fail to appear in Court on the date to which the defendant has been remanded;

(b) whether there is a risk that the defendant may interfere with witnesses or evidence;

(c) any previous conviction on an offence of a similar nature;

(d) whether there is a risk that the defendant may offend while on bail;

(e) the seriousness of the punishment to which the defendant is liable, and the severity of the punishment that is likely to be imposed;

(f) the character and past character or behaviour, in particular proven criminal behaviour of the defendant;

(g) whether the defendant has a history of offending while on bail, or breaching Court orders including other orders imposing bail conditions;
(h) the nature of the offence with which the defendant is charged, and whether it is a grave or less serious one of its kind;

(i) the strength of the evidence and the probability of conviction or otherwise;

(j) the seriousness of the punishment to which the defendant is liable, and the severity of the punishment that is likely to be imposed;

(k) any other matter that is relevant in the particular circumstances.

103. Bail pending sentence - (1) If a defendant is found guilty or if a defendant pleads guilty, the Court may not grant bail unless it is satisfied on the balance of probabilities that it would be in the interests of justice in the particular case to do so.

(2) The onus is on the defendant to show cause why bail should be granted.

(3) When considering the interests of justice under subsection (1), the Court may, instead of the considerations in section 99, take into account the following considerations:

(a) whether the defendant is likely to receive a sentence of imprisonment;

(b) the likely length of time that will pass before the defendant is sentenced;

(c) any other consideration that the Court considers relevant.

(4) If the defendant is unlikely to receive a sentence of imprisonment, this must count against the defendant being remanded in custody.

106. Conditions of bail - (1) Subject to section 109, if a defendant is granted bail, the defendant must be released on condition that the defendant attend personally:

(a) at the time and place at which the hearing is adjourned; or

(b) at the time and place to which, during the course of the proceedings, the hearing may from time to time be adjourned.

(2) The Court or remand officer may impose, as a further condition of the defendant’s release, a condition that the defendant report to the Police at the time or times and at the place or places that the Court or remand officer orders.

(3) Whether or not the Court or remand officer imposes a condition under subsection (2), the Court or remand officer may impose any other condition that the Court or remand officer considers reasonably necessary to ensure that the defendant:

(a) appears in Court on the date to which the defendant has been remanded; and

(b) does not interfere with any witness or any evidence against the defendant; and

(c) does not commit any offence while on bail; and

(d) for the protection of the community.

(4) The Court or remand officer may require, as a further condition of the defendant’s release, the deposit of any sum or the entering into of any obligation in the nature of a bond, guarantee, or surety, whether by the defendant or any other person.

112. Defendant on bail may be arrested without warrant in certain circumstances - (1) A constable may arrest without warrant a defendant who has been released on bail if the constable believes on reasonable grounds that:

(a) the defendant has absconded or is about to abscond for the purpose of evading justice; or

(b) the defendant has contravened or failed to comply with any condition of bail.
(2) A defendant who is arrested under subsection (1) must be brought before the Court as soon as possible.
(3) In any such case, the Court must reconsider the question of bail, if it is satisfied that the defendant had absconded or was about to abscond or has contravened or failed to comply with any condition of bail.
(4) After a defendant has been arrested under subsection (1), the defendant cannot be bailed as of right.
(5) Nothing in this section prevents a constable from seeking a warrant to arrest a defendant under section 113.

114. Failure to answer bail
(1) A defendant commits an offence if the defendant, having been released on bail:
   (a) fails without reasonable excuse to attend personally at the time and the Court specified in the notice of bail; or
   (b) fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned; or
   (c) fails to comply with any of the conditions of bail.
(2) A defendant convicted for an offence under subsection (1) is liable to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding 12 months, or both.

Samoa has provided the following examples of the implementation of those measures:
See cases in which bail applications were made and the flight risk was considered:
- Police v Pule [2017] WSSC 127 (12 September 2017) – bail denied due to real risk of flight and other factors
- Police v Barlow [2017] WSSC 107 (26 July 2017) in this case flight risk was considered but deemed low. Bail was denied for other reasons
- Police v Lealaitagomoa [2006] WSSC 6 (9 February 2006)

(b) Observations on the implementation of the article
The reviewing experts conclude that Samoa has fully complied with the provisions of Art. 30 (4) of the Convention.

Article 30 Procurement, adjudication and sanctions

Paragraph 5
5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:
The Prisons Parole Board Act establishes the Prisons Parole Board. The gravity of the offence is not a factor in determining parole.

Prisons Parole Board Act 1977
PART 3 RELEASE AND SUBSEQUENT SUPERVISION OF OFFENDERS
10. Eligibility for parole consideration –

(1) An offender is eligible for consideration by the Board for release on parole upon the expiry of the following periods from the date of his or her reception in a prison after sentencing:

(a) ten years for an offender undergoing imprisonment for life, having been sentenced to death and the sentence having been commuted to life imprisonment;

(b) eight years for any other offender undergoing imprisonment for life.

(c) one year or after the expiry of one-half of the term of the sentence, whatever period is longer, for an offender undergoing a sentence of 1 year or more other than a sentence of life imprisonment.

(2) The Board shall consider the case of an offender as soon as practicable after the expiry of the terms as provided in subsection (1) and at least once in every period of 12 months thereafter.

(3) After an offender has become entitled to have his or her case considered for the first time under subsection (1), the offender may apply to the Board for the further consideration of his or her case:

**PROVIDED THAT** no application under this subsection is to be made to the Board at any time within 6 months after the making of a previous application under this subsection.

(4) A member of the Board may at any time after the expiration of the appropriate period provided for in subsection (1) request the Board to consider any case, and on such request the Board shall consider the case at its next meeting.

(5) In considering any case under this section, the Board shall not be required to interview the offender but the Board or any member of the Board may interview the offender at the prison in which he or she is detained or summon the offender before a meeting of the Board.

11. Term of parole –

(1) If an offender who is detained under a sentence of imprisonment of 1 year or more, not being imprisonment for life and not being a person to whom subsection (3) applies, is released from detention before the expiry of the maximum term for which he or she is liable to be detained under the sentence, the offender shall be on parole, from the time of release, until the expiry of the term of the sentence, or for 1 year if the unexpired part of that term is less than a year:

**PROVIDED THAT** the Board may discharge from parole an offender who remains on parole after the maximum term of his or her imprisonment by virtue of the requirement of a minimum of 1 year of parole prescribed in subsection (1).

(2) Where an offender detained under a sentence of imprisonment for life is released from detention, the offender shall be on parole, from the time of his or her release, for the rest of his or her life.

(3) This section, so far as it is applicable to a person released from detention under a sentence of imprisonment of 1 year or more, shall apply whether the release is under this Part, or is under a partial remission of his or her sentence under the Prisons and Corrections Act 2013.
For the purposes of this section, cumulative terms of imprisonment are taken to be 1 term.

12. Parole order –

(1) The Board shall order that the release on parole of any offender shall be subject to the general conditions set out in section 13, and any special conditions as the Board thinks fit, and such conditions shall be incorporated in a parole order.

(2) A parole order shall be in writing and signed by a member authorised by the Board and a copy of the order shall be given to the offender personally at a meeting of the Board prior to the offender’s release from prison.

13. Conditions of parole –

(1) If an offender is released on parole, the following general conditions shall apply:

(a) within 24 hours after his or her release on parole, the offender shall report in person to the parole officer at the place stated in the parole order, or if he or she does not proceed directly to that place, then the offender shall report to some other parole officer within 48 hours of his or her release on parole;

(b) the offender shall report to the parole officer under whose supervision he or she is for the time being as and when he or she is required to do so by the parole officer;

(c) the offender shall give to the parole officer reasonable notice of his or her intention to move from his or her address; and if the offender moves to any other address, he or she shall, within 48 hours after arrival at that other address, notify the chief parole officer of his or her arrival, the new address, and the nature and place of his or her employment;

(d) the offender shall not reside at an address that is not approved by the parole officer;

(e) the offender shall not continue in any employment, or continue to engage in any occupation, that is not approved by the parole officer;

(f) the offender shall not associate with any specified person, or with persons of any specified class, with whom the parole officer has, in writing, warned him or her not to associate;

(g) the offender shall be of good behaviour and shall not commit any offence against the law.

(2) A parole offender is under the supervision of a parole officer in whose district he or she resides for the time being, or of such other parole officer as the chief parole officer may direct.

(3) A paroled offender or his parole officer may apply to the Board for the remission, suspension, or variation of any general or special condition of parole, and the parole officer may in his or her discretion, and in writing, suspend the condition until the application has been heard by the Board and disposed of.

(4) A parole officer may apply to the Board for the imposition of any additional condition of parole in respect of any paroled offender under his or her supervision.

(b) Observations on the implementation of the article
While not codified, Samoa stated that in practice, parole decisions depend on the seriousness of an offence, behavior in prison, and time spent. The decision is made by the Commission of prisons and a parole board, on the legal basis of a Commissioner’s order, which was not made available to the reviewers.

The reviewing experts recommend that Samoa consider codifying the conditions to be taken into account when deciding on parole, and include as a condition the gravity of the offence.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

> 6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

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

Samoa provided the following information regarding the implementation of this provision:

Section 14 of the PFM Act provides for suspension of authority of a person (including a head of department) from dealing with public funds or public property. See as follows:

**Public Finance Management Act 2001**

"14. Access to information and removal of authority to deal with public monies etc. –

(1) The Financial Secretary has power to obtain full and free access at all times to all accounts and records of accountable officers that relate, directly or indirectly, to:

(a) the collection, receipt, expenditure, issue or use of public money; and

(b) the receipt, custody, disposal, issue or use of public property, and to inspect and inquire into and call for any information arising from those accounts and records.

(2) In the exercise of his or her powers under this section, the Financial Secretary may appoint a person by writing under his or her hand to inquire into and report on any matter or matters specified in the instrument of appointment.

(3) If:

(a) as a result of any information coming to the attention of the Financial Secretary, the Financial Secretary becomes concerned that public monies or trust money or public property is at risk through the actions or omissions to act of an accountable officer the Financial Secretary may by notice in writing addressed to the accountable officer suspend the authority of that accountable officer to exercise any power, duty or authority under the Act pending an investigation.

(b) the Financial Secretary issues a notice under subsection (3)(a) the Financial Secretary shall conduct an inquiry forthwith into the actions or omissions to act of the accountable officer and where as a result of such investigation the Financial Secretary forms the view, on reasonable grounds, that public monies or trust money or public property is at risk if the authority under this Act of the accountable officer is restored the Financial Secretary shall immediately give notice in writing to the accountable officer that his or her authority
under the Act to deal with public monies, trust money and public property is removed. Such notice shall provide the accountable officer with the reasons for the Financial Secretary’s decision;

(c) as a result of an inquiry the Financial Secretary forms the view that public monies or trust money or public property is not at risk the Financial Secretary shall immediately restore the authority under this Act of the accountable officer and shall provide the accountable officer with notice in writing to this effect;

(d) the Financial Secretary gives a notice and reasons to an accountable officer under subsection (3)(a), (b) or (c) the Financial Secretary shall forward a copy of the notice and reasons to the accountable officer’s head of department and to the Secretary of the Public Service Commission and if the accountable officer whose authority is suspended is a head of department, a copy of the notice and reasons must be forwarded to the Responsible Minister and to the Secretary of the Public Service Commission.”

Section 43 of the Public Service Act provides that where an employee is charged with having committed an offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the relevant Chief Executive Officer may temporarily assign the employee to other duties within the Ministry; or suspend the employee from duty.

If the employee is convicted of the offence, the relevant Chief Executive Officer may, after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45.

**Public Service Act 2004**

3. Interpretation

In this Act, unless the context otherwise requires:

“Chief Executive Officer” means the Head of Department of a Ministry, and includes the head of a Constitutional authority;

“employee” means a person employed in a Ministry but does not include a Chief Executive Officer;

19. Code of Conduct

An employee and a Chief Executive Officer shall:

(a) be honest and impartial; and
(b) work carefully and diligently; and
(c) treat everyone with respect and courtesy and without coercion or harassment; and
(d) comply with all laws that apply to them; and
(e) comply with all lawful and reasonable directions given to them by persons who have authority to give those directions; and
(f) disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment; and
(g) use Government resources properly; and
(h) use official information only for official purposes; and
(i) act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body; and
(j) uphold the values of the public service set out in section 17; and
(k) comply with any other conduct requirements set out in the regulations; and
(l) uphold the good reputation of the public service.

Division 6 – Upholding the values and the Code of Conduct

43. Conviction for offence

(1) Where an employee is charged with having committed an offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the relevant Chief Executive Officer may:

(a) temporarily assign the employee to other duties within the Ministry; or

(b) suspend the employee from duty.

(2) Suspension under this section is without pay unless the Commission directs otherwise.

(3) If the employee is convicted of the offence, the relevant Chief Executive Officer may, after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45.

(4) If the employee is acquitted of the charge the employee shall be reinstated without loss of any benefit or status and paid the salary they lost as a result of any suspension from duty.

44. Breach of the Code of Conduct

(1) If a Chief Executive Officer suspects that an officer may have breached the Code of Conduct, the Chief Executive Officer or the Chief Executive Officer’s delegate must carry out a preliminary investigation of the matter, and:

(a) charge the officer in writing with a breach of the Code of Conduct; or

(b) give the officer a warning; or

(c) take no further action.

(2) When an officer has been charged with a breach of the Code of Conduct, the relevant Chief Executive Officer must appoint an officer or a contract employee from a Ministry other than the Ministry in which the charged officer works, to carry out a complete investigation of the charge and to make recommendations to the Chief Executive Officer.

(3) A person must not be appointed for the purpose of subsection (2) unless the Commission has certified that the person is qualified to carry out an inquiry and appears to be impartial.

(4) A person appointed for the purposes of subsection (2) may do any or all of the following:

(a) amend a charge;

(b) withdraw a charge;

(c) lay an additional charge, – and must without delay, inform the officer of an amendment, withdrawal or additional charge.

(5) The procedure for investigating and determining a charge against an officer is specified in the regulations, but as a minimum, the procedure must provide that:
(a) the officer must be informed of the charge against the officer and any evidence in support of the charge; and

(b) the officer has a right to respond, either in writing or orally, to—

(i) confirm or to contradict the charge and any evidence in support of the charge; and

(ii) make a submission on a penalty to be imposed on the officer if the Chief Executive Officer is satisfied that the charge is true.

(6) Despite the other provisions of this Act, if:

(a) in the reasonable opinion of the Commission a Chief Executive Office is unwilling or unable to exercise any of the functions or powers given to a Chief Executive Officer under this section and sections 43, 45, 46, 47 and 48; and

(b) the Commission is, after consulting with the relevant Chief Executive Officer, of the opinion that the Chief Executive Officer’s unwillingness or inability under paragraph (a) will or is likely to adversely affect the performance or reputation of any Ministry or other part of the Government, —

the Commission may exercise any of the Chief Executive Officer’s functions and powers under this section and sections 43, 45, 46, 47 and 48.

(7) If the Commission acts under subsection (6), the Commission is taken for all purposes to be the Chief Executive Officer and this section and sections 43, 45, 46, 47 and 48 apply, with such adaptations and alterations as required, to enable the Commission to exercise the Chief Executive Officer’s functions and powers under this section and sections 43, 45, 46, 47 and 48.

45. Penalties

If:

(a) an officer admits the truth of a charge; or

(b) the relevant Chief Executive Officer, after considering the report of the person who carried out the inquiry and any submissions made by the officer, is satisfied that the charge is true, —

the relevant Chief Executive Officer may, after taking into account the service record of the officer, impose on the officer 1 or more of the following penalties—

(i) caution and reprimand the officer;

(ii) order that a sum not exceeding $1000 be deducted by way of penalty from the salary of the officer and paid into the Treasury Fund;

(iii) transfer the officer to other duties;

(iv) reduce the classification or the grading of the officer;

(v) reduce the rate of salary of the officer (with or without reduction in grading);

(vi) terminate the employment of the officer.

47. Suspension and temporary transfer — (1) When:

(a) a person has been appointed under subsection 44(2) to consider whether a charge should be made against an officer; or

(b) a charge has been made against an officer under that subsection, —
The Chief Executive Officer may, after giving the officer an opportunity to be heard on the matter—
(i) suspend the officer from duty; or
(ii) temporarily assign the officer to other duties in the Ministry, – pending the determination of the charge.
(2) Suspension under this section is with pay.
(3) If an officer is not charged under subsection 44(1) within 21 days of the imposition of a suspension under this section, the Chief Executive Officer must revoke the suspension.

In 2018, 6 employees were suspended from duties due to being charged by Police for alleged criminal offences. In the previous year, 4 employees were either transferred to other duties or suspended from duties until the completion of Police investigation against them.

(b) Observations on the implementation of the article

Section 14 of the PFM Act provides for suspension of authority of a person (including a head of department), pending an investigation, from dealing with public funds or public property in cases of concern that public monies or trust money or public property is at risk through the actions or omissions to act of an accountable officer.

Section 43 of the Public Service Act provides that where an employee is charged with having committed an offence, the relevant Chief Executive Officer may temporarily assign the employee to other duties within the Ministry; or suspend the employee from duty.

If the employee is convicted of the offence, the relevant Chief Executive Officer may, after giving the employee an opportunity to be heard on the matter, transfer the officer to other duties or impose other disciplinary sanctions.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:
(a) Holding public office; and

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

Samoa provided the following information regarding the implementation of this provision:

A person is disqualified for being a candidate or being elected as a Member of Parliament if the person is an undischarged bankrupt; or has been convicted in Samoa or another country within the previous 8 years, of an offence punishable by death or by imprisonment for a term of 4 years or more; or convicted or found guilty in Samoa of a corrupt practice and has not been removed from the Corrupt Practices List under section 32A.

Under the Electoral Act, the office of the Electoral Commissioner is vacated if the Commissioner has a conviction or is convicted for an offence involving dishonesty or
corruption; or where the penalty for such offence includes imprisonment for 1 year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction).

Under section 21 of the Public Bodies (Performance and Accountability) Act a person who whilst acting in the capacity of a director of a Public Body, knowingly makes or takes part in the making, or attempts to take part in the making of a decision where the person has a pecuniary or other interest which conflicts with the interests of the Public Body is guilty of an offence and shall be liable to a fine of up to 100 penalty units. A person convicted under this section shall immediately forfeit his or her directorship of the particular Public Body and any other Public Body of which the person is a director.

**Electoral Act 1963**

2. Interpretation

(1) In this Act, unless the context otherwise requires:

“Matai title” means the title which is entered in the Register of Matais established and kept under the *Land and Titles Act 1981* other than a title held as a complimentary honour only;

3. Electoral Commissioner –

(1) Subject to this section, there shall be appointed by the Head of State, acting on the advice of Cabinet, an Electoral Commissioner who shall have and exercise the responsibilities, functions, duties and powers conferred by this Act and any applicable law.

(3) The office of Commissioner is vacated immediately if the Commissioner:

(a) breaches subsection (2)(c) or (2)(d) or (4); or

(b) is declared bankrupt in Samoa or elsewhere; or

(c) at the time of appointment and whilst holding the position of Commissioner, has a conviction or is convicted for an offence, in Samoa or elsewhere:

(i) under this Act; or

(ii) involving dishonesty or corruption; or

(iii) where the penalty for such offence includes imprisonment for 1 year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction); or

(d) is determined by a medical practitioner to be unable to perform the Commissioner’s responsibilities, functions, duties and powers due to a physical or mental incapacity; or

(e) is absent from duty in Samoa for a period of 5 consecutive days without the Minister’s written consent or other lawful excuse; or

(f) after due enquiry, is declared by the Chief Justice of the Supreme Court to have engaged in any personal or official conduct or other behaviour in Samoa or elsewhere which the Chief Justice determines, acting in the Chief Justice’s absolute discretion, could bring or has brought into disrepute or could or has cast doubt on the integrity or honesty or impartiality of—

(i) the office of Commissioner; or

(ii) the Samoan electoral process; or
(iii) the proper administration of this Act.

…

PART 2 QUALIFICATIONS OF MEMBERS

5. Who may be candidates for election as Members

(1) Subject to the Constitution and of this Act, a person who is registered as an voter of a territorial constituency and is the holder of a matai title is qualified to be a candidate and to be elected as a Member for that constituency, and a person who is registered as a voter on the urban voters’ roll and is the holder of a matai title is qualified to be a candidate and to be elected as a Member representing the urban voters, if in either case, as required by Article 45 of the Constitution, he or she:

(a) is a citizen of Samoa; and

(b) is not disqualified under the Constitution or of any Act,

PROVIDED THAT:

(a) the requirement for a candidate registered in the urban voters’ roll to hold a matai title shall only apply to the 2011 General Elections and any other elections thereafter;

(b) a Member representing or who had represented the urban voters is not disqualified from being a Member for not holding a matai title for a period leading up to the 2011 General Elections.

…

(5) A person is disqualified for being a candidate or being elected as a Member of Parliament if the person:

(a) is an undischarged bankrupt; or

(b) has been—

(i) convicted in a Samoa or another country within the previous 8 years, of an offence punishable by death or by imprisonment for a term of 4 years or more; or

(ii) convicted or found guilty in Samoa of a corrupt practice and has not been removed from the Corrupt Practices List under section 32A; or

(c) is of unsound mind and is subject to an order of medical custody made under the Mental Health Act 2007.

…

32A. Corrupt Practices List –

(1) Where it is proved before the Commissioner that a person who is registered or who applies for registration as a voter has within the immediately preceding period of 5 years:

(a) been convicted of a corrupt practice; or

(b) been reported by the Supreme Court in its report on the trial of an election petition to have been proven guilty of a corrupt practice,—

the Commissioner shall enter the name, residence, and description of that person and particulars of the conviction or report on a list to be called the Corrupt Practices List.
(2) The Commissioner shall remove the name of a person from the Corrupt Practices List at the expiration of 5 years from the date of the conviction or report in respect of which his or her name is entered on the list, or sooner if so ordered by the Supreme Court.

(3) Whenever a main roll is printed for a territorial or urban constituency, a copy of the Corrupt Practices List for the territorial or urban constituency is to be appended to it and printed and published with it.

(4) Whenever a supplementary roll is printed for a territorial or urban constituency, a copy of so much of the Corrupt Practices List as has not been printed with the main roll or an existing supplementary roll for the territorial or urban is to be appended to the supplementary roll and printed and published with it.

(b) Observations on the implementation of the article

Regulations exist regarding members of Parliament and the Electoral Commissioner.

A person is disqualified for being a candidate or being elected as a Member of Parliament if the person has been convicted in Samoa or another country within the previous 8 years, of an offence punishable by imprisonment for a term of 4 years or more; or convicted or found guilty in Samoa of a corrupt practice and has not been removed from the Corrupt Practices List kept by the Electoral Commissioner.

The Electoral Commissioner’s post is vacated if the Commissioner has a conviction or is convicted for an offence involving dishonesty or corruption; or where the penalty for such offence includes imprisonment for 1 year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction).

A director of a Public Body who is convicted for involvement in a decision despite an existing conflict of interest, shall immediately forfeit his or her directorship of the particular Public Body and any other Public Body of which the person is a director.

No disqualification procedure exists for other public offices or offices in state-owned enterprises, applications are handled on a case-by-case basis and objective decisions are provided for by a selection panel that consists of one commissioner and at least one private sector representative. Samoa is encouraged to establish procedures for the disqualification of public officials convicted of corruption offences from holding public office.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

Public Bodies (Performance and Accountability) Act 2009

21. Decisions by Directors involving a conflict of interest-

(1) A person who whilst acting in the capacity of a director of a Public Body, knowingly makes or takes part in the making, or attempts to take part in the making of a decision where the person has a pecuniary or other interest which conflicts with the interests of the Public Body is guilty of an offence and shall be liable to a fine of up to 100 penalty units.

(2) A person convicted under this section shall immediately forfeit his or her directorship of the particular Public Body and any other Public Body of which the person is a director.

(b) Observations on the implementation of the article

During the country visit, Samoa stated that applications are handled on a case-by-case basis and objective decisions are provided for by a selection panel that consists of one commissioner and at least one private sector representative. Samoa is encouraged to establish procedures for the disqualification of public officials convicted of corruption offences from holding office in an enterprise owned by the State.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

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

Samoa provided the following information regarding the implementation of this provision:

The law is silent on whether the process of disciplinary matters be followed in parallel to criminal proceedings. Although the law is silent on this, the Public Service Commission intends to develop a ‘protocol’ as a trigger for processes to undertake. For employees in the Samoa Public Service, once there is an alleged misconduct under the Code of Conduct, the CEO may initiate the breach of the Code of Conduct process in section 44 of the Public Service Act 2004. If the alleged misconduct is also a potential criminal offence, CEOs have also referred the matter to the Police for investigation and criminal charges while at the same time, the breach process against the employee is ongoing. Principally, this is due to the different threshold of proof that the Public Service breaching process adopts and that of the Police. More often than not, the Court may not convict an employee due to Prosecution not being able to prove the criminal offence beyond a reasonable doubt. As such, the employee gets acquitted by the Court and here, the CEO may either decide to terminate the employment or impose another penalty as the CEO thinks fit. The Public Service Commission ‘protocol’ is anticipated to assist the CEOs in their decision to choose the appropriate process to undertake, but only in respect of employees employed in the Samoa Public Service.

In addition, Section 117 of the PFM Act provides that if it is established that a head of department or chief executive intentionally or recklessly has authorised expenditure or commitment of funds in excess of the approved limit for the department or public body the
appointing authority may dismiss the head of department or the chief executive, as the case may be.

The PFM (Government Vehicles) Regulations 2015, also provide for disciplinary action against any public official or Government employee in breach of the Regulations.

**Public Service Act 2004:**

43. **Conviction for offence** –

a. Where an employee is charged with having committed an offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the relevant Chief Executive Officer may:

   (a) temporarily assign the employee to other duties within the Ministry; or

   (b) suspend the employee from duty.

b. Suspension under this section is without pay unless the Commission directs otherwise.

c. If the employee is convicted of the offence, the relevant Chief Executive Officer may, after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45.

d. If the employee is acquitted of the charge the employee shall be reinstated without loss of any benefit or status and paid the salary they lost as a result of any suspension from duty.

44. **Breach of the Code of Conduct** –

(1) If a Chief Executive Officer suspects that an officer may have breached the Code of Conduct, the Chief Executive Officer or the Chief Executive Officer’s delegate must carry out a preliminary investigation of the matter, and:

   (a) charge the officer in writing with a breach of the Code of Conduct; or

   (b) give the officer a warning; or

   (c) take no further action.

(2) When an officer has been charged with a breach of the Code of Conduct, the relevant Chief Executive Officer must appoint an officer or a contract employee from a Ministry other than the Ministry in which the charged officer works, to carry out a complete investigation of the charge and to make recommendations to the Chief Executive Officer.

(3) A person must not be appointed for the purpose of subsection (2) unless the Commission has certified that the person is qualified to carry out an inquiry and appears to be impartial.

(4) A person appointed for the purposes of subsection (2) may do any or all of the following:

   (a) amend a charge;

   (b) withdraw a charge;

   (c) lay an additional charge,
and must without delay, inform the officer of an amendment, withdrawal or additional charge.

...

**44A. Investigation not required** – Despite section 44, if a Chief Executive Officer:

(a) is of the opinion that an officer has breached the Code of Conduct; and

(b) the officer has admitted to the Chief Executive Officer to that breach,

The Chief Executive Officer may, without any further investigation, impose any of the penalties under section 45.

Other express or implied powers of investigation of employees:

- *Electricity Power Corporation Act 1980* – section 15(m) authority to investigate a breach of the Act
- *Lawyers and Legal Practice Act 2014* – section 6(1)(c) and 50
- *Legislative Assembly Powers and Privileges Ordinance 1960* – section 21
- *Ombudsman (Komesina o Sulufaiga) Act 2013* – section 41 (3) disallows investigation by the Ombudsman where there is an ongoing criminal or disciplinary investigation UNLESS there is possible abuse of process by the relevant authorities, a delay or improper investigation
- *Plumbers Act 2014* – section 31 investigation and prosecution of complaints against members
- *Police Service Act 2009* – section 56 (3) (suspension of Commissioners and Acting Commissioners until suspected grounds of termination have been investigated) and (6) suspension on being charged with a criminal offence. Section 68 establishing the Professional Standards Unit and section 75 – ministerial authority to inquire
- *Samoa Institute of Accountants Act 2006* – requirement to have a Professional Conduct Committee to investigate complaints against members (section 7(f))
- *Samoa Water Authority Act 2003* – section 10(2)(m) authority to investigate a breach of the Act

(b) **Observations on the implementation of the article**

The possibility of parallel criminal and disciplinary measures is not precluded by the legislation.

In practice, for employees in the Samoa Public Service, once there is an alleged misconduct under the Code of Conduct, the CEO may initiate the breach of the Code of Conduct. If the alleged misconduct is also a potential criminal offence, CEOs have also referred the matter to the Police for investigation and criminal charges while at the same time, the breach process against the employee is ongoing.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.
(a) **Summary of information relevant to reviewing the implementation of the article**

*Samoa provided the following information regarding the implementation of this provision:*

See the *Community Justice Act 2008* which is described as:

"AN ACT to promote criminal justice by the provision of a community based justice system that fosters community based sentencing options and the rehabilitation and reintegration of offenders."

2. **Purpose** – The purpose of this Act is to administer and operate a community based justice system that promotes public safety and contribute towards the maintenance of a just society by:

(a) ensuring that sentences are administered in a fair and effective manner; and

(b) reducing re-offending by managing the rehabilitation of offenders and their reintegration into society; and

(c) providing useful and timely information to courts and the Prisons Parole Board to assist them in determining decisions relating to the rehabilitation and reintegration of offenders and prisoners; and

(d) providing opportunities for the community to participate in the rehabilitation and reintegration of offenders; and

(e) providing opportunities for Samoan custom and tradition to be recognised in the sentencing, rehabilitation and reintegration of offenders; and

(f) ensuring that Samoan custom and tradition is integrated, where appropriate, in the community justice system.

3. **Objects of the Act** – The principal objects of this Act are:

(a) the maintenance of public safety; and

(b) the consideration of victims’ interests; and

(c) to ensure offenders undertaking sentences of supervision have access to rehabilitative and reintegration programmes; and

(d) to ensure the fair treatment of offenders undergoing sentences of supervision or community work; and

(e) to ensure offenders released on parole have access to rehabilitative and reintegration programmes; and

(f) for offenders, as far as is reasonable and practicable in the circumstances and within the resources available, to be given access to activities that may contribute to their rehabilitation and reintegration into the community; and

(g) for Samoan custom and tradition, where appropriate, to be applied in the rehabilitation and reintegration of offenders.

5. **Purposes and Principles** – (1) The purpose of this Part is to provide to a Court a range of sentencing options and means of dealing with offenders other than by imprisonment.

(2) Where an offender is convicted of an offence punishable by imprisonment, the Court when considering the sentence it should impose, must have regard to the desirability of keeping offenders in the community so far as that is practicable and consistent with the safety of the community.

12. **Community-based sentences**-(1) This Part applies to the Sentencing Act 2016 for community-based sentences in this Part.

(2) In sentencing a defendant to a community-based sentence in this Part, a court may have regard to the potential effect that a particular sentence may have in contributing to the development of a defendant’s work and living skills.

18. **Special conditions related to programme** - A court may impose any special condition or conditions related to a programme if the court is satisfied that:

(a) there is a significant risk of further offending by the defendant; and
(b) standard conditions alone would not adequately reduce that risk; and
(c) the defendant requires a programme to reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

19. **Meaning of “programme”** - In section 18, “programme” means any of the following that is not residential in nature:
(a) any psychiatric or other counselling or assessment;
(b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or re-integrative programme;
(c) placement in the care of any appropriate person, persons, or agency, approved by the Commissioner, such as, without limitation -
(i) family;
(ii) a village;
(iii) members or particular members of any of the above.

23. **Sentence of community work**—(1) A court may sentence a defendant to community work:
(a) if the defendant is convicted of an offence punishable by imprisonment; or
(b) if the defendant is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.
(2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the court thinks fit.
(3) This section is subject to sections 24 and 25.

Other relevant Acts include the: **Young Offenders Act 2007 and Sentencing Act 2016**

**Young Offenders Act 2007**

13. **Principles to consider at pre-sentence meetings** – An outcome determined at a pre-sentence meeting shall have regard to the following principles:
(a) the accountability by the young person for the wrong that has been done; and
(b) the rehabilitation of the young person including an assessment of the suitability of his or her current living arrangements; and
(c) the involvement of the young person’s family, church, chief, and village; and
(d) the protection of the community; and
(e) an acknowledgement of the views of the victim and to restoring the position of the victim in accordance with Samoan custom and tradition;
(f) the putting in place of a plan for rehabilitation of the young person that fosters responsibility by the young person and which promotes the young person’s self-esteem, cultural awareness and understanding.

**Sentencing Act 2016**

5. **Purposes of sentencing or otherwise dealing with defendants** - (1) The purposes for which a court may sentence or otherwise deal with a defendant are either 1 or more of the following:
(a) to hold the defendant accountable for harm done to the victim and the community by the offending;
(b) to promote in the defendant a sense of responsibility for, and an acknowledgment of, that harm;
(c) to provide for the interests of the victim of the offence;
(d) to denounce the conduct in which the defendant was involved;
(e) to deter the defendant or other persons from committing the same or a similar offence;
(f) to protect the community from the defendant;
(g) to assist in the defendant’s rehabilitation and reintegration.
(2) Nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.
14. **Guidance on use of sentence of supervision** - A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the defendant through the rehabilitation and reintegration of the defendant.

40. **Variation or cancellation of sentence of community detention** - (1) A defendant who is subject to a sentence of community detention, or an officer, may apply, under section 45, for an order under subsection (3) on the grounds that:
   (a) the defendant is unable to comply, or has failed to comply, with any conditions of the sentence; or
   (b) the curfew address is no longer available or suitable because of a change in circumstances; or
   (c) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the defendant has responded to the sentence -
      (i) the rehabilitation and reintegration of the defendant would be advanced by the suspension or variation of the curfew period; or
      (ii) the continuation of the sentence is no longer necessary in the interests of the community or the defendant.

59. **Imposition of conditions on release of defendant sentenced to imprisonment for short term** - (1) A court that sentences a defendant to a term of imprisonment of 12 months or less may impose the standard conditions and any special conditions on the defendant and, if it does so, must specify when the conditions expire.

   ... (4) In this section:
   “sentence expiry date” means the date on which the defendant who is subject to the sentence has served its full term and therefore ceases to be subject to it;
   “special conditions” includes, without limitation:
   (a) conditions relating to the defendant’s place of residence (which may include a condition that the defendant reside at a particular place), or his or her finances or earnings;
   (b) residential restrictions;
   (c) conditions requiring the defendant to participate in a programme to reduce the risk of further offending by the defendant through the rehabilitation and reintegration of the defendant;

   ... (5) A special condition must not be imposed unless it is designed to:
   (a) reduce the risk of reoffending by the defendant; or
   (b) facilitate or promote the rehabilitation and reintegration of the defendant; or
   (c) provide for the reasonable concerns of victims of the defendant.

Samoa currently has a charitable organisation known as the Samoa Returnees Association whereby deportees from United States, Australia or New Zealand are referred to for reintegration into society. These deportees have been convicted of a criminal offence in those jurisdictions. The charitable organisation has programs of reintegrating the individual. They are deported due to no records of known families in those jurisdiction.

In the Samoa Public Service, there are no provisions which prohibit an individual convicted of a criminal offence from applying to a position in the Samoa Public Service. Having said that, the Public Service is an equal opportunity employer and does not discriminate. There are public servants currently employed in the Samoa Public Service.
that were convicted of past criminal offences. The expectation on applicants with previous criminal convictions is to declare in their job applications whether or not they have a previous criminal conviction.

**Samoa provided the following as examples of the implementation of those measures:**

Vast amount of caselaw in which the Court has supported the Defendant’s reintegration into society by imposing non-custodial sentences.

Although these cases have not been discussed in the context of corruption cases the caselaw illustrates the willingness of Courts to consider and apply the reintegration principle to a wide range of cases where the context allows for such. Examples:

- Intentional damage: Police v King [2018] WSFVC 1 (18 April 2018)

**(b) Observations on the implementation of the article**

Rehabilitation and reintegration into society of offenders appears to be an overarching concept in the Samoan criminal justice system. Rehabilitation and reintegration for adult offenders are governed primarily by the Community Justice Act 2008: When sentencing, the Court must have regard to the desirability of keeping offenders in the community so far as that is practicable and consistent with the safety of the community (section 5) and a sentence of community work or supervision maybe be imposed of imprisonment instead or as an alternative penalty (section 9). In addition, the Court may order participation in a medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or re-integrative programme.

Power and functions of Chief Executive Officer in relation to the community based justice system include commissioning or undertaking research on the good administration of parole and rehabilitation and reintegration models and establishing and implementing such programmes for offenders as necessary for their reintegration into society (section 34).

According to section 13 of the Young Offenders Act, the rehabilitation of the young person is to be taken into account when determining the sentence for an offence.

In addition, the public service of Samoa does not preclude applicants on the basis of a criminal conviction and is a prospective employer for past offenders.

A charity organization offers services for deportees from the US, Australia or New Zealand who were convicted of an offence.

During the country visit, Samoa described that conditions under a community sentence can be tailored to the convict, such as making a baker bake bread for the community, or ordering someone to go to church regularly. Samoa stated that very few offenders re-offend after having served a community sentence.

The reviewing experts conclude that Samoa has adequately complied with the provisions of Art. 30 (10) of the Convention.

**(c) Successes and good practices**
The rehabilitation and reintegration system, including through tailored community sentences instead of prison sentences, has a high success rate and few convicts re-offend. This was considered as a good practice by the reviewing experts.

(d) Technical assistance needs identified to improve implementation of the Convention
Trainings on cybercrime, fraud, money laundering and financial investigation.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

Section 14 of the Proceeds of Crime Act provides that if a person is convicted of a serious offence, the Attorney-General may apply to the Court for a forfeiture order against tainted property. “Tainted property” is defined as proceeds of crime or an instrument, whether the property is situated within or outside Samoa. The term “proceeds of crime” is defined under section 6 of the Proceeds of Crime Act.

Part IV and Part V of the Counter-Terrorism Act 2014 also covers the management and forfeiture of property(ies) of specified entities and also the restraint and forfeiture of terrorist property.

Proceeds of Crime Act 2007

2 Interpretation –

In this Act, unless the context otherwise requires:

“proceeds of crime” has the meaning given in section 6;

“serious offence” means an offence:

(a) against a law of Samoa that would constitute unlawful activity; or

(b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa;

“tainted property” means proceeds of crime or an instrument, whether the property is situated within or outside Samoa;

“unlawful activity” means an act or omission that constitutes an offence and that is punishable, under the laws of Samoa, for a maximum period of not less than 12 months.

6. Meaning of “proceeds of crime” –
(1) In this Act, “proceeds of crime” means any property wholly or partly derived or realised, whether directly or indirectly, from a serious offence or terrorist act, whether situated within or outside of Samoa, including:

(a) property into which any property derived or realised from the offence is later successively converted, transformed or intermingled; or

(b) income, capital or other economic gains derived or realised from that property at any time since the offence or terrorist act; or

(c) property wholly or partly derived or realised from a disposal or other dealing with proceeds of the serious offence or wholly or partly acquired using proceeds of the serious offence or terrorist act, including because of a previous application of this section; or

(d) property which is proceeds of crime and has been credited to an account or disposed of or otherwise dealt with.

(2) If property that is proceeds of crime (the original proceeds) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime.

(3) Property can be proceeds of crime even if no person has been convicted of the offence or terrorist act.

PART 3 CONFISCATION

Division 1 – General

14. Application for forfeiture order or pecuniary penalty order—

(1) Subject to subsection (2), if a person is convicted of a serious offence, the Attorney-General may apply to the Court for one or both of the following orders:

(a) a forfeiture order against tainted property; and

(b) a pecuniary penalty order against the person for benefits derived by the person from the commission of the offence.

(2) Notwithstanding subsection (1), the Attorney-General shall not make such an application after the end of the relevant application period for the conviction.

(3) An application under this section may be made in relation to 2 or more serious offences involving or affecting the same person.

(4) Where an application under this section has been determined, no further application for an order under this section may be made in relation to the offence for which the person was convicted without leave of the Court.

(5) The Court may grant leave where:

(a) the property or benefit to which the new application relates was identified after the previous application was determined; or

(b) further significant evidence became available only after the previous application was determined; or

(c) it is in the interests of justice that the new application be made.

15 Notice of application – (1) Subject to this Act and this section, if the Attorney-General makes an application for a forfeiture order under section 14, the Attorney-General shall give reasonable written notice of the application to the convicted person
and to any other person who the Attorney-General has reason to believe may have an interest in the property.

(2) When an application made pursuant to section 14 is heard, the convicted person, and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

(3) Notwithstanding anything in this section, the Court may, at any time before the final determination of the application, direct the Attorney-General:

(a) to give reasonable written notice of the application to a person who, in the opinion of the Court, appears to have an interest in the property; or

(b) to publish notice of the application, containing the particulars that the Court directs and as often as the Court directs, in a newspaper published and circulating in Samoa.

(4) If the Attorney-General applies for a pecuniary penalty order under section 14 against a person, the Attorney-General shall give the person reasonable written notice of the application.

(5) A person subject to a pecuniary penalty order may appear and adduce evidence at the hearing of the application by the Attorney-General.

16 Amendment of application – (1) Subject to the provisions of this Act, the Court may, before finally determining an application for a forfeiture order or pecuniary penalty order, and on the application of the Attorney-General, allow the amendment of the application to include any other property or benefit where:

(a) the other property or benefit was not reasonably capable of identification when the application for the order was originally made; or

(b) further significant evidence became available only after that application was originally made.

(2) When the Attorney-General applies to amend an application for a forfeiture order or a pecuniary penalty order against a person and the effect of the amendment would be to include an additional property or benefit in the application for the forfeiture order or the pecuniary penalty order, as the case may be, the Attorney-General shall give reasonable written notice of the application to amend to a person whom the Attorney-General reasonably believes has an interest in the additional property or benefit.

(3) A person who claims an interest in the additional property may appear and adduce evidence at the hearing of the application to amend.

18. Application for forfeiture order if person has absconded – (1) When an information has been filed alleging that a person has committed a serious offence and, subject to subsection (2), the Attorney-General is of the opinion that the person will abscond before the information is determined by the Court, the Attorney-General may apply to the Court for a forfeiture order against any property which relates to the serious offence for which the information was laid.

(2) The Attorney-General may form the opinion that a person has absconded where:

(a) reasonable attempts to arrest the person under a warrant have been unsuccessful during the period of 6 months commencing on the day the warrant was issued; or
(b) a warrant for the person’s arrest has been issued and the person dies.

(3) A person is taken to have absconded on the last day of the period mentioned under subsection (2)(a) or on the day the person dies.

Division 2 - Forfeiture Orders

19. Forfeiture order on conviction —

(1) If, upon application by the Attorney-General, the Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted or is terrorist property, the Court may order that the property, or so much of the property as is specified by the Court in the order, be forfeited to the State.

(2) In determining whether property is tainted property, the Court may infer, in the absence of evidence to the contrary:

(a) that the property was used in, or in connection with the commission of the offence, if the property was in the person’s possession or effective control at the time of, or immediately after the commission of the offence; or

(b) that the property was derived, obtained or realised as a result of the person’s committing the offence—

(i) if the property (in particular, money) was found, during investigations before or after the person was arrested for and charged with the offence, in the person’s possession or under the person’s control in a building, vehicle, receptacle or place; or

(ii) if the property was acquired by the person before, during or within a reasonable time after the commission of the offence of which the person was convicted, and the Court is satisfied that the person’s income from sources unrelated to criminal activity cannot reasonably account for the acquisition of that property.

(3) If the Court orders that property (other than money) be forfeited to the State, the Court shall specify in the order the amount that it considers to be the value of the property when the order is made.

(4) In considering whether to make a forfeiture order against property, the Court may take into account:

(a) a right or interest of a third party in the property; and

(b) the gravity of the offence concerned; and

(c) any hardship that may reasonably be expected to be caused to a person by the operation of the order; and

(d) the use that is ordinarily made of the property or the use to which the property was intended to be put.

(5) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

(6) A court is not to take into account the making of a forfeiture order, whether by consent or otherwise, when considering its sentence upon conviction.

20. Effect of forfeiture order —
(1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the State.

(2) If the Court makes a forfeiture order against registrable property:
   (a) the order vests the property in the State in equity, but does not vest it in the State at law until the applicable registration requirements have been complied with; and
   (b) the State is entitled to be registered as owner of the property; and
   (c) the Administrator may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any necessary instrument.

(3) If the Court makes a forfeiture order against registrable property:
   (a) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect, the State’s equitable interest in the property; and
   (b) anything done by the Attorney-General under paragraph (a) is not a dealing for the purposes of subsection(4)(a).

(4) If the Court makes a forfeiture order against property (including registrable property):
   (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the State, before—
      (i) an appeal against the conviction, or the making of the order, is finally determined or lapses; or
      (ii) the last day for the lodging of an appeal against the conviction or order passes without such an appeal having been lodged; and
   (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Administrator directs, after—
      (i) the determination or lapsing of any appeal lodged against the conviction or the making of the order; or
      (ii) the last day for lodging such an appeal passes, without such an appeal having been lodged.

Samoa provided the following as examples of the implementation of those measures:

Samoa has the basis of an effective confiscation regime, and has begun to make good use of it over the last two to three years in relation to lower level drugs and fraud cases, however there is scope for increased proceeds of crime action in relation to more serious/complex predicate crimes.\(^2\) Samoa has successfully prosecuted a number of proceeds-generating predicate offences and has successfully pursued the proceeds of crime in a number of cases.\(^3\)

Between January 2012 and September 2014, the AGO has made 17 applications for restraining and/or forfeiture orders under the Proceeds of Crime Act, of which 13 have

been successful. These applications relate solely to domestic predicate offences (no confiscations have been made in relation to foreign predicate offences), the prosecution of which have been initiated by the police. The types of property restrained and/or forfeited include houses, cash (both located on persons-properties and in bank accounts), motor vehicles and other goods. The approximate total value of property forfeited to date is $38,000 SAT (approximately US$16,500).4

**Confiscation action under the POCA, January 2012 – September 2014**

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restraining orders granted</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Forfeiture orders granted</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Did not proceed</td>
<td></td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

**Case Example: Confiscation of instrument of crime**  
**Attorney General v Faisaovale C.A. 06/11**

The Supreme Court Decision in Attorney General v Faisaovale [2011] WSSC 56 (24 June 2011) was appealed by the AGO, as there was forfeiture of cash, but forfeiture of the vehicle was declined. In the Court of Appeal, the AGO contended that the cash and the vehicle complement each other as instruments of crime and therefore are both ‘tainted properties’ pursuant to the Proceeds of Crime Act 2007. The Court of Appeal consequentially ordered the forfeiture of the vehicle to the State of Samoa. Also see the following successful applications for freezing orders for suspected money laundering:

- **Police v Gianno (cited above)**

**Observations on the implementation of the article**

If a person is convicted of a serious offence, the Attorney-General may apply to the Court for a forfeiture order against tainted property and/or a pecuniary penalty order against a person for the benefits derived by the person from the commission of an offence (section 14 of the Proceeds of Crime Act 2007 (POCA)). A serious offence is defined as an offence with a maximum penalty of not less than 12 months imprisonment (section 2 POCA). With the exception of individual offences listed under article 25, all offences discussed under previous articles have a maximum penalty above 12 months.

Recoverable, tainted, property includes any proceeds of crime or instruments, whether the property is situated within or outside Samoa (section 2 POCA). Proceeds of crime means any

---

property wholly or partly derived or realised, whether directly or indirectly, from a serious offence or terrorist act, whether situated within or outside of Samoa, section 6.

If the Court is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, the Court may order that the property, or portions of it, be forfeited to the State. Value-based confiscation is provided for in sects. 24, 25 POCA. Forfeiture is also possible where the accused has absconded, section 18 POCA.

Before issuing a forfeiture order, the court may set aside or void any transfer of the property that occurred for the purpose of avoiding the forfeiture (sect. 26). Pecuniary penalty orders against for benefits derived from the commission of an offence are also possible (sect. 14).

Forfeiture is at the discretion of the AG and the Court, with discretion criteria laid out by POCA.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

   (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

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

Samoa cited the following provision regarding the implementation of this provision:

Proceeds of Crime Act 2007, section 2:

“instrument” in relation to property, means the property:

(a) is used in, or in connection with, the commission of a serious offence; or

(b) is intended to be used in, or in connection with the commission of a serious offence; or

(c) is wholly or partly derived or realised from the disposal or other dealing with an instrument of the serious offence or is wholly or partly acquired using an instrument of the serious offence; or

(d) which is an instrument and has been credited to an account or disposed of or otherwise dealt with, whether the property is situated within or outside Samoa; “interest”, in property, means:

(a) a legal or equitable estate or interest in the property; or

(b) a right, power or privilege in connection with the property, whether present or future and whether vested or contingent;

(b) **Observations on the implementation of the article**

Equipment and instrumentalities are subject to forfeiture as described under art. 31(1)(a) above. During the country visit, Samoan authorities cited a case of instrumentalities being forfeited in a non-corruption related case.

**Article 31 Freezing, seizure and confiscation**
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

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

Samoa provided the following information regarding the implementation of this provision:

Part 4 of the Proceeds of Crime Act outlines measures which may be taken to facilitate investigations and preserve property. Samoa has a good legal framework for freezing, seizing and conviction-based confiscation of proceeds of crime and instruments of crime. The Proceeds of Crime Act contains an extensive array of powers to support seizure and confiscation. Seized and confiscated goods are effectively managed. In the event that the proceeds are not available to be confiscated, there is a power to order payment of equal value in substitution for the forfeiture, though this power has not been used.

Proceeds of Crime Act 2007

PART 4 FACILITATING INVESTIGATIONS AND PRESERVING PROPERTY

37. Issuing a search warrant —

(1) An authorised officer of an enforcement agency may apply to a Judge or the Registrar of the Court for the issue of a warrant to search land or premises for tainted property or evidential material.

(2) If an application is made under subsection (1) for a warrant, the Judge or Registrar may issue the warrant authorising the authorised officer, with such assistance, and by such force, as is necessary and reasonable:

(a) to enter the land or premises; and

(b) to search the land or premises for the tainted property or evidential material and to seize it.

(3) The Judge or the Registrar may issue the warrant only if the Judge or Registrar, as the case may be, is satisfied that:

(a) the property authorised to be seized is—

(i) tainted property; or

(ii) evidential material in relation to property to which the warrant relates; or

(iii) evidential material relating to a serious offence; and

(b) an information has been laid or will be laid within 5 days for the relevant offence; and

(c) there are reasonable grounds for issuing the warrant.

(4) A warrant issued under this section shall include:

(a) a statement of the purpose for which the warrant is issued, including a reference to the nature of the relevant offence; and

(b) a description of the kind of property authorised to be seized; and

(c) a time at which the warrant ceases to have effect; and

(d) a statement whether entry is authorised at any time or at specified times.
(5) Subject to any conditions specified in the warrant, every warrant issued under subsection (3) shall authorise the authorised officer executing the warrant:

(a) to enter and search the premises specified in the warrant at any time by day or night during the currency of the warrant; and

(b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search; and

(c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place or premises being searched; and

(d) to search for and seize a thing referred to in the warrant.

(6) A person called upon to assist any authorised officer executing a warrant shall have the powers described in subsection (5)(c) and (d).

46. Application for restraining order –

(1) The Attorney-General may apply to the Court for a restraining order against:

(a) any realisable property held by a defendant; or

(b) realisable property, specified in the application, held by a person other than the defendant.

(2) An application for a restraining order may be made ex parte.

(3) An application for a restraining order shall be in writing and shall be accompanied by an affidavit stating:

(a) if the relevant defendant has been convicted of a serious offence—

(i) the offence for which the defendant was convicted, the date of the conviction, the court before which the conviction was obtained; and

(ii) whether an appeal has been lodged against the conviction, the result of any appeal and, if an appeal has not been finalised, what stage it has reached; and

(b) if the defendant has not been convicted of a serious offence, the serious offence for which the defendant is or is about to be charged and the grounds for believing that the defendant committed the offence; and

(c) if the defendant is about to be charged with a serious offence, the grounds for believing that the defendant will be charged with a serious offence within 5 days; and

(d) a description of the property against which the restraining order is sought; and

(e) the name and address of the person who is believed to be in possession or control of the property; and

(f) if the application seeks a restraining order against property of a defendant, the grounds for believing that the property is tainted property or that the defendant derived a benefit directly or indirectly from committing the offence; and

(g) if the application seeks a restraining order against property of a person other than the defendant, the grounds for believing that the property is tainted property or is subject to the effective control of the defendant; and

(h) the grounds for the belief that a forfeiture order or a pecuniary penalty order may be or is likely to be made in respect of the property.
42. **Return of seized property if no forfeiture order made** – If property has been seized under sections 37 or 38 and no forfeiture order is made against the property within 28 days after the date of seizure the property is in the possession of the responsible custodian at the end of that period, the responsible custodian shall, subject to section 43, arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period.

47. **Notice of application for restraining order** – (1) Before making a restraining order, the Court shall require reasonable written notice to be given to, and may hear, a person who, in the opinion of the Court, may have an interest in the property.

(2) The Court may, at any time before the final determination of the application, direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner as the Court may direct.

(3) Despite subsection (1), if the Attorney-General so requests, the Court may consider the application without requiring notice to be given, but any restraining order made shall cease to have effect after 14 days or a lesser period that the Court specifies in the order.

(4) The Court may, on application by the Attorney-General, extend the period of operation of a restraining order made under subsection (3), but shall not consider the application without requiring reasonable written notice to be given to a person who may have an interest in the property.

48. **Restraining orders** –

(1) The Court may make a restraining order against property if it is satisfied that:

   (a) the defendant has been convicted of a serious offence or has been charged with a serious offence or will be charged with a serious offence within 5 days; and
   
   (b) if the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence; and
   
   (c) if the property is property of the defendant, there are reasonable grounds for believing that the property is tainted property in relation to a serious offence or terrorist actor that the defendant derived a benefit, directly or indirectly, from the commission of the offence; and
   
   (d) if the property is property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property, or that the property is subject to the effective control of the defendant; and
   
   (e) there are reasonable grounds for the belief that a forfeiture order or pecuniary penalty order may be or is likely to be made in respect of the property.

(2) The order may:

   (a) prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, or such part thereof or interest therein, as is specified in the order, either absolutely or except in such manner as may be specified in the order; and
(b) at the request of the Attorney-General, if the Court is satisfied that the circumstances so require, direct the Administrator—

   (i) to take custody of the property or such part thereof as is specified in the order; and

   (ii) to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and

(c) require a person having possession of the property to give possession thereof to the Administrator.

(3) The order may be subject to any conditions that the Court thinks fit and, without limiting this subsection, may provide for meeting out of the property or a specified part of it, all or any of the following:

   (a) the person’s reasonable living expenses (including the reasonable living expenses of the person’s dependants, if any) and reasonable business expenses; or

   (b) the person’s reasonable expenses in defending a criminal, charge and any proceedings under this Act; or

   (c) a specified debt incurred by the person in good faith.

(4) The order shall not make such provision under subsection (3), unless the Court is satisfied that the person cannot meet the expenses or debt out of property that is not subject to a restraining order.

(5) If the Court gives the Administrator a direction under subsection (2)(b) in relation to any property, the Administrator may do anything that is reasonably necessary to maintain the property and for that purpose:

   (a) may exercise a power that the owner of the property could exercise; and

   (b) may do so to the exclusion of the owner.

(6) In proceedings for a restraining order, the Court may order that a witness need not answer a question or produce a document, if the Court is satisfied that answering the question or producing the document may prejudice the investigation of a serious offence or the prosecution of a person for a serious offence.

(7) A restraining order may relate to more than one offence in relation to the defendant.

(8) The Court shall make a restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

(9) The Court must specify that a restraining order covers property that is acquired by the defendant after the making of the order before such an order may affect property that is acquired after the making of the restraining order.

74. Monitoring orders – (1) An authorised officer of an enforcement agency may apply ex parte to a Judge in chambers for a monitoring order directing a financial institution to provide information about transactions conducted during a particular period through an account held by a particular person with the institution.

   (2) The Judge shall not make a monitoring order unless the Judge is satisfied that there are reasonable grounds for suspecting that:

      (a) the person in respect of whose account the order is sought—

      (i) has committed, or is about to commit, a serious offence; or
(ii) was involved in the commission, or is about to be involved in the commission of, a serious offence; or
(iii) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence; or
(b) the account is being used to commit a terrorist act or an offence of money laundering or the financing of terrorism.

3) A monitoring order shall:
(a) specify the name or names in which the account is believed to be held; and
(b) specify the kind of information that the financial institution is required to provide; and
(c) specify the period during which the transaction must have occurred; and
(d) specify to which enforcement agency the information is to be provided; and
(e) specify the form and manner in which the information is to be given; and
(f) set out the effect of failing to comply with a monitoring order.

4) The period mentioned in subsection (3)(c):
(a) begins no earlier than the day on which notice of the monitoring order is given to the financial institution; and
(b) ends no later than 6 months after the date of the order.

79. **Proceedings are civil, not criminal** — (1) Proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

(2) Except for an offence under this Act:
(a) the rules of construction applicable only in relation to the criminal law do not apply in the interpretation of this Act; and
(b) the rules of evidence applicable in civil proceedings apply and those rules of evidence applicable only in criminal proceedings do not apply to proceedings under this Act.

Samoa provided the following as cases as examples of the implementation of those measures.

- **Police v Gianno (cited above)**

(b) **Observations on the implementation of the article**

The Proceeds of Crimes Act 2007 provides for the possibility of a search warrant and a restraining order. An application for a restraining order may be made if the defendant is about to be charged with a serious offence within five days. Prior to issuing a restraining order, notice must be given to a person who may have an interest in the property. If the Attorney-General so requests, the Court may consider the application for a restraining order without notice having been given, but a subsequently issued restraining order may only stay in effect for 14 days or less.

Bank accounts can be frozen on the basis of freezing orders.

During the country visit, Samoan authorities described that law enforcement has access to several registers to facilitate asset tracing, including the road traffic register and the border management system.
It is recommended that Samoa assess whether extending the period between applying for a restraining order and filing criminal charges to more than five days and issuing a longer restraining order when not having given notice would be conducive to effective restraint.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

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

Samoa provided the following information regarding the implementation of this provision:

Any amounts forfeited under the Proceeds of Crime Act are credited to the Confiscated Assets Fund. Part 5 of the Money Laundering Prevention Act regulates the administration of this Fund.

Proceeds of Crime Act 2007

39. Responsibility for things seized – (1) If a thing is seized under a search warrant, the responsible custodian shall:

(a) arrange for the thing to be kept until it is dealt with in accordance with any other provision of this Act; and

(b) ensure that all reasonable steps are taken to reasonably maintain the thing while it is so kept.

(2) The responsible custodian of a thing that is seized under a search warrant is the head of the enforcement agency of the authorised officer who is responsible for executing the warrant.

85. Confiscated Assets Fund –

(1) There shall be credited to the Confiscated Assets Fund amounts equal to:

(a) proceeds of forfeited assets under this Act; and

(b) money paid under section 24, where the Court makes an order for payment instead of a forfeiture order; and

(c) money paid pursuant to a pecuniary penalty order made under this Act; and

(d) money paid to Samoa by a foreign State, under a treaty or arrangement providing for mutual assistance in criminal matters; and

(e) money, other than money referred to in paragraph (d), paid to Samoa by a foreign State in connection with assistance provided by Samoa in relation to the recovery by that country of the proceeds of crime or the investigation or prosecution of a serious offence; and
(f) proceeds of forfeiture orders or pecuniary penalty orders made under any other law.

(2) Payments out of the Confiscated Assets Fund must be administered in accordance with the Money Laundering Prevention Act 2007.

钱洗罪预防法2007

部分5没收官资产基金

34. 基金的成立——

(1) 基金被成立。

(2) 基金是一个特殊目的的账户，目的是为了公共财务管理法2001。

35. 基金的存款——

基金应存入以下款项：

(a) 没收资产的款项，根据2007年犯罪收益法；

(b) 赔偿给萨摩亚的款项，根据国际条约或安排，为了在刑事事务中提供互助援助；

(c) 将款项，除了根据（b）段所述的款项外，支付给萨摩亚的款项，用于支付在该国际组织的协助提供给萨摩亚，以协助该国的犯罪收益的追回或犯罪的调查或起诉。

36. 资产共享——

当部长认为适当，要么因为国际安排的要求或允许，要么在利益的公共利益时，部长可以命令，将全部或部分没收入的款项，根据2007年犯罪收益法，或其价值，支付给外国。

37. 基金的付款——

基金的下列款项是其用途：

(a) 向外国国家支付的款项，部长认为适当；

(b) 部长认为必要的赔偿的款项。

(i) 一个注册的没收入的外国债务；

(ii) 一个注册的外国财产的款项；

(c) 根据部长批准的计划，经部长批准。

38. 批准的支出计划——

(1) 部长可以书面批准为在某财政年度的支出计划。

(2) 支出的批准应为一个或多个出口的下述目的：

(a) 资助的洗钱预防管理局或金融情报单位；
(b) crime prevention measures; or

(c) law enforcement measures.

(b) Observations on the implementation of the article
Seized objects are to be kept and reasonably maintained by the head of the enforcement agency executing a restraining order as the responsible custodian. No guidelines exist in this regard.

Forfeited assets are deposited in a Confiscated Assets Fund (sects. 34-38 MLPA).

During the country visit, Samoan authorities explained that police is in charge of managing assets and maintaining chain of custody. Assets are stored in a room and the health department’s assistance is sought with regard to perishable assets. Assets forfeited under POCA are transferred to POCA and auctioned off.

It is recommended that Samoa adopt additional measures to improve the regulation of administration of frozen, seized and confiscated property.

Article 31 Freezing, seizure and confiscation

Paragraphs 4 to 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

The definition of “proceeds of crime under the Proceeds of Crime Act includes property into which any property derived or realised from the offence is later successively converted, transformed or intermingled. POCA further provides that if property that is proceeds of crime (the original proceeds) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime.

Proceeds of Crime Act 2007

2 Interpretation –

In this Act, unless the context otherwise requires:

“proceeds of crime” has the meaning given in section 6;
“tainted property” means proceeds of crime or an instrument, whether the property is situated within or outside Samoa;

6. Meaning of “proceeds of crime”–

(1) In this Act, “proceeds of crime” means any property wholly or partly derived or realised, whether directly or indirectly, from a serious offence or terrorist act, whether situated within or outside of Samoa, including:

(a) property into which any property derived or realised from the offence is later successively converted, transformed or intermingled; or

(b) income, capital or other economic gains derived or realised from that property at any time since the offence or terrorist act; or

(c) property wholly or partly derived or realised from a disposal or other dealing with proceeds of the serious offence or wholly or partly acquired using proceeds of the serious offence or terrorist act, including because of a previous application of this section; or

(d) property which is proceeds of crime and has been credited to an account or disposed of or otherwise dealt with.

(2) If property that is proceeds of crime (the original proceeds) is intermingled with other property from which it cannot readily be separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime.

(3) Property can be proceeds of crime even if no person has been convicted of the offence or terrorist act.

Samoa provided the following case as an example of the implementation of those measures: *Attorney General v Faisauvale [2011] WSSC 56 (24 June 2011)*

(b) Observations on the implementation of the article

The definition of proceeds of crime under POCA includes property into which any property derived or realised from the offence is later successively converted, transformed or intermingled.

If the proceeds of crime are intermingled with other property from which they cannot readily be separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime (sect. 6(2) POCA).

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

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

Samoa referred to its response to Article 40.
(b) Observations on the implementation of the article

It is possible to request that bank, financial and commercial records be made available and seized, pursuant to the general provisions of the CPA (s. 33), in addition section 27(3)(c) of the Financial Institutions Act).

The FIU can request information and copy of bank records directly from Banks. The Police and the Attorney General can apply for a search warrant from the Supreme Court Judge to seize the original copies of bank, financial or commercial records.

Seized documents can be made available in the context of international cooperation. For original records, a formal MLA request is required.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

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

Samoa provided the following information regarding the implementation of this provision:

According to section 880 POCA, the applicant in any proceedings bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

Section 30 of the Proceeds of Crime Act provides that where a person has been convicted of a serious offence, the Attorney-General may provide the Court with a statement about any matter relevant to deciding whether the person has benefited from the offence. The Court may require the person to indicate to what extent the person accepts each allegation in the statement; and for each allegation that the person does not accept wholly or in part, any evidence or matters the person proposes to rely on.

Proceeds of Crime Act 2007

3. Meaning of “benefit”–

For the purposes of this Act:

(a) a person benefits from an offence if the person receives, at any time, whether before or after the commencement of this Act, a payment, service or other reward in connection with, or derives a pecuniary advantage from, the commission of the offence; and

(b) a reference to a benefit derived or obtained by, or otherwise accruing to, a person includes a benefit derived or obtained by, or otherwise accruing to, any other person at the first mentioned person’s request or direction.

29. Rules for determining benefit and assessing value –

(1) If a person obtains property from the commission of a serious offence, whether directly or indirectly, the person’s benefit is the value of the property so obtained.
(2) If a person obtains an advantage from the commission of a serious offence, whether directly or indirectly, the person’s advantage is deemed to be a sum of money equal to the value of the advantage so derived.

(3) Property is taken to be tainted property if it is held by a person on the day when the application is made, and at any time:

(a) if the offence or earliest offence was committed more than 6 years before the application is made, within 6 years before the application is made; and

(b) in any other case, after the offence, or the earliest offence, was committed and before the application is made.

(4) Any expenditure by the person in the time mentioned in subsection (3) is taken to be expenditure met out of tainted property.

(5) A property received or taken to have been received by the person at any time as a result of, or in connection with, the commission of the offence or offences is taken to have been received free of any other interests.

(6) If evidence is given at the hearing of the application that the value of the person’s property increased after committing an offence, the increase is taken to be part of the person’s benefit from the offence.

(7) If a pecuniary penalty order has previously been made against a person in relation to an offence, any of the person’s benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under the earlier order shall be disregarded.

30. Statements about benefits from committing serious offence –

(1) If a person has been convicted of a serious offence, the Attorney-General may provide the Court with a statement about any matter relevant to:

(a) deciding whether the person has benefited from the offence, or from any other serious offence of which the person is convicted in the same proceedings or that is taken into account in passing sentence on the person; or

(b) assessing the value of the person’s benefit from the offence or any other serious offence of which the person is so convicted in the same proceedings or that is so taken into account.

(2) If the Court is satisfied that a copy of the statement has been served on the person, the Court may require the person to indicate:

(a) to what extent the person accepts each allegation in the statement; and

(b) for each allegation that the person does not accept wholly or in part, any evidence or matters the person proposes to rely on.

(3) If the person accepts to any extent an allegation in the statement, the Court may, in deciding or assessing the matters mentioned in subsection (1), treat the person’s acceptance as conclusive of the matters to which it relates.

(4) If a person fails, wholly or in part, to comply with a requirement under subsection (2), the Court may treat the person, for this section, as having accepted every allegation in the statement, other than:

(a) an allegation for which the person has complied with the requirement; or
(b) an allegation that the person has benefited from the offence concerned, or that the person obtained any property or advantage as a result of, or in connection with, committing the offence.

(5) An allegation may be accepted, or matter indicated, for this section either orally before the Court or in writing.

(6) An acceptance by a person under this section that the person received any benefits from committing a serious offence is admissible in any proceedings against the person for any offence.

80. **Onus and standard of proof** – (1) The applicant in any proceedings under this Act bears the onus of proving the matters necessary to establish the grounds for making the order applied for.

(2) Except as otherwise provided in this Act, a question of fact to be decided by the Court, on an application under this Act, is to be decided on the balance of probabilities.

(b) **Observations on the implementation of the article**

Samoa may wish to consider adopting measures requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

9. *The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

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

*Samoa provided the following information regarding the implementation of this provision:*

Section 21 of the *Proceeds of Crime Act* provides for protection for bona fide third parties. In addition, cf. notification requirements described under paras 1 and 2.

**Proceeds of Crime Act 2007**


(1) If an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order about the person’s interest in property, the Court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person’s interest if the Court is satisfied on a balance of probabilities:

(a) that the applicant was not involved in committing an offence in relation to which forfeiture of the property is sought, or a forfeiture order against the property was made; and

(b) if the applicant acquired the interest when, or after, the offence was committed, that the applicant acquired the interest—
(i) for sufficient consideration; and
(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of the acquisition, tainted property.

(3) If a forfeiture order has already been made against property, a person who claims an interest in the property may, within 6 months commencing on the day when the order is made, apply to the Court for an order under subsection (2).

(4) A person may not make an application under subsection (3), except with the leave of the Court, if the person:

(a) knew about the application for the forfeiture order before the order was made; or
(b) appeared at the hearing of that application.

(5) A person who applies to the Court under subsection (1) or (3) shall give 28 days’ written notice of the application to the Attorney-General.

(6) The Attorney-General:

(a) is a party to the proceedings in an application under subsection (1) or (3); and
(b) may make an application under subsection (1) for a person.

(7) An appeal lies to the Court of Appeal from an order under subsection (2).

(8) On application by a person who has obtained an order under subsection (2), if the period allowed for appeals has expired and any appeal from that order has been determined or has lapsed, the Administrator shall:

(a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
(b) pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.

Please provide examples of the implementation of those measures.

Please note in the case of Attorney General v Fiti [2014] WSSC 63 (30 August 2014) the Court accepted that the vehicle was used in the offending and therefore tainted property under the Proceeds of Crime Act however, because of the secured interests of the Development Bank and the defendant’s parents as legal owners of the vehicle the Court prioritized the interests of the parents and bank (as third parties) not responsible or involved in the offending.

(b) Observations on the implementation of the article

In addition to the notification requirements described under paras 1 and 2, section 21 POCA provides for the protection of bona fide third parties. A person who claims to have an interest in property subject to forfeiture may apply to the court for an order regarding the person’s interest resulting in an appeal to the Court of Appeal, or compensation of the person if the period allowed for appeals has expired.

Article 32 Protection of witnesses, experts and victims

Paragraphs 1 and 2
1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

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

The State has appropriate legal measures to criminalize conduct by a defendant which would harm witnesses. Further protections for witnesses (which includes experts and victims) are given under the Criminal Procedure and Evidence Acts allowing special procedure for witnesses giving evidence via closed circuit television or being screened from the Defendant. Furthermore, the Court may consider the risk of interference with witnesses when granting bail to a defendant under the Criminal Procedure Act.

The case law also illustrates that the Court has taken a robust approach to fully utilizing the law in order to ensure witness protection.

The Criminal Procedure Act, Crimes Act and Evidence Act contain a number of provisions for the protection of witnesses.

**Criminal Procedure Act 2016**

48. Prosecutor may decline to disclose information –

(1) Section 46 does not require a prosecutor to disclose information which the prosecutor would, but for this section, be required to disclose if:

(a) the prosecutor is not in possession of the information requested; or

(b) the information is not recorded; or

(c) the disclosure of the information is likely to prejudice the prevention, investigation or detection of offences; or

(d) the disclosure of the information is likely to endanger the safety of any person; or

(e) the information is –

(i) material or communications prepared by the prosecutor, or communications between persons assisting in the trial of the case and the prosecutor; or

(ii) the information relates to information about undercover police officers; or

(iii) the information is subject to a pre-trial witness anonymity order or a witness anonymity order given under evidence legislation; or
(iv) the information relates to information about witnesses’ addresses; or
(f) the disclosure of the information would be likely to prejudice –
   (i) the security or defence of Samoa or the international relations of the
   Government; or
   (ii) the entrusting of information to the Government on a basis of confidence by
   the government of any other country or any agency of that government or any
   international organisation; or
(g) disclosure of the information would be likely to facilitate the commission of
another offence; or
(h) disclosure of the information would constitute contempt of Court or contempt of
the Legislative Assembly; or
(i) the information could be withheld under any privilege applicable under the rules
of evidence; or
(j) disclosure of the information would be contrary to the provisions of any other
enactment; or
(k) the information is publicly available and it is reasonably practicable for the
defendant to obtain the information from another source; or
(l) the information has previously been made available to the defendant; or
(m) the information does not exist or cannot be found; or
(n) the information –
   (i) reflects on the credibility of a witness who is not to be called by the prosecutor to
give evidence but who may be called by the defendant to give evidence; and
   (ii) is not for any other reason relevant.
(2) If part only of the information may be withheld, the prosecutor must make the
remainder of the information available if it is possible to protect the withheld information
by deletion, summary, or otherwise.
(3) If the prosecutor becomes aware that there has ceased to be any justification for
withholding all or part of any information that has been withheld under this Act, the
prosecutor must, if the criminal proceedings have not yet been completed, disclose that
information to the defendant as soon as is reasonably practicable.
60. Presence and custody of defendant during trial –
(1) A defendant is entitled to be present in Court during the whole of the defendant’s trial,
unless the defendant misconducts himself or herself by so interrupting the trial as to
render its continuance in the defendant’s presence impracticable.
(2) A defendant may defend the proceedings personally or be represented by a lawyer.
(3) When the trial of a defendant who was granted bail commences in the Supreme Court,
the Court may remand the defendant into custody until the end of the hearing of the trial
if:
   (a) the defendant is liable on conviction to a sentence of imprisonment or the
defendant has been arrested; or
   (b) the defendant was late to the hearing of the trial; or
(c) the defendant has conducted himself or herself in a manner that may influence or threaten witnesses.

99. Factors relevant to decision as to bail - In considering whether there is just cause for the defendant to be remanded in custody or for continued detention, a Court must take into account the following:

(b) whether there is a risk that the defendant may interfere with witnesses or evidence;

**Crimes Act 2013**

222. Contempt of court – (1) If any person: (a) assaults, threatens, intimidates, or wilfully insults a Judge, or any Registrar, or any officer of the court, or any assessor, or any witness, during his or her sitting or attendance in court, or in going to or returning from the court; or (b) wilfully interrupts or obstructs the proceedings of the court or otherwise misbehaves in court; or (c) wilfully and without lawful excuse disobeys any order or direction of the court in the course of the hearing of any proceedings, any constable or officer of the court, with or without the assistance of any other person, may, by order of the Judge, take the offender into custody and detain the person until the rising of the court.

(2) In any such case as aforesaid, the Judge, if he or she thinks fit, may sentence the offender to imprisonment for any period not exceeding 3 months, or sentence him or her to pay a fine not exceeding 10 penalty units for every such offence; and in default of payment of any such fine may direct that the offender be imprisoned for any period not exceeding 3 months, unless the fine is sooner paid. (3) Nothing in this section limits or affects any power or authority of the court to punish any person for contempt of court in any case to which this section does not apply.

**Evidence Act 2015**

*Division 8 - Witness anonymity orders*

93. **Anonymity order may be made before trial**-

(1) This section and section 94 of this Act apply if a person is charged with an offence and is to be tried in the District Court or the Supreme Court, where the trial has been transferred under the Criminal Procedure Act 1972 or any other enactment.

(2) At any time after the person is charged, the prosecution or the defendant may apply to a Judge of the Supreme Court for an order:

(a) excusing the applicant from disclosing to the other party prior to trial, the name, address, and occupation of any witness, and (except with leave of the Judge) any other particulars likely to lead to the witness’s identification; and

(b) excusing the witness from stating his or her name, address, and occupation, and (except with leave of the Judge) any other particulars likely to lead to the witness’s identification.

(3) The Judge must hear and determine the application in chambers, and:

(a) the Judge must give each party an opportunity to be heard on the application; and

(b) neither the party supporting the application nor the witness need disclose any information that might disclose the witness’s identity to any person (other than the Judge) before the application is dealt with.

(4) The Judge may make the order if he or she believes on reasonable grounds that:
(a) the safety of the witness or of any other person is likely to be endangered, or there is likely to be serious damage to property, if the witness’s identity is disclosed before the trial; and
(b) withholding the witness’s identity until the trial would not be contrary to the interests of justice.

(5) Without limiting subsection (4), in considering the application, the Judge must have regard to:

(a) the gravity of the offence; and
(b) the importance of the witness’s evidence to the case of the party who wishes to call the witness; and
(c) whether it is practical for the witness to be protected prior to the trial by any other means; and
(d) whether there is other evidence that corroborates the witness’s evidence.

94. Effect of pre-trial anonymity order-

If a pre-trial witness anonymity order is made under section 93:

(a) the party who applied for the order must give the Judge the name, address, and occupation of the witness; and
(b) a lawyer, officer of the court, or other person must not disclose the name, address, or occupation of the witness, or any other particulars likely to lead to the witness’s identification; and
(c) any formal statement filed must not disclose the name, address, or occupation of the witness or any other particulars likely to lead to the witness’s identification; and
(d) during the course of any pre-trial examination of the witness -

(i) no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to the name, address, or occupation of the witness who is subject to the order; and
(ii) except with leave of a Judge of the Supreme Court, no oral evidence may be given, and no question may be put to any witness, if the evidence or question relates to any other particulars likely to lead to the identification of the witness who is subject to the order; and
(e) a person must not publish, in any report or account relating to the proceeding, the name, address, or occupation of the witness, or any other particulars likely to lead to the witness’s identification.

95. Orders and directions necessary to preserve anonymity-

(1) A Judge who makes an order under section 93 may, for the purposes of trial (as the case may be), also make any orders and give any directions that the Judge considers necessary to preserve the anonymity of the witness, including (without limitation) one (1) or more of the following directions:

(a) that the court be cleared of members of the public;
(b) that the witness be screened from the defendant;
(c) that the witness give evidence by closed-circuit television or by video link.
(2) In considering whether to give directions concerning the mode in which the witness is to give his or her evidence at the trial, the Judge must have regard to the need to protect the witness while at the same time ensuring a fair hearing for the defendant.

(3) This section does not limit:

(a) any statutory provision or rule of law which confers power to deal with contempt of court; or

(b) any statutory provision or rule of law which confers power to clear the court; or

(c) any power of the court to direct that evidence be given, or to permit evidence to be given, by a particular mode.

96. Variation or discharge of anonymity order –

At any time before a witness gives evidence during a trial, a Supreme Court Judge may, on the Judge's own initiative or on the application of either party, vary or discharge a witness anonymity order made for the purposes of the proceeding under section 93.

97. Offence of breaching anonymity order-

(1) A person commits an offence who, with knowledge of a pre-trial witness anonymity order made under section 93, intentionally contravenes section 940, (c) or (e), and is liable on conviction to imprisonment for a term not exceeding 7 years.

(2) If a person contravenes section 94(b), (c) or (e), and that contravention does not constitute an offence against subsection (1), the person commits an offence and is liable on conviction:

(a) for an individual, to a fine not exceeding 50 penalty units; and

(b) for a body corporate, to a fine not exceeding 500 penalty units.

(3) This section does not limit the power of any court to punish any contempt of court.

This is also partly covered under sections 9-12 of the Commissions of Inquiry Act 1964 (Samoa). Those summoned as witness for commissions of inquiry have the same privileges and immunities as witnesses and counsel in a court of law.

Section 38 of the PFM Act also provides for protection of persons summoned by the National Revenue Board. Any such person if appearing as a witness, is given the same privileges and immunities of a witness sworn and examined in the Supreme Court.

Section 19 of the Stamp Duty Ordinance 1932, authorises the CEO of the Ministry of Finance to summon any person in respect of any information relating to liability of any person to pay any stamp duty.

Samoa provided the following examples of the implementation of those measures:

In the case of Police v Barlow [2017] WSSC 107 (26 July 2017) the Defendant sought bail however the Court in considering section 99(b) of the Criminal Procedure Act denied bail due to the risk of his interfering with the key witness (his wife).

In the case of Police v Posala [2015] WSSC 92 (31 August 2015) the Defendant applied for bail and the Court considered the factors under section 99 of the Criminal Procedure Act. Overall the Court was satisfied that some risk was present but not substantial enough to deny bail. The Defendant was granted conditional bail,
one of these conditions being that he not tamper or have direct or indirect contact with the Prosecution witnesses.

(b) Observations on the implementation of the article

A variety of evidentiary procedures have been implemented for witnesses. A pre-trial witness anonymity order can be made to protect the name, address, occupation and other particulars of the witness. Breaches of these anonymity orders are criminalized. During a witnesses’ testimony, the court may be cleared of the public, the witness can be screened from the defendant or can give evidence by closed-circuit television or through video link.

Victim participation was cited by Samoa as an overarching requirement of its legal system. An MOU exists with a victim support group to ensure protection of victims’ rights. Police protection can be provided, although this has to date been more relevant in violent and sexually motivated crimes. Protection orders or restraining orders can be obtained within a day and are enforced by police. Testimony from victims located overseas may be received via video conference.

The relocation of a witness within Samoa is not realistic given the size of the country, but witnesses have in the past been relocated to New Zealand for protection, with New Zealand facilitating the immediate removal of the witness from Samoa, based on a treaty.

The possible interference with or threatening of witnesses must be taken into account during bail considerations.

Experts are defined separately under the Evidence Act and have separate provisions governing their testimony.

In addition, cf. information provided under art. 25 regarding the criminalization of obstruction of justice.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

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

Samoa referred to the information provided above under (1).

(b) Observations on the implementation of the article

During the country visit, Samoan authorities stated that an immediate removal of a witness from Samoa had taken place on the basis of a treaty.

Article 32 Protection of witnesses, experts and victims

Paragraph 4
4. The provisions of this article shall also apply to victims insofar as they are witnesses.

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

Samoa provided the following information regarding the implementation of this provision:

Under section 2 of the Evidence Act 2015, “witness” is defined as a person who gives evidence and is able to be cross-examined in a proceeding. The safety of victims must be taken into account by the Court when deciding on bail, section 101 Criminal Procedure Act.

(b) Observations on the implementation of the article

Victims are covered by the definition of witness.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

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

Samoa referred to the information provided above under (1).

(b) Observations on the implementation of the article

Victim rights are specifically protected through an MOU with a victim support group and victim participation in criminal proceedings was cited by Samoa as one of the most important requirements of its system.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Section 28 of the Money Laundering Prevention Act provides for the protection of the identity of persons in relation to suspicious transaction reports. Protection against civil, criminal, administrative or disciplinary proceedings of persons reporting suspicious transactions are provided for under section 29 of the Money Laundering Prevention Act.

Money Laundering Prevention Act 2007

28. Protection of identity of persons and information in suspicious transaction reports –

(l) A person shall not disclose any information that will identify or is likely to identify:

(a) a person who has handled a transaction in respect of which a suspicious transaction report has been made; or
(b) a person who has prepared a suspicious transaction report; or
(c) a person who has made a suspicious transaction report; or
(d) any information contained in a suspicious transaction report or information provided pursuant to subsection 23(3), –
   except for the following purposes:
   (e) the investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or
   (f) the enforcement of the Proceeds of Crime Act.

(2) No person is required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against section 29.

29. Protection of persons reporting suspicious transactions –

(1) No civil, criminal, administrative or disciplinary proceedings shall be taken against:
   (a) a financial institution, an auditor or supervisory authority of a financial institution; or
   (b) an officer, employee or agent of the financial institution, the auditor or the supervisory authority of a financial institution, acting in the course of that person’s employment or agency, in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent taken under section 17,20(3),23 or 24 in good faith or in compliance with directions given by the Financial Intelligence Unit pursuant to section 11(2).

(2) Subsection (1) does not apply in respect of proceedings for an offence under section 27.

In addition, Section 116 of the PFM Act provides the following:

“116. Obligation to report – (1) A person who has knowledge of any circumstances which may cause him or her to consider that an offence under section 115 (Offences) may have occurred shall report those circumstances to the Controller and Auditor General, Minister or Financial Secretary or both.

   (2) A person who in good faith alleges a breach of this Act to the Controller and Auditor General, Minister or Financial Secretary is immune from civil suit and shall not be penalized in any way (whether the allegation is proved or not) because of his or her actions in reporting the matter. ”

Please provide examples of the implementation of those measures.

(b) Observations on the implementation of the article

Samoa has not adopted any legislation on the protection of reporting persons against unjustified treatment or retaliation. In practice, it was stated that identities of reporting persons are protected upon request and complaints are treated confidentially.
The Annual Review for the Public Administration Sector Plan 2013-2014 to 2017-2018, published by the Public Service Commission, calls for the establishment of whistleblower protection legislation. However, this has not been implemented to date and remains a recommendation.

In practice, it was stated that identities of reporting persons are protected upon request and complaints are treated confidentially.

Samoa is encouraged to consider incorporating appropriate measures to provide protection of reporting persons and provide for their effective enforcement.

**Article 34 Consequences of acts of corruption**

> With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

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

*Samoa provided the following information regarding the implementation of this provision:*

Sections 111 and 115 of the PFM Act provide offences and penalties for breach of relevant provision of the Act (Treasury Instructions and any Regulations issued under the PFM Act).

Also, Government’s Standard Tender Documents and Contract Templates (including Funding Agreements) make provision to safeguard from corrupt and fraudulent practices. See as follows wording used in contracts:

"*If the Principal determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Principal may, after giving fourteen (14) days’ notice to the Consultant, terminate the Consultant’s employment under the Contract, and the provisions of Clause 16 shall apply.*"

*It is the World Bank's policy to require that borrowers (including beneficiaries of World Bank loans), as well as consultants under World Bank financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the World Bank will:*

(a) reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;

(b) cancel the portion of the grant allocated to the consultant’s contract if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or of a beneficiary of the loan during the selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to the World Bank to remedy the situation;

(c) declare a consultant ineligible, either indefinitely or for a stated period of time, to be awarded a World Bank-financed contract if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, a World Bank-financed contract; and
(d) have the right to require that, in contracts financed by a World Bank grant, a provision to be included requiring consultants to submit audited financial statements and the same to be certified by an independent auditor, and also to permit the World Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the World Bank.

For the purposes of this Clause, the terms set-forth below are defined as follows:

(a) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(c) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(d) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(e) “obstructive practice” is

(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

(ii) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under the Contract."

Also, there is a provision in contracts that it is a ground for termination or disqualification if the Principal/Government is satisfied that a Consultant/Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices (as defined in prevailing Government’s sanctions procedures or the World Bank’s).

In various contracts funded by ADB and WB it is also a requirement for the Executing Agency (normally Government) and those benefitting from any donor financing to adhere or comply with ethics or standards issues by WB or ADB on Anti-Corruption. For instance, there is reference in Government’s contracts to Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers and the ADB’s Policy on Anti-Corruption and World Bank's Anti-Corruption Guidelines found on:


In Government's Tender Documents we have the following clauses:

"The Purchaser shall require that the Supplier, its contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, and service providers under any Government contracts, observe the highest standard of ethics during the
procurement and execution of such contracts pursuant to GCC 3.1 of this Tender Document. Accordingly, the Government:

(a) shall clarify the terms set out in GCC 3.1 where it becomes necessary;
(b) shall reject a proposal for award of Contract if it determines that the Tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(a) will cancel the portion of the funding allocated to a contract if it determines at any time that representatives of the Purchaser engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Purchaser having taken timely and appropriate action satisfactory to the Government to remedy the practice in question; and

(b) will sanction a firm or an individual, at any time, in accordance with prevailing Government sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a specified period of time:

(i) to be awarded a Government contract; and

(ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Government-financed contract.

3.2 Where necessary and only in exceptional circumstances, the Tenderers shall permit the Government to inspect any accounts and records and other documents relating to the Tender submission and contract performance, and to have them audited by auditors appointed by the Government.

3.3 Furthermore, Tenderers shall be aware of the provision stated in GCC 35.1 of this Tender Document with regard to termination."

The Treasury Instructions 2016 (Part K) and supporting Guidelines provide sufficient support for Government bringing legal proceedings to terminate a contract with a party who has become involved in corrupt or fraudulent practices. The legal framework for procurement is also clear that any recent previous conviction for fraud or corruption will render a bidder ineligible to compete in the procurement process.

**Treasury Instructions 2016 (Part K)**

- K.2.1 (1) Principles of Procurement are all geared towards ensuring that public procurement is conducted in a fair and transparent manner free from corruption (see specifically K.2.1(1)(a)).
- K.4.6 Evidence of Qualification: bidders are required to provide evidence that they have not been convicted of criminal offences for dishonesty or corruption in Samoa or elsewhere as part of their eligibility to bid in services.
- K.8.7 Suspensions and Debarments: bidders convicted of corruption offences may be suspended or debarred from the procurement process. Persons convicted are also barred from being awarded contracts.

Part K.8.7 provides for the three groups of persons that TB may suspend or debar and which may include a person who is found to have committed an offence listed under Instructions 4.6(5)((a)).
These requirements are reflected in the Guidelines for Procurement and Contracting of Goods, Works and General Services (section 3.14(h) and 7.01) and Guidelines for Procurement and Contracting of Consulting Services (section 3.01(f) and 10.01).

As a non-legislative measure, all Government contracts (domestic and foreign funded) provide Government with the right to terminate the contract if the Contractor is convicted of any corruption offences or becomes involved in any fraudulent or corrupt practices as defined in those contracts.


In addition, section 13 of the Public Service Act allows the Public Service Commission to terminate the services of a Chief Executive Officer on the grounds of 1. Misbehaviour, 2. Poor performance, 3. Redundancy and 4. Physical or mental capacity. Also if an employee is determined to have breached the Public Service Code of Conduct (Samoa), the Chief Executive Officer has the authority to terminate employment, depending on the severity of the breach of code.

(b) Observations on the implementation of the article

The determination of corrupt, fraudulent, collusive, coercive or obstructive conduct by a government contractor can be a reason for the rejection of proposals, the cancelation of portions of funding, the termination of contracts, the disqualification or sanctioning of the person or company, including their debarment from participation in procurement be it as the tenderer or a subcontractor, supplier etc. to the tenderer.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

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

Samoa provided the following information regarding the implementation of this provision:

There is nothing in the law of Samoa which prevents a person/company from bringing legal action to be compensated for injury caused by corruption or fraudulent activities.

See Supreme Court (Civil Procedure) Rules 1960:

- Rule 31 (Who may be joined as Plaintiffs): (1) All persons may be joined as plaintiffs in one action in whom any right to relief in respect of or arising out of the same transaction or event or series of transactions or events is alleged to exist whether jointly, severally, or in the alternative where, if they brought separate actions any common question or law or fact would arise.

Essentially any person who wishes to claim relief from an event or transaction may bring a claim.

Aside from the legal standing, under the Sentencing Act 2016 the Court is allowed to take into consideration offers from the Defendant to make amends or compensate the victim for harm caused as well as make orders for reparation (sections 9, 69, 76).
Samoa provided the following cases as examples of the implementation of those measures:

- **Strickland Brothers v Attorney General [2014] WSSC 15 (29 April 2014)** – the State was sued in vicarious liability for the actions of employees of the Ministry of Police who defrauded the Plaintiff.
- **Samoa Breweries Ltd v Osa [2018] WSSC 36 (13 March 2018)** in this case the Plaintiff was the victim of a large-scale fraud and brought a claim against the defendants for compensation of $1.46m. After the hearing the defendants were ordered to pay compensation of $778k.

(b) Observations on the implementation of the article

During the country visit, Samoan authorities stated that, to their knowledge, no foreign State had ever initiated legal proceedings in Samoa. However, nothing in the law prevents an entity and/or person from initiating legal proceedings to obtain compensation for damages, including for immaterial damage such as pain and suffering. Punitive damages can also be ordered.

Article 36 Specialized authorities

> Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

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

Samoa provided the following information regarding the implementation of this provision:

Samoa has a number of bodies whose mandates help combat corruption through law enforcement. Relevant anti-corruption bodies in Samoa include the:

- Ombudsman;
- Attorney-General;
- Auditor-General;
- Money Laundering Prevention Authority;
- Money Laundering Prevention Task Force;
- Financial Intelligence Unit;
- Samoan Police Force; and
- Transnational Crimes Unit.
- Government Tenders Board established by Part 12 of the Public Finance Management Act 2001. Given the role of the Tenders Board in overseeing the public procurement process we feel they have a strong anti-corruption mandate especially as enforcer of the principles of procurement under the Treasury Instructions 2016 (Part K).

Ombudsman
The Ombudsman is established under section 82A of the Constitution. The Ombudsman is appointed by the Head of State acting on the recommendation of the Legislative Assembly for a term of six years. Section 6 of the Ombudsman (Komesina o Sulufaiga) Act 2013 provides for the independence of the Ombudsman.

An applicant is not eligible for appointment as the Ombudsman unless the applicant is qualified for appointment as a judge of the District Court and has extensive knowledge or experience in the principles of human rights and relevant domestic and international human rights law; the promotion and protection of human rights; and good governance and public administration; has the knowledge and experience in public governance and administration; is recognised as being a person of integrity and good character; is capable of fulfilling the position with independence and impartiality; is a citizen of Samoa; and meets any other criteria prescribed by regulations.

The principal function of the Ombudsman is to conduct independent investigations into complaints against administrative actions (including any recommendation made to a Cabinet Minister of government agencies (section 11(1)). The Ombudsman may conduct own motion investigations that suggest possible systemic concerns (section 11(2)).

Constitution

PART VIA OMBUDSMAN (KOMESINA O SULUFAIGA)

82A. Ombudsman
(1) There is to be an Ombudsman (Komesina o Sulufaiga) appointed by the Head of State acting on the recommendation of the Legislative Assembly.

(2) The Ombudsman is to be appointed pursuant to the selection and appointment criteria and other terms and conditions provided by Act.

(3) The Ombudsman:
(a) is to be appointed for 6 years; and
(b) is eligible for re-appointment; and
(c) on expiry of the term, continues in office until re-appointed or a successor assumes the function of the office.

(4) The salary, allowances and other benefits of the Ombudsman:
(a) are to be determined by Act; and
(b) are to be charged on the Treasury Fund, without further appropriation than this subclause; and
(c) are not to be reduced during the term of office of the Ombudsman, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(5) The Ombudsman may be removed from office pursuant to the grounds and procedures provided by Act.

82B. Functions of Ombudsman

The functions of the Ombudsman are:
(a) to carry out the functions relating to promotion of good governance in public administration provided by Act; and
(b) to carry out the functions relating to human rights provided by Act; and
(c) to carry out any other functions provided by Act.

**Ombudsman (Komesina o Sulufaiga) Act 2013**

5. Continuation and legal personality

The Ombudsman (Komesina o Sulufaiga), previously established under the Komesina o Sulufaiga (Ombudsman) Act 1988 continues and is established under this section as an independent corporate sole with perpetual succession and common seal and may:

(a) own and dispose of property and other assets; and
(b) enter into contracts; and
(c) sue and be sued; and
(d) do any other thing that a person may do in law.

6. Independence

(1) The Ombudsman:
   (a) is an independent officer of Parliament; and
   (b) must independently carry out the functions, duties and powers under this Act; and
   (c) when carrying out the functions, duties and powers under this Act, is not to be subject to a direction or influenced by a person, officeholder or authority.

(2) This section does not prevent a court from making a direction or order whether the Ombudsman:
   (a) has carried out the functions, duties and powers under this Act; or
   (b) should or should not carry out the functions, duties or powers.

7. (repealed by section 13 of the Constitution Amendment Act 2015, No.19)

8. Selection and criteria

The Ombudsman is to be selected pursuant to the selection processes and criteria set out in Schedule 3.

(2) (repealed by section 13 of the Constitution Amendment Act 2015, No.19)

9. Oath of office

The Ombudsman must, before taking office, take before the Speaker the oath of office set out in Part 1 of Schedule 2.

10. (repealed by section 13 of the Constitution Amendment Act 2015, No.19)

11. Remuneration

(1) The salary, allowances and other benefits of the Ombudsman are determined under the Remuneration Tribunal Act 2003 by the Tribunal taking into account the terms and conditions of other parliamentary officers and constitutional office holders.

(2) The salary, allowances and other benefits of the Ombudsman are not to be reduced during the term of office of the Ombudsman, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries, allowances and other benefits are determined under the Remuneration Tribunal Act 2003.

(3) The salary, allowances and other benefits referred to in subsection (1) are to be charged on the Treasury Fund, without further appropriation than this subsection.
12. Ombudsman to hold no other office

(1) The Ombudsman must not:
   (a) become a Member of Parliament while in office; or
   (b) without the approval of the Speaker in each particular case, hold any other office or employment or engage in any activity or practice that may in any way conflict with the Ombudsman’s actual or perceived independence or impartiality.

(2) If the Ombudsman becomes aware of an actual or perceived conflict of interest, the Ombudsman must:
   (a) immediately inform the Speaker; and
   (b) take immediate action to avoid the conflict of interest.

13. Acting Ombudsman

If the Ombudsman is unable to carry out the functions of the office because of illness, absence on leave or from Samoa, vacancy or any other reason:
   (a) the Ombudsman; or
   (b) the Head of State for vacancy of office on death,–

may, in writing, designate an Assistant Ombudsman to carry out the functions of the Ombudsman.

14. Resignation

The Ombudsman may, in writing to the Head of State, resign from office.

15. Removal and suspension

(1) The Head of State, acting on the recommendation of the Legislative Assembly, may remove the Ombudsman from office for inability to perform the functions of the office arising from infirmity of body or mind or for misconduct in office.

(2) The Ombudsman may not otherwise be removed except under this section.

(3) If the Legislative Assembly considers that the question of removal from office ought to be investigated, the Legislative Assembly may appoint a tribunal, consisting of:
   (a) a retired judge in Samoa or elsewhere or a lawyer qualified for appointment as a judge of the Supreme Court, as chairperson; and
   (b) two other members.

(4) If the question relates to infirmity of body or mind, one of the members under subsection (3)(b) must be a medical practitioner registered under the Medical Practitioners Act 2007.

(5) The tribunal must enquire into the matter and provide a written report of the facts and its findings to the Legislative Assembly.

(6) If the question of removing the Ombudsman has been referred to the tribunal, the Head of State, acting on the recommendation of the Legislative Assembly, may suspend the person from office pending the determination of the question of removal.

(7) The terms and conditions for a tribunal are to be prescribed by regulations or determined by the Speaker if no regulations are made.

16. Automatic vacation of office
(1) As an exception to section 15, the office of the Ombudsman automatically becomes vacant if the Ombudsman:

(a) becomes subject to an order of medical custody under the Mental Health Act 2007; or

(b) has been adjudged bankrupt by a court of competent jurisdiction; or

(c) has been duly nominated under section 48 of the Electoral Act 1963; or

(d) has been convicted by a court or tribunal of competent jurisdiction, in Samoa or elsewhere, of any of the following—

(i) a serious criminal offence;

(ii) misuse of public funds;

(iii) a provision of this Act.

(2) In this section, “serious criminal offence” means an offence that prescribes a fine of at least 20 penalty units or imprisonment of at least 2 years.

(3) The effective date of vacation of office is the date of the order, adjudication or conviction.

(4) If there is doubt as to the effective date of vacation of office, the Speaker may determine the date.

17. Vacancy

(1) The office of the Ombudsman becomes vacant when the Ombudsman dies, retires or resigns or is removed from office or vacates the office under section 16.

(2) A vacancy is to be filled pursuant to section 7 and Schedule 3.

SCHEDULE 3

(sections 8 and 17)

SELECTION AND CRITERIA

1. Establishment

(1) The Screening Committee (“Committee”) is established comprising the following members:

(a) the Chairperson of the Public Service Commission, as Chairperson;

(b) a retired judge or a lawyer qualified for appointment as a Supreme Court judge, appointed by the Chairperson;

(c) a member to represent civil society groups and the private sector, appointed by the Chairperson.

(2) The following persons are not eligible for appointment under clause 1(1)(b) or (c):

(a) a member of Parliament;

(b) a Minister;

(c) public servant or a person engaged by the Government or in the “service of Samoa” within the meaning under Article 111 of the Constitution;

(d) a director or employee of a public body regulated under the Public Bodies (Performance and Accountability) Act 2001;
(e) any other person prescribed by regulations.

(3) All members constitute a quorum.

(4) The Committee may regulate its own meeting procedures.

2. Functions

The Committee must consider applications and determine candidates for appointment or re-appointment as the Ombudsman.

3. Advertisement of vacancies

(1) When the position of the Ombudsman becomes vacant or will become vacant within 6 months before expiry of the term, the Government must advertise the position in a newspaper having wide circulation in Samoa.

(2) The Government must send the list of applicants who responded to the advertisement under subsection (1), including any qualified individual it considers for appointment (“applicants”), to the Committee for determinations.

(3) If no applicant qualifies under clause 6, the vacancy must be re-advertised.

4. Determination of applications

When determining the suitability of the applicants for appointment or re-appointment, the Committee:

(a) must take into account clause 6; and

(b) may take into account clause 7.

5. Report of the Committee

(1) After determining the applications, the Committee must prepare and send to the Legislative Assembly a report on its determination setting out:

(a) the names of all qualified applicants; and

(b) the screening process.

(2) The report:

(a) must include information and documentation that demonstrates how an applicant meets the criteria in clause 6 and why the Committee believes the applicant is suitable to be recommended by the Legislative Assembly to the Head of State for appointment;

(b) may include information and documentation that demonstrate how an applicant meets any general criteria under clause 7.

(3) A copy of the report is to be sent to the Prime Minister.

6. Specific criteria

An applicant is not eligible for appointment as the Ombudsman unless the applicant is qualified for appointment as a judge of the District Court and meets the following criteria:

(a) has extensive knowledge or experience in all of the following—

(i) the principles of human rights and relevant domestic and international human rights law;

(ii) the promotion and protection of human rights;
(iii) good governance and public administration; and
(b) has the knowledge and experience in public governance and administration;
(c) is recognised as being a person of integrity and good character; and
(d) is capable of fulfilling the position with independence and impartiality; and
(e) is a citizen of Samoa; and
(f) any other criteria prescribed by regulations.

7. General criteria – In considering applicants, the Committee may consider any of the following general criteria:

(a) knowledge of, or experience in -
   (i) current economic, employment, and social issues;
   (ii) cultural issues, Fa’a-Samoa and the needs and aspirations (including life experiences) of different communities in Samoa;
   (iii) other diverse matters likely to come before the Ombudsman;

(b) skills or experience in—
   (i) public advocacy and education;
   (ii) financial management;
   (iii) academia, social welfare, community development, law, business, commerce, economics or industry;

(c) any other criteria prescribed by regulations.

**Attorney-General**

Section 41 of the **Constitution** provides for the appointment of an Attorney-General by the Head of State, acting on the advice of the Prime Minister. The Attorney-General must be a person qualified to be a Judge of the Supreme Court. The Attorney-General is to advise on legal matters referred to him or her by the Head of State, Cabinet, the Prime Minister or a Minister. The Attorney-General is both the chief prosecutor and chief legal adviser of Samoa, and is a member of the Transnational Crimes Unit Management Committee and the Money Laundering Prevention Task Force. The Attorney General’s Office is the central authority for formal international co-operation

*Also the Mutual Legal Assistance in Criminal Matters Act 2007* – sections 7 and 9 allowing requests for assistance to be made by and to the Attorney General.

**Constitution**

41. **Attorney-General**

(1) The Head of State, acting on the advice of the Prime Minister, shall appoint an Attorney General, who shall be a person qualified to be a Judge of the Supreme Court.

(2) The Attorney General shall advise on legal matters referred to him or her by the Head of State, Cabinet, the Prime Minister or a Minister.

(3) The Attorney General shall have a right of audience in, and shall take precedence over any other person appearing before, any Court or tribunal on any proceedings other than criminal proceedings.
(4) The powers of the Attorney General may be exercised by the Attorney General in person or by officers subordinate to the Attorney General, acting under and in accordance with his or her general or special instructions.

(5) The Attorney General shall hold office for such term or terms and under such conditions as may be determined by the Head of State, acting on the advice of the Prime Minister.

**Director of Public Prosecutions**

Section 41A of the *Constitution* establishes the Director of Public Prosecutions. Pursuant to this section, the Head of State may, acting on the advice of the Prime Minister, appoint a person for a term of six (6) years who is qualified to be appointed as a judge of the Supreme Court as the Director of Public Prosecutions.

**Auditor General**

Section 97 of the *Constitution* provides for the appointment of the Auditor-General to be appointed by the Head of State, acting on the advice of the Prime Minister. Before advising the Head of State, the Prime Minister shall consult the parliamentary committee responsible for Officers of Parliament on the proposed appointment of the Auditor General. The Controller and Auditor General is responsible for auditing public assets, liabilities and equity including public money. A person appointed as Controller and Auditor General holds office for a term of 12 years.

The Audit Office specified under section 97(1)(b) of the *Constitution* is established by section 11 of the Audit Act 2013 consisting of the Controller and Auditor General; the Assistant Auditor; officers and employees of the Audit Office; and any other person, including consultants and contractors, authorised (whether by delegation or otherwise) to exercise or perform any of the powers or functions of the Controller.

**Constitution**

97. **Controller and Auditor General**

(1) There shall be a Controller and Auditor General:

   (a) who shall be appointed by the Head of State, acting on the advice of the Prime Minister; and

   (b) whose office shall be called the Audit Office.

(2) Before advising the Head of State, the Prime Minister shall consult the parliamentary committee responsible for Officers of Parliament on the proposed appointment of the Controller and Auditor General.

(3) No person shall be appointed as Controller and Auditor General unless the person satisfies the eligibility criteria provided by Act.

(4) A person shall not be appointed as Controller and Auditor General if the person has previously been appointed as Controller and Auditor General or as Controller and Chief Auditor under this Part.

(5) Subject to Article 97A(4), the Controller and Auditor General is an independent officer of Parliament.

(6) There are no implied functions, powers, rights, immunities or obligations of the Controller and Auditor General arising from the Controller and Auditor General’s status as an independent officer of Parliament.
(7) There are no implied powers of the Legislative Assembly arising from the Controller and Auditor General’s status as an independent officer of Parliament and the powers of the Legislative Assembly to act in respect of the Controller and Auditor General are only those provided under or by this Part or Act.

(8) Except as provided by Act, the Controller and Auditor General is not subject to the Act regulating the Public Service.

(9) Other terms of the appointment of the Controller and Auditor General and the establishment and composition and functions of the Audit Office are provided by Act.

97A. Responsibilities of Controller and Auditor General

(1) The Controller and Auditor General is responsible for auditing public assets, liabilities and equity including public money.

(2) Without limiting clause (1), the Controller and Auditor General shall audit the Treasury Fund, other public funds and public accounts as may be established by law, funds and accounts of all Ministries and other Government and State Offices (including departments of Ministries, and overseas missions), and funds and accounts of other public, statutory authorities, local authorities and other bodies as may be provided by Act.

(3) For the purpose of exercising functions under this Part, the Controller and Auditor General has other functions, powers, immunities and independence provided by Act.

(4) Except as provided by Act, the Controller and Auditor General has complete discretion in carrying out his or her functions, duties and powers and is not subject to any direction from any person as to:

(a) whether or not to conduct a particular audit; or

(b) the way in which the Controller and Auditor General is to conduct a particular audit; or

(c) the priority to be given to any particular audit or other matter.

98. Duty of Controller and Auditor General to report to Legislative Assembly

(1) Subject to clause (2), the Controller and Auditor General shall:

(a) report, at least once annually and at such other times as may be provided by Act, to the Legislative Assembly -

(i) on the results of all audits conducted under this Part or by Act; and

(ii) draw attention to any irregularities in the accounts, transactions, processes, systems or operations of the Treasury Fund or of a public fund, public account, Ministry, office or body audited by the Controller and Auditor General under Article 97A(2); and

(b) report generally and at least once annually to the Legislative Assembly on the performance of his or her functions, duties and powers under this Part or by Act and the operations of the Audit Office.

(2) A report under clause (1) shall be presented by the Speaker to the Legislative Assembly.

99. Term of office

(1) Subject to this Part, a person appointed as Controller and Auditor General holds office for a term of 12 years.
(2) If the term for which a person who has been appointed as Controller and Auditor General expires, that person continues to hold office until a successor to that person is appointed unless removed or suspended during the period of expiry.

99A. Conditions of service

(1) The Controller and Auditor General is entitled to salary, allowances and other benefits provided by Act.

(2) The salary of the Controller and Auditor General shall not be reduced during the period of office of the Controller and Auditor General, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(3) The allowances and other benefits of the Controller and Auditor General’s service are not to be altered in any way which reduces any allowance and benefit conferred on the Controller and Auditor General arising from the appointment.

(4) The salary, allowances and other benefits under this Part shall be charged on the Treasury Fund.

99B. Other employment

Except as provided by Act or authorised by resolution of the Legislative Assembly, the Controller and Auditor General shall not:

(a) hold any appointment in the Public Service (including in any of the other capacities under Article 83), other than that of Controller and Auditor General; or

(b) be a member of any authority or body mentioned under Article 97A(2); or

(c) engage in any paid employment outside the functions of his or her office.

99C. Rights preserved

(1) A person who was an officer or employee in the Public Service and who is appointed as Controller and Auditor General is entitled to retain all existing and accruing rights as if the service of that person as Controller and Auditor General were a continuation of service as an officer or employee in the Public Service.

(2) During the term of appointment as Controller and Auditor General, the Controller and Auditor General is entitled to retain existing and accruing rights as if the Controller and Auditor General had continued in service as an officer or employee in the Public Service.

(3) If a person ceases to hold office as Controller and Auditor General and becomes an officer in another capacity or an employee in the Public Service, the service of that person as Controller and Auditor General is to be regarded as service in that other capacity or as an employee in the Public Service for the purpose of determining accruing rights.

99D. Absence of Controller and Auditor General

(1) If the Controller and Auditor General is unable to carry out his or her functions, duties and powers under this Constitution or any other Act or law because of illness, absence on leave or from Samoa or any other reason, the person who is appointed by an Act as the Assistant Auditor must carry out those functions, duties and powers.

(2) If the Assistant Auditor is unable to carry out the functions, duties and powers of the office of the Controller under clause (1) because of illness, absence on leave or from Samoa or any other reason, the Controller must in writing appoint a senior officer of the Audit Office to carry out those functions, duties and powers.
99E. Resignation of Controller and Auditor General

The Controller and Auditor General may resign from office by giving the Head of State a signed letter of resignation.

99F. Removal from office of Controller and Auditor General

(1) The Head of State may, acting on the advice of the Prime Minister given pursuant to clause (3), remove the Controller and Auditor General only in accordance with this Article and only under any of the grounds set out under clause (2).

(2) The Controller and Auditor General may only be removed if he:

(a) has been convicted of an offence involving dishonesty punishable by imprisonment for 12 months or more, or of an offence under an Act involving evasion of tax;

(b) has become bankrupt or commits an act of bankruptcy under an Act regulating bankruptcy;

(c) has become, by reason of physical or mental disability, incapable of performing the functions of the office of Controller and Auditor General as provided by this Part or by Act;

(d) has, without any lawful or reasonable justification, failed to discharge any function of the Controller and Auditor General under or by this Part or by Act;

(e) has engaged in any conduct which places the Controller and Auditor General in conflict with the functions of the office of Controller and Auditor General.

(3) Before advising the Head of State under clause (1), the Prime Minister shall:

(a) consult the parliamentary committee responsible for Officers of Parliament on the proposed removal of the Controller and Auditor General; and

(b) lay before the Legislative Assembly a full statement of the grounds for the removal of the Controller and Auditor General for a resolution of the Legislative Assembly to be passed by at least two-thirds of the total number of Members of Parliament (excluding any vacancy).

(4) The Controller and Auditor General is deemed to be suspended from office from the date the Prime Minister consults the parliamentary committee responsible for Officers of Parliament under clause (3)(a), until a final decision for removal is made.

Audit Act 2013

7. Criteria for appointment of Controller

For the purpose of Article 97(3) of the Constitution, the criteria for the appointment of the Controller and Auditor General are set out in Part 1 of Schedule 1.

8. Disqualification

(1) A person who is a member of the Legislative Assembly or a candidate for election as a member of the Legislative Assembly, is disqualified from appointment to the office of Controller and Auditor General.

(2) If a person holding the office of Controller becomes a candidate for election as a member of the Legislative Assembly, that person is taken to vacate the office of Controller.
In this section, a person is a candidate or becomes a candidate when the person’s nomination as a candidate for election is accepted by the Electoral Commissioner.

A person who is a director of a company is disqualified from appointment to the office of Controller and, if a person holding that office becomes a director, that person is taken to vacate the office of Controller from the date of appointment as director.

9. Declaration of office by Controller

Before performing the functions and exercising the powers of the Controller and Auditor General for the first time, the Controller must make a declaration before the Head of State in the form contained in Part 2 of Schedule 1.

10. Salary, allowances and other benefits of the Controller

(1) Pursuant to Article 99A of the Constitution, the salary, allowances and other benefits of the Controller, as applying from the commencement of this Act, are as determined by the Remuneration Tribunal under the Remuneration Tribunal Act 2003.

(2) The Controller is entitled to full salary if the Controller is suspended under Article 99F(4) of the Constitution.

11. Establishment of the Audit Office

(1) The Audit Office specified under Article 97(1)(b) of the Constitution is established by this section consisting of:

(a) the Controller and Auditor General; and
(b) the Assistant Auditor; and
(c) officers and employees of the Audit Office; and
(d) any other person, including consultants and contractors, authorised (whether by delegation or otherwise) to exercise or perform any of the powers or functions of the Controller.

(2) Part IV of the Public Service Act 2004 applies with necessary modifications, to this Act, and any reference in that Part to:

(a) Chief Executive Officer or employer is to be read as a reference to the Controller and Auditor General;
(b) employee is to be read as reference to any person employed or engaged under subsection (1).

(3) The Controller has sole power to employ, which includes power to structure, appoint, manage, and fix remuneration and salaries of the Assistant Auditor, officers, employees and other persons of the Audit Office on terms that the Controller thinks fit.

(4) The power under subsection (3) to appoint includes the power to transfer (within the Audit Office), promote, suspend, discipline or dismiss officers and employees, and to vary, suspend or terminate contracts for consultants or contractors.

Money Laundering Prevention Authority

The Money Laundering Prevention Authority established under section 4 of the Money Laundering Prevention Act is, formally, responsible for supervising financial institutions under the Act, issuing guidelines to financial institutions on customer due diligence, and for establishing the Samoa Financial Intelligence Unit. The functions of the Money
Laundering Prevention Authority are performed by the Governor of the Central Bank of Samoa, who also chairs the Money Laundering Prevention Task Force.

**Money Laundering Prevention Act 2007**

4. **Money Laundering Prevention Authority**

(i) The Minister may appoint a person or persons to be known as the Money Laundering Prevention Authority to supervise financial institutions in accordance with this Act.

(ii) 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, or by any person authorised by the Governor in writing in that behalf.

(iii) The Authority shall issue Guidelines to financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions.

**Money Laundering Prevention Task Force**

The Money Laundering Prevention Task Force is established under section 5 of the **Money Laundering Prevention Act**. The Task Force consists of the Governor of the Central Bank or such other person as may be designated by the Governor, as the Chairperson; the Attorney-General; the Commissioner of Police; the Chief Executive Officer of the Samoa International Finance Authority; the Head of the Customs department; the Head of the Immigration department; the Director of the Financial Intelligence Unit; the Director of the Public Prosecutions; and such other persons as may be appointed by the Minister, acting on the advice of the Authority.

**Money Laundering Prevention Act 2007**

5. **Money Laundering Prevention Task Force**

(i) The Money Laundering Prevention Task Force is hereby established and consists of:

(a) the Governor of the Central Bank or such other person as may be designated by the Governor, as the Chairperson; and

(b) the Attorney-General; and

(c) the Commissioner of Police; and

(d) the Chief Executive Officer of the Samoa International Finance Authority; and

(e) the Head of the Customs department; and

(f) the Head of the Immigration department; and

(g) the Director of the Financial Intelligence Unit; and

(ga) the Director of the Public Prosecutions; and

(h) such other persons as may be appointed by the Minister, acting on the advice of the Authority.

(ii) The Money Laundering Prevention Task Force shall:

(a) advise the Authority on any matter referred to it by the Authority relating to the prevention of money laundering or the financing of terrorism; and
(b) on its own motion, report and make recommendations to the Authority on any matter relating to the prevention of money laundering or the financing of terrorism, as it sees fit; and

(c) ensure close liaison, cooperation and coordination between the various Government departments, statutory corporations and the Authority and the Financial Intelligence Unit.

(3) Except for the purpose of the performance of the person’s duties or the exercise of the person’s functions under this Act or when lawfully required to do so by any court, a member of the Money Laundering Task Force shall not disclose any information or matter which has been obtained by the person in the performance of the person’s duties or the exercise of the person’s functions under this Act, except for one or more of the following purposes:

(a) the detection, investigation or prosecution of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(b) the enforcing of the Counter Terrorism Act 2014 or the Proceeds of Crime Act 2007.

Financial Intelligence Unit

Section 6 of the Money Laundering Prevention Act establishes the Financial Intelligence Unit by the Money Laundering Prevention Authority. The Financial Intelligence Unit is to consist of a Director appointed by the Authority, on such terms as it may determine; and such other persons as may be appointed by the Authority. Section 7 of the Money Laundering Prevention Act outlines the functions of the Financial Intelligence Unit.

Money Laundering Prevention Act 2007

6. Establishment of the Financial Intelligence Unit

(1) The Financial Intelligence Unit shall be established by the Money Laundering Prevention Authority.

(2) The Financial Intelligence Unit shall consist of:

(a) a Director appointed by the Authority, on such terms as it may determine; and

(b) such other persons as may be appointed by the Authority.

(3) The Director shall exercise all of the powers, duties and functions of the FIU under this Act.

(4) The Director may authorise any person, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

7. Functions and powers of the Financial Intelligence Unit

(1) The Financial Intelligence Unit:

(a) shall receive reports required to be provided to it and information provided to the FIU by any agency of a foreign State, information provided to the FIU by a law enforcement agency or a government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence, a money laundering offence or the offence of the financing of terrorism; and
(b) may collect information that the FIU considers relevant to serious offences, money laundering activities or the financing of terrorism and that is publicly available, including commercially available databases or information that is collected or maintained, including information that is stored in databases maintained by the government; and

(c) may analyse and assess all reports and information; and

(d) may request information from any law enforcement agency, government agency or supervisory agency for the purposes of this Act; and

(e) may enter into Memoranda of Understanding, agreements or arrangements with Samoan Government and non-governmental agencies and authorities, including the Police Service, the Customs Department, the Immigration Department, the Central Bank and the Samoa International Finance Authority, so as to ensure close liaison, cooperation and the secure exchange of information; and

(f) may provide information concerning a money laundering offence or an offence of the financing of terrorism, without the need for a request, to foreign agencies concerned with the prevention or investigation of money laundering or the prevention and suppression of terrorism, when such information comes to the attention of the FIU and may assist that foreign agency; and

(g) may send any report, any information derived from such report or any other information it receives to the appropriate law enforcement and supervisory authorities if, on the basis of its analysis and assessment, the FIU also has reasonable grounds to suspect that the transaction is suspicious; and

(h) may inform any regulatory authority, government agency or law enforcement agency of an alleged breach by a financial institution of the provisions of this Act or the Regulations with a request that such authority or agency review the business or other licence of the financial institution following such alleged breach; and

(i) shall destroy a suspicious transaction report received or collected on the expiry of 5 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report for five years from the date of the last activity relating to the person or report; and

(j) may instruct any financial institution to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation anticipated by the FIU, notwithstanding that such financial institution has not made a suspicious transaction report in relation to such matter; and

(k) may compile statistics and records, disseminate information within Samoa or elsewhere and make recommendations arising out of any information received; and

(l) may provide training programmes for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions; and

(m) may undertake due diligence checks and other inquiries as may be requested in writing by the Central Bank, Samoa International Finance Authority, the Samoa Police Service and other Government agencies and departments, as may be named by the Authority; and
(n) may provide feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under the Act; and
(o) may conduct research into trends and developments in the areas of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism; and
(p) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism; and
(q) may obtain further information on parties or transactions referred to in a report made under sections 13, 23 and 24; and
(r) may disclose any report, any information derived from such report or any other information it receives to a government of a foreign State or an institution or agency of a foreign State or of an international organization established by the governments of foreign States that has powers and duties similar to those of the FIU as set out in sections 8 and 9, if on the basis of its analysis and assessment, the FIU has reasonable grounds to suspect that the report or information would be relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of financing of terrorism.

(2) Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may:

(a) involve the proceeds of a serious crime, a money laundering offence or an offence of the financing of terrorism; or
(b) be preparatory to the offence of the financing of terrorism, –

it may, by an ex-parte application to the Court, apply for an order to temporarily freeze the funds affected by that transaction or attempted transaction.

(3) The Court upon an application under subsection (2) and upon being satisfied that there are reasonable grounds to suspect that a transaction or attempted transaction may:

(a) involve the proceeds of a serious crime, a money laundering offence or an offence of the financing of terrorism; or
(b) be preparatory to the offence of the financing of terrorism,—

make an order directing a financial institution not to proceed with the carrying out of that transaction or attempted transaction or any other transaction in respect of the funds affected by that transaction or attempted transaction for a period to be determined by the Court, which may not be more than 5 days, in order to allow the FIU:

(c) to make any necessary inquiries concerning the transaction or attempted transaction; and
(d) if the FIU deems it appropriate, to consult with or advise the relevant law enforcement agency about the inquiries.

(4) The Court may, on application by the Financial Intelligence Unit, extend the period of the operation of the order granted under subsection (3).

**Samoan Police Service**

The Samoan Police Service is the designated authority responsible for investigating money laundering and terrorist financing offences. The Criminal Investigation Division of
the police is responsible for investigating domestic cases and commercial crime, including
money-laundering. The Commissioner of Police is a member of the Money Laundering
Prevention Task Force.

The newly established Professional Standards Unit within the Police, charged with the
investigation of complaints against the Police encourages complainants and the public to
go to the Ombudsman should they be not satisfied with the handling of their concerns by
the Professional Standards Unit.

**Samoa Transnational Crime Unit (TCU)**

The Transnational Crime Unit is responsible for supporting investigations of predicate
crimes, money laundering and terrorist financing that include a transnational element. The
Transnational Crime Unit was established in 2002 to provide investigative and
operational intelligence to tackle transnational crime including drug trafficking,
money laundering and terrorism. The Transnational Crime Unit is a multi-disciplinary
unit within the Ministry of the Prime Minister & Cabinet, made up of specialist
officers from the Police Service, Ministry of Revenue (which includes Customs) and
Immigration Department. Investigative powers of the Unit only arise from the powers
held by the seconded staff working within the Transnational Crime Unit.⁵

**Samoa provided the following examples of the implementation of those measures:**

Annual reports of the Audit Office are available through its website for the years 2008-
2012 in both English and Samoan.

The Ombudsman has published on its website the State of Human Rights Report 2015;
Detention Centres Inspection Report 2015; and Submission to the Convention on the
Rights Of the Child Committee 2015.

The Public Service Commission publishes its annual report on its website.

(b) **Observations on the implementation of the article**

Relevant anti-corruption bodies in Samoa include the Ombudsman; the Attorney-General, the
Auditor-General, the Money Laundering Prevention Authority and the Money Laundering
Prevention Task Force, the Financial Intelligence Unit, the Samoan Police Force and the
Transnational Crimes Unit.

The fraud squad of the police, the Attorney-General, the TCU and the SFIU are the primary
investigative authorities for Convention offences.

The independence of the Attorney-General, Auditor-General and Ombudsman are established
by law.

Training and resources for domestic investigations and prosecutions are limited.

(c) **Successes and good practices**

Samoa employs a pragmatic and needs-specific and -based approach to arising capacity
issues, such as the placement of foreign prosecutors in cases of possible conflicts of interests.

---

⁵ Asia/Pacific Group on Money Laundering, Anti-Money Laundering and Counter-Terrorist Financing Measures, Samoa,
Article 37 Cooperation with law enforcement authorities

Paragraphs 1 to 3

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Section 28 of the Money Laundering Prevention Act provides for the protection of the identity of persons in relation to suspicious transaction reports. Protection against civil, criminal, administrative or disciplinary proceedings of persons reporting suspicious transactions are provided for under section 29 of the Money Laundering Prevention Act.

In addition, please see:

- **Sentencing Act 2016**: section 7(2)(b) which allows the Court to consider early guilty pleas as a mitigating factor in sentencing
- **Prosecution Guidelines 2016**: section 5.8.2 lists the some factors which may be taken into account when deciding whether a matter should proceed for prosecution. One consideration is where the defendant has given assistance and demonstrated genuine remorse but note this is not the only consideration to be made.

“5.8.2 This section lists some public interest considerations against prosecution which may be relevant in particular cases and require consideration by a prosecutor when determining where the public interest lies. The following list is illustrative only and not exhaustive and is not to be applied in a mathematical sense (see 5.8.1 above).

**Public Interest Considerations against Prosecution**
- Where the court is likely to impose a very small or nominal penalty.
- Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake of fact.
- Where the offence is not of a serious nature and is unlikely to be repeated.
- The offence is trivial, technical in nature, obscure or obsolete.
- Where there has been a long passage of time between an offence taking place and the likely date of trial, such as to give rise to undue delay or an abuse of process - unless:
- the offence is serious;
- delay has been caused in part by the defendant;
- the offence has only recently come to light; and/or
- the complexity of the offence has necessarily resulted in a lengthy investigation.
- Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness.
- Where the defendant has co-operated with law enforcement or tangibly demonstrated significant remorse.
- Where information may be made public that could disproportionately harm sources of information, international relations or national security.
- Where the defendant, a victim or an essential witness was at the time of the offence or trial suffering from significant mental or physical ill-health.
- Where the defendant has no previous convictions.
- Where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants must not be able to avoid prosecution simply by paying compensation or engaging in ifoga).
- Where the recovery of the proceeds of crime can more effectively be pursued by civil action.
- Where any proper alternatives to prosecution are appropriately available.
- Where to proceed would necessarily involve unfairness to the defendant.

If a co-defendant is a witness they will receive the protections other witnesses are entitled to under the Criminal Procedure Act 2016.

Requests for assistance are made under the Mutual Assistance in Criminal Matters Act 2007. Furthermore, persons transported from a foreign state to give evidence are not liable to prosecution or civil action for events that occurred before the person departed from the foreign state (see section 14).

Money Laundering Prevention Act 2007

28. Protection of identity of persons and information in suspicious transaction reports –

(l) A person shall not disclose any information that will identify or is likely to identify:

(a) a person who has handled a transaction in respect of which a suspicious transaction report has been made; or
(b) a person who has prepared a suspicious transaction report; or
(c) a person who has made a suspicious transaction report; or
(d) any information contained in a suspicious transaction report or information provided pursuant to subsection 23(3), –

except for the following purposes:

(e) the investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or
(f) the enforcement of the Proceeds of Crime Act.

(2) No person is required to disclose any information to which this section applies in any judicial proceedings unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.

(3) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against section 29.

29. Protection of persons reporting suspicious transactions –

(1) No civil, criminal, administrative or disciplinary proceedings shall be taken against:
(a) a financial institution, an auditor or supervisory authority of a financial institution; or

(b) an officer, employee or agent of the financial institution, the auditor or the supervisory authority of a financial institution, acting in the course of that person’s employment or agency, in relation to any action by the financial institution, the auditor or the supervisory authority or their officer, employee or agent taken under section 17,20(3), 23 or 24 in good faith or in compliance with directions given by the Financial Intelligence Unit pursuant to section 11(2).

(2) Subsection (1) does not apply in respect of proceedings for an offence under section 27.

Samoa provided the following examples of the implementation of those measures:

While law enforcement agencies indicate that the information disseminated by the SFIU is normally of good quality, they also indicated that the flow and types of information and the level of operational co-operation with the SFIU needs to be improved.6

In terms of sentencing and recognition the case of Police v Kennach [2006] WSSC 35 (6 June 2006) shows the Court’s willingness to give a benefit to a defendant who pleads guilty and provides evidentiary assistance to Police to identify other defendants. Also see the cases of Police v Chong Nee [2007] WSSC 102 (19 October 2007) and Police v Tevaga [2008] WSSC 53 (30 July 2008) in which a similar consideration was made.

(b) Observations on the implementation of the article

Cooperation with law enforcement by the defendant or the tangible demonstration of significant remorse are among the factors to be considered by the prosecution when deciding on whether to prosecute.

An early guilty plea or efforts to make amends by the defendant may be taken into account by the Court when sentencing.

During the country visit, Samoan authorities highlighted the importance of the cooperation of offenders for successful law enforcement while stressing the need to balance the interests of the accused with those of law enforcement. Samoan law provides for the possibility of plea bargains and immunity from prosecution, with police stating that they frequently rely on informants during their work.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

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

---

Samoa provided the following information regarding the implementation of this provision:

If a co-defendant is a witness they will receive the protections other witnesses are entitled to under the **Criminal Procedure Act 2016**.

(b) **Observations on the implementation of the article**

According to Samoan authorities, a co-defendant acting as a witness is subject to the protection measures for witnesses (under bail conditions not to contact Prosecution witnesses) described under article 32.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

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

Samoa referred to the answer above under (1).

(b) **Observations on the implementation of the article**

During the country visit, Samoan authorities recalled having provided assistance to New Zealand on the basis of an arrangement.

**Article 38 Cooperation between national authorities**

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

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

Samoa provided the following information regarding the implementation of this provision:

The Asia-Pacific Group on Money Laundering found that “operational co-operation and co-ordination between the SFIU and the law enforcement agencies (Samoan Police and Customs) in particular needs to be significantly enhanced. These agencies do not have a sufficient understanding of how they can work effectively together to identify and mitigate the risks posed by predicate crimes and the associated money laundering and proceeds of crime.”
The Samoan Financial Intelligence Unit and Transnational Crimes Unit have some cooperation. The Samoan Financial Intelligence Unit and Attorney General’s Office generally cooperate and coordinate efforts well in relation to proceeds of crime and international cooperation issues (both formal and informal). There is also good co-operation and coordination between the Central Bank of Samoa, Samoa International Finance Authority and Samoan Financial Intelligence Unit) on supervision of financial institutions. There has also been some coordination between these supervisory authorities and other licensing authorities (such as the Gambling Control Authority) and other competent agencies such as the Attorney General’s Office and Police on licensing matters.\(^7\)

Law enforcement agencies do not have direct access to the Financial Intelligence Unit’s database, but can spontaneously request information from the FIU.

The Money Laundering Prevention Authority (MLPA) has signed a number of memoranda of understanding on behalf of the Samoan Financial Intelligence Unit with other key agencies with the Police, Customs, Immigration, Central Bank and the Samoa International Financial Authority to cooperate and exchange information may however technically be invalid as the Financial Intelligence Unit (not the MLPA) is the only agency empowered under section 7(e) of the MLP Act to enter into an MOU with domestic agencies.

**Public Finance Management Act 2001**

116. Obligation to report –

(1) A person who has knowledge of any circumstances which may cause him or her to consider than an offence under section 115 (Offences) may have occurred shall report those circumstances to the Minister or Financial Secretary or both.

(2) A person who in good faith alleges a breach of this Act to the Minister or Financial Secretary shall be immune from civil suit and shall not be penalized in any way (whether the allegations is proved or not) because of his or her action in reporting the matter.

**Money Laundering Prevention Act 2007**

7. Functions and powers of the Financial Intelligence Unit –

(1) The Financial Intelligence Unit:

(a) shall receive reports required to be provided to it and information provided to the FIU by any agency of a foreign State, information provided to the FIU by a law enforcement agency or a government institution or agency, and any other information voluntarily provided to the FIU about suspicions of a serious offence, a money laundering offence or the offence of the financing of terrorism; and

(b) may collect information that the FIU considers relevant to serious offences, money laundering activities or the financing of terrorism and that is publicly available, including commercially available databases or information that is collected or maintained, including information that is stored in databases maintained by the government; and

(c) may analyse and assess all reports and information; and

(d) may request information from any law enforcement agency, government agency or supervisory agency for the purposes of this Act; and

(e) may enter into Memoranda of Understanding, agreements or arrangements with Samoan Government and non-governmental agencies and authorities, including the Police Service, the Customs Department, the Immigration Department, the Central Bank and the Samoa International Finance Authority, so as to ensure close liaison, cooperation and the secure exchange of information; and

(f) may provide information concerning a money laundering offence or an offence of the financing of terrorism, without the need for a request, to foreign agencies concerned with the prevention or investigation of money laundering or the prevention and suppression of terrorism, when such information comes to the attention of the FIU and may assist that foreign agency; and

(g) may send any report, any information derived from such report or any other information it receives to the appropriate law enforcement and, supervisory authorities if, on the basis of its analysis and assessment, the FIU also has reasonable grounds to suspect that the transaction is suspicious; and

(h) may inform any regulatory authority, government agency or law enforcement agency of an alleged breach by a financial institution of the provisions of this Act or the Regulations with a request that such authority or agency review the business or other licence of the financial institution following such alleged breach; and

(i) shall destroy a suspicious transaction report received or collected on the expiry of 5 years after the date of receipt of the report if there has been no further activity or information relating to the report or the person named in the report for five years from the date of the last activity relating to the person or report; and

(j) may instruct any financial institution to take such steps as may be appropriate in relation to any information or report received by the FIU to enforce compliance with this Act or to facilitate any investigation anticipated by the FIU, notwithstanding that such financial institution has not made a suspicious transaction report in relation to such matter; and

(k) may compile statistics and records, disseminate information within Samoa or elsewhere and make recommendations arising out of any information received; and

(l) may provide training programmes for financial institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions; and

(m) may undertake due diligence checks and other inquiries as may be requested in writing by the Central Bank, Samoa International Finance Authority, the Samoa Police Service and other Government agencies and departments, as may be named by the Authority; and

(n) may provide feedback to financial institutions and other relevant agencies regarding outcomes relating to the reports or information given under the Act; and

(o) may conduct research into trends and developments in the areas of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism; and

(p) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism; and

(q) may obtain further information on parties or transactions referred to in a report made under sections 13, 23 and 24; and
(r) may disclose any report, any information derived from such report or any other information it receives to a government of a foreign State or an institution or agency of a foreign State or of an international organization established by the governments of foreign States that has powers and duties similar to those of the FIU as set out in sections 8 and 9, if on the basis of its analysis and assessment, the FIU has reasonable grounds to suspect that the report or information would be relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of financing of terrorism.

**Samoa provided the following as examples of the implementation of those measures:**

The Asia Pacific Group on Money Laundering found that “Despite the existence of formal mechanisms and powers to support co-operation and exchange of information, practical operational co-operation and exchange of information between the Financial Intelligence Unit and other competent authorities is limited and needs to be strengthened. While regular meetings of the MLP Task Force, which includes the SFIU and the main law enforcement agencies and supports co-operation at a strategic level, occur they do not result in adequate levels of operational coordination and co-operation on a day-to-day basis. The flow of financial intelligence and information through this mechanism, and through the MOUs between the SFIU and key law enforcement agencies and other competent authorities, to operational personnel is limited.”

**Observations on the implementation of the article**

In addition to the information provided under (a), during the country visit Samoan authorities described that police, according to their code of conduct, are obliged to report any criminal activity. Obligations to report are further laid out in sect. 116 PFMA and sect. 27a Public Bodies Act. While the Public Service Act contains no such obligation, civil servants are in practice encouraged to speak out against suspected wrongdoing. The Public Service Commission (PSC) has training programs and regular meetings in this regard and encourages ministries to report any criminal activity either to a superior, a CEO or the PSC. Public campaigns are organized on international anti-corruption days, such as television programs.

**Article 39 Cooperation between national authorities and the private sector**

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

**Summary of information relevant to reviewing the implementation of the article**

---

Samoa cited the following provisions regarding the implementation of this provision:

The *Money Laundering Prevention Act* obliges financial institutions to report suspicious transactions.

**Money Laundering Prevention Act 2007**

**PART 4 OBLIGATIONS TO REPORT**

23. **Financial institution to report suspicious transactions**

(1) Where a financial institution has reasonable grounds to suspect that a transaction, an attempted transaction or information that the financial institution has concerning any transaction or attempted transaction may be:

   (a) relevant to an investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or

   (b) of assistance in the enforcement of the Proceeds of Crime Act; or

   (c) related to the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

   (d) preparatory to an offence of the financing of terrorism.—

   the financial institution shall, as soon as practicable after forming that suspicion, but no later than 2 working days, report the transaction or attempted transaction to the Financial Intelligence Unit.

(2) A report under subsection (1) shall:

   (a) be in writing and may be given by way of mail, fax or electronic mail or by telephone, to be followed up in writing as soon as is practicable, but no later than 48 hours after the initial telephone call or in such other manner as may be prescribed; and

   (b) be in such form and contain such details as may be prescribed in the Guidelines; and

   (c) contain a statement of the grounds on which the financial institution holds the suspicion; and

   (d) be signed or otherwise authenticated by the financial institution.

(3) A financial institution that has made a report or has given any other information to the Financial Intelligence Unit shall give the FIU or a law enforcement agency that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction, if requested to do so by the FIU or the law enforcement agency.

24. **Supervisory authority or auditor to report suspicious transactions**

Where a supervisory authority or an auditor of a financial institution has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be:

   (a) relevant to an investigation or prosecution of a person for a serious offence, a money laundering offence or an offence of the financing of terrorism; or

   (b) of assistance in the enforcement of the Proceeds of Crime Act 2007; or
(c) related to the commission of a serious offence, a money laundering offence or an offence of the financing of terrorism; or

(d) preparatory to the offence of the financing of terrorism, –

the supervisory authority or the auditor of the financial institution shall report the transaction or attempted transaction to the Financial Intelligence Unit.

Additionally, there are amendments to the PFM Regulations to provide for members of the public to report any incident involving a Government vehicle.

Samoa provided the following statistics as examples of the implementation of those measures:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of STRs</th>
<th>Reporting Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (Jan - Sept.)</td>
<td>13</td>
<td>Banks (8); Trustee companies (2); MTOs (3)</td>
</tr>
<tr>
<td>2013</td>
<td>20</td>
<td>Banks (14); Lawyers (1); MTOs (5)</td>
</tr>
<tr>
<td>2012</td>
<td>45</td>
<td>Banks (42); MTOs (3)</td>
</tr>
<tr>
<td>2011</td>
<td>17</td>
<td>Banks (13); Trustee companies (1); MTOs (3)</td>
</tr>
<tr>
<td>2010</td>
<td>9</td>
<td>Banks (8); MTO (1)</td>
</tr>
<tr>
<td>2009</td>
<td>13</td>
<td>All from banks</td>
</tr>
<tr>
<td>2008</td>
<td>8</td>
<td>All from banks</td>
</tr>
</tbody>
</table>

(b) Observations on the implementation of the article

The cooperation cited by Samoa only applies to financial institutions in the context of anti-money laundering.

During the country visit, Samoan authorities highlighted that cooperation in practice takes place with other companies, such as phone companies and social media providers. Samoan authorities further explained that the identity of informants may be kept confidential, despite this being challenging in a small country. Witness protection measures are frequently granted for informants. Representatives of the FIU highlighted the close cooperation between private banks, the central bank and the FIU, including through awareness raising programs. The SAO cooperates with private auditing firms.
How do you generally promote cooperation of the private sector with law enforcement? Are there any case examples or statistics in this regard?

A company register is maintained by the Ministry of Commerce and is publicly available.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

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

Samoa provided the following information regarding the implementation of this provision:

A range of confidentiality/secrecy provisions apply to both domestic and international entities (for example, sections 37 – 39 International Banking Act 2005; section 32 International Insurance Act 1988; section 31 Trustee Companies Act 1988; section 27 International Trusts Act 1988; section 39 International Partnership and Limited Partnership Act 1988; and section 227 International Companies Act 1988). However, for the purposes of the Money Laundering Prevention Act, all financial institution secrecy or confidentiality obligations are overridden by section 3 of that Act.9

Section 3 of the Money Laundering Prevention Act overrides secrecy obligations. The scope of section 3 is applies to any obligation as to secrecy or other restriction upon the disclosure of information imposed by any other law or otherwise.

Section 10 of the Tax Information Exchange Act also overrides secrecy and confidentiality obligations in relation to Part 3 of that Act. All relevant secrecy provisions provided under any Act can be overridden by a search warrant approved by the Court.

While the Central Bank of Samoa, Samoan Financial Intelligence Unit and Samoa International Finance Authority are given powers under section 10 (specific powers for the Samoan Financial Intelligence Unit and any person it authorises in writing) and section 45 (broad powers of examination and supervision for the Central Bank of Samoa, Samoan Financial Intelligence Unit and Samoa International Finance Authority as ‘relevant supervisory authorities’) of the Money Laundering Prevention Act, the Central Bank of Samoa and Samoa International Finance Authority also use their powers under other relevant legislation for anti-money laundering supervisory purposes. The section 3 Money Laundering Prevention Act ‘secrecy override’ does not apply to the exercise of these specific powers under those other Acts. However, in that regard:

- the International Banking Act appears to give powers to Samoa International Finance Authority to collect information, but only for the purposes of the International Banking Act. Disclosure in relation to money laundering and terrorist financing matters is however expressly permitted under the International Banking Act;
- the International Insurance Act has an investigative but not inspection power (although it states that Samoa International Finance Authority does, in fact the power

to inspect is limited to where there is a suspicion of wrongdoing—section 25(1)—and disclosure is prohibited except for the purposes of the Act or ordered by a court;

- the *International Companies Act* provides an investigation power to Samoa International Finance Authority but prohibits disclosure except for the purposes of the *International Companies Act*. However, sections 227(3)(k) - (n) of the *International Companies Act* permit disclosure of information by the Registrar (SIFA) or the Money Laundering Prevention Act for the purposes of money laundering or terrorist financing investigations, and the Trustee Companies Act has a broader inspection and information gathering power and permits disclosure for any purpose under any Samoan law;

- the *Financial Institutions Act* powers for the Central Bank of Samoa to collect information are only for the purposes of the Act. Disclosure is only possible when required by any provision of any law or the court.10

**Money Laundering Prevention Act 2007**

3. Secrecy obligations overridden—

The provisions of this Act have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

10. Power to examine—

(1) The Financial Intelligence Unit or any person it authorises in writing may examine the records and inquire into the business and affairs of any financial institution for the purpose of ensuring compliance with this Act or Guidelines, or for the purposes of any investigation or analysis being undertaken by the FIU, and for those purposes may:

(a) at any reasonable time, enter any premises in which the FIU or the authorised person believes, on reasonable grounds, that there are records relevant to its investigation or analysis or to ensuring compliance with this Act; and

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system; and

(c) reproduce any record or cause it to be reproduced from the data, in the form of a printout or other intelligible output, and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for the premises referred to in subsection (1) and any person found therein shall give the Financial Intelligence Unit or any authorised person all reasonable assistance to enable them to carry out their responsibilities and shall provide them with any information that they may reasonably require with respect to the administration of this Act or the regulations.

(3) The Financial Intelligence Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities, if the FIU has reasonable grounds to suspect that the information is suspicious or is relevant.

---

to an investigation for non-compliance with this Act, a serious offence, a money laundering offence or an offence of the financing of terrorism.

(4) A person who willfully obstructs, hinders or fails to cooperate with the Financial Intelligence Unit or any authorised person in the lawful exercise of the powers under subsection (1), or any person who does not comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or to imprisonment for a term not exceeding 5 years, or to both.

45. Obligations of supervisory authorities –

The relevant supervisory authority of a financial institution may:

(a) adopt any necessary measures to prevent or avoid any person who is not a fit and proper person from controlling or participating, directly or indirectly in the directorship, management or operation of the financial institution; and

(b) examine and supervise the financial institution, and verify, through regular on-site examinations, that a financial institution complies with the requirements of this Act; and

(c) issue guidelines to assist financial institutions in detecting suspicious patterns of behaviour in their customers; and

(d) co-operate with law enforcement agencies and the Financial Intelligence Unit, both domestic and foreign, in any investigation, prosecution or proceedings relating to a serious offence, a money laundering offence, an offence of the financing of terrorism or any offence under this Act.

Tax Information Exchange Act 2012

10. Secrecy and confidentiality obligations overridden –

(1) This Part has effect despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a).

(2) A provision in another Act providing for an obligation of the kind referred to in subsection (1), including a provision enacted after the commencement of this Act, is subject to this section.

(b) Observations on the implementation of the article

Offshore banks are governed by the International Banking Act while the Financial Institutions Act 1996 governs national banks.

It was confirmed during the country visit that there are no specific provisions providing for bank secrecy in Samoa, nevertheless, section 3 of the MLPA overrides secrecy obligations.

The FIU can request information and copy of bank records directly from Banks. The Police and the Attorney General can apply for a search warrant from the Supreme Court Judge to seize the original copies of bank records or request the information from the FIU.

Bank secrecy is not an obstacle to effective criminal investigations (MLPA, s. 3)
Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

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

Samoa provided the following information regarding the implementation of this provision:

Section 107 of the Evidence Act provides that evidence of a prior conviction or acquittal may be provided as evidence. “Conviction” is defined under section 2 for the purposes of section 107 as a subsisting conviction entered before or after the commencement of this Act by a Samoan or foreign court.

Evidence Act 2015

2. Interpretation –

(1) In this Act, unless the context otherwise requires:

“conviction” means:

(a) in sections 37 to 39, a subsisting conviction entered before or after the commencement of this Act by -

(i) a court; or

(ii) a court established by the law of a country; and

(b) in sections 107 and 108, a subsisting conviction entered before or after the commencement of this Act by a Samoan or foreign court.

107. Evidence of convictions, acquittals and proceedings-

(1) Evidence of the following facts, if admissible, may be given by a certificate purporting to be signed by a Judge, a Registrar, or other officer having custody of the relevant court records:

(a) the conviction or acquittal of a person charged with an offence and the particulars of the offence charged and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate);

(b) the sentencing by a court of a person to any penalty or other disposition of the case following a plea or finding of guilt, and the particulars of the offence for which that person was sentenced or otherwise dealt with and of the person (including the name and date of birth of the person if the person is an individual, and the name and date and place of incorporation of the person if the person is a body corporate);

(c) an order or judgment of a court and the nature, parties, and particulars of the proceeding to which the order or judgment relates;

(d) the existence of a criminal or civil proceeding, whether or not the proceeding has been concluded, and the nature of the proceeding.

(2) A certificate under this section is sufficient evidence of the facts stated in it without proof of the signature or office of the person appearing to have signed the certificate.
(3) The manner of proving the facts referred to in subsection (1) authorised by this section is in addition to any other manner of proving any of those facts authorised by law.

(4) Subsection (5) applies if:

(a) a certificate under this section is offered in evidence in a proceeding for the purpose of proving the conviction or acquittal of a person, or the sentence by a court of a person to a penalty, or an order made by a court concerning a person; and

(b) the name of the person stated in the certificate is substantially similar to the name of the person concerning whom the evidence is offered.

(5) If this subsection applies, it is presumed, in the absence of evidence to the contrary, that the person whose name is stated in the certificate is the person concerning whom the evidence is offered.

(6) Subdivision A of Division 1 of Part 2 does not apply to evidence offered under this section.

Samoa has provided the following examples of the implementation of those measures:

There are cases in which a defendant’s foreign previous conviction was noted in sentencing for a domestic offence however these do not relate directly to the offences established by this Convention. However, they illustrate that the Court is open to considering a foreign criminal record and there are not legislative bar to considering this record

- **Police v Poasa [2017] WSSC 59 (10 April 2017)** extensive previous conviction record from New Zealand
- **Police v Apineru [2013] WSSC 89 (24 December 2013)** consideration of previous convictions for assault in New Zealand in a damage to property charge in Samoa
- **Police v Chong Nee [2007] WSSC 102 (19 October 2007)** consideration of previous convictions from New Zealand for similar offences to the charge of robbery being prosecuted
- **Police v Uluilelatatuvale [2018] WSSC 59 (16 March 2018)** consideration of previous convictions for assault in New Zealand in sentencing for narcotics charge in Samoa
- **Police v Falealili [2013] WSSC 137 (25 September 2013)** consideration of previous similar convictions from USA in sexual offending sentencing committed in Samoa

(b) **Observations on the implementation of the article**

A previous conviction or acquittal, whether by a Samoan or a foreign court, may be presented as evidence in criminal proceedings, sections 2, 107 of the Evidence Act 2015, provides that evidence of a prior conviction or acquittal may be provided as evidence.

The reviewing experts conclude that Samoa has adequately complied with the provisions of Arti. 41 of the Convention.

**Article 42 Jurisdiction**
Paragraph 1

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

   (a) The offence is committed in the territory of that State Party; or

   (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

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

Samoa provided the following information regarding the implementation of this provision:

Part 2 of the *Crimes Act* outlines jurisdiction. Section 4(2) provides that the *Crimes Act* applies to all acts done or omitted in Samoa. Section 7 covers vessels and aircrafts. Section 8 also allows for proceedings of certain types of offences to be brought to court even if the acts or omissions alleged to constitute the offence occurred wholly outside of Samoa.

*Crimes Act 2013*

**PART 2 - JURISDICTION**

3. Meaning of Samoa –

Without limiting the provisions of any other enactment, “Samoa” means the islands of Upolu, Savai’i, Manono and Apolima in the South Pacific Ocean together with all other adjacent islands and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of south longitude west of Greenwich; and includes all waters within the outer limits of the territorial sea of Samoa (as defined in the Maritime Zones Act 1999) and the exclusive economic zone of Samoa (as defined in the Maritime Zones Act 1999).

4. Application –

   (1) This Act applies to all offences for which the offender may be proceeded against and tried in Samoa.

   (2) This Act applies to all acts done or omitted in Samoa.

   (3) Subject to subsection (4), no act done or omitted outside of Samoa is an offence unless it is an offence by virtue of any provision of this Act or of any other enactment.

   (4) For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence shall be deemed to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

   (5) The Court of Appeal, the Supreme Court and the District Court shall have jurisdiction to hear and determine any matter for which this Act or any other law provides such court with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

5. Persons not to be tried in respect of things done outside of Samoa –

Subject to the provisions of section 6, no act done or omitted outside Samoa is an offence, unless it is an offence by virtue of any provision of this Act or of any other enactment.

6. Place of commission of offence –
For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence is treated to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

7. Jurisdiction in respect of crimes on ships or aircraft beyond Samoa –

(1) This section applies to any act done or omitted beyond Samoa by any person:

(a) on board any Samoan registered ship; or
(b) on board any Samoan aircraft; or
(c) on board any ship or aircraft, if that person arrives in Samoa on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or
(d) being a citizen of Samoa, on board any foreign ship (not being a ship to which he or she belongs) on the high seas; or
(e) being a Samoan citizen or a person ordinarily resident in Samoa, on board any aircraft provided that paragraph (c) does not apply where the act was done or omitted by a person, not being a citizen of Samoa, on any ship or aircraft for the time being used as a ship or aircraft of any of the armed forces of any country; or
(f) being a Samoan citizen or a person ordinarily resident in Samoa, on board any ship or aircraft as a servant or an officer of the Government of Samoa.

(2) Where any person does or omits any act to which this section applies, and that act or omission would, if it occurred within Samoa, be a crime under this Act or under any other enactment (whether that enactment was passed before or after the commencement of this Act), then, subject to the provisions of this Act and of that other enactment, the person is liable on conviction as if the act or omission had occurred in Samoa: PROVIDED THAT where any proceedings are taken by virtue of the jurisdiction conferred by this section it shall be a defence to prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

(3) Where at any place beyond Samoa any person who belongs, or within 3 months previously has belonged, to any Samoan registered ship does or omits any act, whether on shore or afloat, not being an act, or omission to which subsection (1) applies, and that act or omission would, if it occurred within Samoa, be a crime, then this section shall apply in respect of that act or omission in the same manner in all respects as if it had occurred on board a Samoan registered ship.

(4) This section shall be read subject to the provisions of section 221.

8. Extraterritorial jurisdiction for offences with transnational aspects –

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Counter Terrorism Act 2014 or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:

a) is a Samoan citizen; or
b) is ordinarily resident in Samoa; or
c) has been found in Samoa and has not been extradited: or
d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:
   a) is a Samoan citizen or an ordinary resident of Samoa; and
   b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

Samoa provided the following cases as examples of the implementation of those measures:

Only one case has been brought concerning the definition of Samoa for the purposes of prosecuting crimes. However please note that this case was brought under the (now repealed) *Crimes Ordinance 1961* which at the time of that offending did not recognize extra-territorial offences.


(b) Observations on the implementation of the article

Samoa has established its jurisdiction over offences committed in its territory (s. 4(2) of the CA) and offences committed on board a vessel that is flying its flag or an aircraft that is registered under its laws (s. 7(1) of the CA).

**Article 42 Jurisdiction**

**Subparagraph 2 (a)**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
   (a) The offence is committed against a national of that State Party; or

**Summary of information relevant to reviewing the implementation of the article**

Samoa provided the following information regarding the implementation of this provision:

Section 8 of the Crimes Act provides for extraterritorial jurisdiction where the person to be charged is a Samoan citizen; or is ordinarily resident in Samoa or has been found in Samoa and not been extradited. This jurisdiction applies to limited offences—those under the Counter Terrorism Act, and certain offences under the *Crimes Act* (including bribery and corrupt use of official information).

**Crimes Act 2013**

8. Extraterritorial jurisdiction for offences with transnational aspects –

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Counter Terrorism Act 2014, or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:
(a) is a Samoan citizen; or
(b) is ordinarily resident in Samoa; or
(c) has been found in Samoa and has not been extradited; or
(d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:

(a) is a Samoan citizen or an ordinary resident of Samoa; and
(b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

Please provide examples of the implementation of those measures.
From our research we confirm there are no cases on this issue however this could be due to the fact that overseas jurisdictions in which offending is committed by Samoan citizens or residents are well equipped to investigate and prosecute those offences negating the need for Samoa to interfere in their processes.

(b) Observations on the implementation of the article

Samoa does not adopt the passive personal jurisdiction.

Samoa is encouraged to consider establishing its jurisdiction over Convention offences committed against Samoan citizens.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

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

Samoa referred to the answer above under (2)(a)

(b) Observations on the implementation of the article

Samoa adopts the active personal jurisdiction which covers offences committed by Samoan citizen or by ordinary residents of Samoa, whether stateless or not (s. 8(2) of the CA).
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

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

Samoa provided the following information regarding the implementation of this provision:

Section 34 imposes criminal liability for any person in Samoa for conspiring or aiding the commission of an offence outside of Samoa. Section 34 is not restrictive and therefore would apply to any offence including the money laundering offences established under Article 23 which are recognised under the *Money Laundering Prevention Act 2007*.

**Crimes Act 2013**

6. **Place of commission of offence** – For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence is treated to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

34. **Party to crime outside Samoa** – (1) A person who, in Samoa, aids, incites, counsels or procures the doing or omission outside Samoa of any act which, if done in Samoa would be a crime is liable to imprisonment for a term not exceeding that prescribed for the crime, or 7 years, whichever is the less.
(2) Despite subsection (1), where the crime alleged in relation to subsection (1) is murder, the term of imprisonment shall be life.
(3) A person charged under this section is not liable to be convicted in any case where it is proved that the act or omission to which the charge relates was not an offence in the place where it was, or was to be, done or omitted.

146. **Participation in organised criminal group** – (1) A person commits an offence and is liable to imprisonment for a term not exceeding 10 years who participates in an organised criminal group:
(a) knowing that 3 or more people share any 1 or more of the objectives (the particular objective or particular objectives) described in subsection (2)(a) to (d) (whether or not the person himself or herself shares the particular objective or particular objectives); and
(b) either knowing that his or her conduct contributes, or being reckless as to whether his or her conduct may contribute, to the occurrence of any criminal activity; and
(c) either knowing that the criminal activity contributes, or being reckless as to whether the criminal activity may contribute, to achieving the particular objective or particular objectives of the organised criminal group.
(2) For the purposes of this Act, a group is an organised criminal group if it is a group of 3 or more people who have as their objective or one of their objectives:
(a) obtaining material benefits from the commission of offences that are punishable by imprisonment; or
(b) obtaining material benefits from conduct outside Samoa that, if it occurred in Samoa, would constitute the commission of offences that are punishable by imprisonment; or
(c) the commission of offences punishable by imprisonment of a term of 5 years or more; or
(d) conduct outside Samoa that, if it occurred in Samoa, would constitute the commission of offences that are punishable by imprisonment of a term of 5 years or more.

(3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not:
(a) some of them are subordinates or employees of others; or
(b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or
(c) its membership changes from time to time.

Please provide examples of the implementation of those measures.
From our research this provision has not been tested by national courts

(b) Observations on the implementation of the article

Samoa has established its jurisdiction regarding the case mentioned in the provision under review pursuant to section 6 of the CA, as it has been confirmed during the country visit.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
(d) The offence is committed against the State Party.

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

Samoa provided the following information regarding the implementation of this provision:

The Crimes Act 2013 is clear. But for the offences with transnational nature and those committed by Samoan citizens or residents overseas, no other offence may be prosecuted in Samoa. The national law does not allow the imposition of jurisdiction for offences committed overseas against the State.

Crimes Act 2013

5. Persons not to be tried in respect of things done outside of Samoa – Subject to the provisions of section 6, no act done or omitted outside Samoa is an offence, unless it is an offence by virtue of any provision of this Act or of any other enactment.

6. Place of commission of offence – For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in Samoa, the offence is treated to be committed in Samoa, whether the person charged with the offence was in Samoa or not at the time of the act, omission, or event.

8. Extraterritorial jurisdiction for offences with transnational aspects –

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Counter Terrorism Act 2014, or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:

(a) is a Samoan citizen; or
(b) is ordinarily resident in Samoa; or
(c) has been found in Samoa and has not been extradited; or
(d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.

(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:

(a) is a Samoan citizen or an ordinary resident of Samoa; and
(b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

Please provide examples of the implementation of those measures.
Since this obligation is not recognised under national law it has not been implemented.

(b) Observations on the implementation of the article

50. Samoa does not establish its jurisdiction over corruption offences committed against Samoa.
51. Samoa is encouraged to consider establishing its jurisdiction over Convention offences committed against Samoa.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

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

Samoa provided the following information regarding the implementation of this provision:

Section 8 of the Crimes Act provides for extraterritorial jurisdiction where the person to be charged has been found in Samoa and not been extradited. This jurisdiction applies to limited offences—those under the Counter Terrorism Act, and certain offences under the Crimes Act (including bribery and corrupt use of official information).

**Crimes Act 2013**

8. Extraterritorial jurisdiction for offences with transnational aspects –

(1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act committed in the course of committing any offence against the Counter Terrorism Act 2014, or an offence against sections 146 to 152 and 154 to 157 of this Act, if the person to be charged:

(a) is a Samoan citizen; or
(b) is ordinarily resident in Samoa; or
(c) has been found in Samoa and has not been extradited; or
(d) is a body corporate, or a corporation sole, incorporated under the law of Samoa.
(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside Samoa, proceedings may be brought for any offence against this Act, if the person to be charged:

(a) is a Samoan citizen or an ordinary resident of Samoa; and
(b) is outside of Samoa as an ambassador, diplomat, representative, envoy, attaché or employee or officer of the Government of Samoa.

(b) Observations on the implementation of the article
52. Samoa has established its jurisdiction regarding the case mentioned in the provision under review based on the active personal jurisdiction (s. 8(2) of the CA).

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa referred to the answer above under (3)

(b) Observations on the implementation of the article
Samoa has not established its jurisdiction over corruption offences, except for the active bribery of foreign public officials (s. 8(1)(c) of the CA), when the alleged offender is present in its territory and it does not extradite him or her.

Samoa is encouraged to consider establishing its jurisdiction over Convention offences, beyond the active bribery of foreign public officials, when the alleged offender is present in its territory and it does not extradite him or her.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:

Under the Mutual Assistance in Criminal Matters Act 2007 the Attorney General once advised of a request from a foreign State may consider the refusing the same after consulting with the Competent Authority of the foreign State on the potential prejudice the request may cause to an ongoing local investigation. This Act therefore complies with the requirements of
Article 42(5) and (6) requiring consultation between States before a decision is made to grant or reject the request from the foreign State.

**Mutual Assistance in Criminal Matters Act 2007**

24. **Refusal of assistance** – A request by a foreign State for assistance under this Act may be:
   (a) refused in whole or in part if, in the opinion the Attorney General, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice; or
   (b) postponed in whole or in part, if, after consulting with the Competent Authority of the foreign State, the Attorney General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

The majority of requests for assistance received are to assist with collecting evidence present in Samoa but related to offences committed overseas. Therefore, the question dual or simultaneous prosecutions is not relevant.

(b) **Observations on the implementation of the article**

Nothing prevents Samoan authorities from, as appropriate, consulting with foreign authorities with a view to coordinating their actions, as it has been confirmed during the country visit, even outside the context of an MLA request.

**Article 42 Jurisdiction**

**Paragraph 6**

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

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

Samoa referred to the answer above under (5)

(b) **Observations on the implementation of the article**

The Convention does not exclude the exercise of any criminal jurisdiction established by Samoa in accordance with its domestic law.

(c) **Technical assistance needs identified to improve implementation of the Convention**

- Assistance in quantifying corruption in Samoa (statistical and qualitative)
- Assistance in developing a case management system at the AG office.
Chapter IV. International cooperation

53. Samoa has a framework in place to combat corruption through international cooperation. However, due to the absence of detailed statistics, it was difficult to assess in detail Samoa’s practice regarding international cooperation in corruption cases.

54. It is recommended that Samoa adapt its information system to allow it to collect data and provide more detailed statistics on international cooperation.

Article 44 Extradition

Paragraphs 1 and 2

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

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

Samoa provided the following information regarding the implementation of this provision:

Although Samoa has a legal mechanism to extradite, there is an absence of extradition treaties and only ten countries have been designated as extradition countries.

Pursuant to the Extradition Act, extradition is only available to and from foreign countries pursuant to a treaty and, in the absence of a treaty, to designated Commonwealth countries. Samoa has not concluded any bilateral or multilateral treaties that could provide extradition in corruption cases. It has designated certain Commonwealth countries as extradition partners, but the Extradition Act does not indicate which countries have been so designated.

Samoa, as a Commonwealth country, is bound by the London Scheme for Extradition within the Commonwealth, incorporating amendments agreed to in Kingstown in November 2002 (London Scheme for Extradition within the Commonwealth), but does not use this Scheme in practice.

Extradition Act 1974

PART 1A - REQUIREMENTS FOR EXTRADITION

3. Designated Commonwealth countries –

(1) The Head of State, acting on the advice of Cabinet may, by Order published in the Samoan Gazette or Savali, designate a Commonwealth country as a designated Commonwealth country for the purposes of this Act.

(2) The Head of State, acting on the advice of Cabinet, may by Order so published direct that this Act has effect for the return of persons to, or in relation to persons returned from, any Commonwealth country so designated subject to such exception, adaptations or modifications as may be specified in the Order.
(3) The Head of State, acting on the advice of Cabinet, may, by Order so published, direct that extradition between Samoa and a Commonwealth country so designated that is specified in the Order is to be conducted on the basis of record of case.

4. Person liable to extradition –

Subject to the provisions of this Act, a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by this Act.

**London Scheme for Extradition within the Commonwealth**

1. (1) The general provisions set out in this Scheme will govern the extradition of a person from the Commonwealth country, in which the person is found, to another Commonwealth country, in which the person is accused of an offence.

(2) Extradition will be precluded by law, or be subject to refusal by the competent executive authority, only in the circumstances mentioned in this Scheme.

(3) For the purpose of this Scheme a person liable to extradition as mentioned in paragraph (1) is described as a person sought and each of the following areas is described as a separate country:

(a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates, and

(b) each country within the Commonwealth, which, though not sovereign and independent, is not a territory designated for the purposes of the preceding sub-paragraph.

**EXTRADITION OFFENCES AND DUAL CRIMINALITY RULE**

2. (1) A person sought will only be extradited for an extradition offence.

(2) For the purpose of this Scheme, an extradition offence is an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.

(3) In determining whether an offence is an offence punishable under the laws of both the requesting and the requested country, it shall not matter whether:

(a) the laws of the requesting and requested countries place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) under the laws of the requesting and requested countries the elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting country constitute an offence under the laws of the requested country.

(4) An offence described in paragraph (2) is an extradition offence notwithstanding that the offence:

(a) is of a purely fiscal character; or

(b) was committed outside the territory of the requesting country where extradition for such offences is permitted under the law of the requested country.
Requests for extradition are not common and Samoa reports only one recent request in 2012 from New Zealand. This was successfully carried out. Rather than using the extradition process, Samoa tends to utilise the powers under Samoa’s *Immigration Act* to deport nationals back to their own countries. Samoa has effected extradition requests by cancelling a person sought’s permit to be in Samoa under its immigration laws.

Certain Pacific Island Forum countries (e.g., Palau and Fiji) have enacted legislation allowing extradition to Samoa by endorsement of warrants, but Samoa has yet to reciprocate.

Samoa requires dual criminality as a precondition for extradition (definition of ‘extradition offence’, para (a)(ii), section 2 *Extradition Act*). Samoa advises that it would extradite if the foreign offence would be an extradition offence under the Samoan Extradition Act 1974.

Section 4 of the *Extradition Act* provides that a person found in Samoa who is accused of an extradition offence in an extradition country orwho is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country. An “extradition offence” is defined in section 2 as an offence against the law of that extradition country that is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and is constituted by an act or omission that would constitute an offence against the law of Samoa if it took place within Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Samoa; or an offence against the law of that extradition country that does not carry a penalty under the law of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Samoa.

**Extradition Act 1974**

2. Interpretation—

(1) In this Act, unless the context otherwise requires:

“extradition country” means:

(a) a Commonwealth country that is designated by Order under section 3, together with the dependencies (if any) of that country; or

(b) a foreign country with which an extradition treaty is in force;

“extradition offence” in relation to an extradition country, means:

(a) an offence (including an offence of a purely fiscal character) against the law of that extradition country that—

---

(i) is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and

(ii) is constituted by an act or omission that would constitute an offence against the law of Samoa if it took place within Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Samoa; or

(b) an offence (including an offence of a purely fiscal character) against the law of that extradition country that does not carry a penalty under the law of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Samoa;

“extradition treaty” means a treaty or agreement relating to extradition, being:

(a) a treaty made by Samoa with a foreign country; or

(b) a treaty made before 1 January 1962 that extends to and is binding on, Samoa;

4. Person liable to extradition –

Subject to the provisions of this Act, a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by this Act.

(b) Observations on the implementation of the article

Samoa is a dualist State. Treaties are not self-executing and require to be domesticated by an act of Parliament.

Article 111 of the Constitution which defines “Law” implies that treaties have to be domesticated by an act of Parliament. This would put them at the same level of laws in the hierarchy of law.

Authority to sign and ratify treaties rests with the Minister of Foreign Affairs (who is also currently the Prime Minister). Treaties should first undergo a legislative compliance review by the Attorney General’s Office.

Extradition in Samoa is regulated by the provisions of the EA which applies, with necessary modifications, in a case where a bilateral agreement or arrangement exists (s. 20, EA). As a Commonwealth country, Samoa is bound by the London Scheme for Extradition within the Commonwealth.

Samoa requires dual criminality with a minimum penalty of 12 months imprisonment in the requesting country as a precondition for extradition (s. 2, EA). For extradition to a Commonwealth country, the minimum penalty required is two years in Samoa and the requesting country (art. 2, London Scheme for Extradition within the Commonwealth). On the basis of dual criminality, some of the offences provided for in the Convention are not subject to extradition because they have not been criminalized in Samoa.

Article 44 Extradition

Paragraph 3
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

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

The law is silent on the matter of several separate offences. Preliminary findings show that Samoa has no practical experience in this.

(b) Observations on the implementation of the article

The EA is silent on the matter of extradition requests covering several separate offences, some of which are not extraditable by reason of their period of imprisonment.

Samoa may wish to allow extradition for offences related to those established in accordance with the Convention.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

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

Samoa provided the following information regarding the implementation of this provision:

Section 6(1)(a) of the Extradition Act provides that a person shall not be extradited where the offence is of a political character. The term “political character” is not defined in the Act.

Extradition Act 1974

6. General restrictions on extradition –

(1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for habeas corpus or for review of the order of committal:

(a) that the offence of which that person is accused or was convicted is an offence of a political character;

…

A political offence exception is also established under section 12 of the London Scheme for Extradition within the Commonwealth.

POLITICAL OFFENCE EXCEPTION
12. (1) (a) The extradition of a person sought will be precluded by law if the competent authority is satisfied that the offence is of a political character;

(b) Sub paragraph (a) shall not apply to:

(i) offences established under any multilateral international convention to which the requesting and the requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation either to extradite or to prosecute the person sought;

(ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law.

(c) If the competent executive authority is empowered by law to certify that the offence of which a person sought is accused is an offence of a political character, and so certifies in a particular case, the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.

(2) (a) A country may provide by law that certain acts shall not be held to be offences of a political character including:

(i) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State or any related offence (i.e. aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit such an offence),

(ii) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as described above,

(iii) murder, or any related offence as described above,

(iv) any other offence that a country considers appropriate.

(c) A country may restrict the application of any of the provisions made under sub paragraph (b) to a request from a country which has made similar provisions in its laws.

(b) Observations on the implementation of the article

Samoa’s legal framework does not guarantee that offences established in accordance with the Convention are included as extraditable offences in existing and future extradition treaties.

Samoa does not consider the Convention as a basis for extradition.

It is recommended that Samoa take necessary measures to guarantee that offences established in accordance with the Convention are included as extraditable offences in existing and future extradition treaties, including by ensuring that offences which still have to be criminalized (see challenges related to the implementation of Ch. III) are considered extraditable offences.

Article 44 Extradition

Paragraphs 5 and 6
5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

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

Samoa provided the following information regarding the implementation of this provision:

Pursuant to the Extradition Act, extradition is only available to and from foreign countries pursuant to a treaty and, in the absence of a treaty, to designated Commonwealth countries. It has designated certain Commonwealth countries as extradition partners, but the Extradition Act does not indicate which countries have been so designated.

Although Samoa has a legal mechanism to extradite, there is an absence of extradition treaties and only ten countries have been designated as extradition countries, but the Extradition Act does not indicate which countries have been so designated.

(b) Observations on the implementation of the article

Extradition is only available to and from foreign countries pursuant to a bilateral extradition treaty and, in the absence of a treaty, to Commonwealth countries designated by Order of the Head of State (s. 2, EA). Samoa has not concluded any bilateral extradition treaties and only ten Commonwealth countries have been designated as extradition countries (1981 designations: Australia, Fiji, Kiribati, New Zealand, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, and Vanuatu and in 1984 Nauru was also designated).

Samoa does not consider the Convention as a basis for extradition.

It is recommended that Samoa seek, where appropriate, to conclude treaties on extradition with other States.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa referred to the answer above.

(b) Observations on the implementation of the article

Extradition is only available to and from foreign countries pursuant to a bilateral extradition treaty and, in the absence of a treaty, to Commonwealth countries designated by Order of the Head of State (s. 2, EA). Samoa has not concluded any bilateral extradition treaties and only ten Commonwealth countries have been designated as extradition countries.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

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

Samoa provided the following information regarding the implementation of this provision:

Pursuant to section 4 of the Extradition Act, a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by the Extradition Act. Section 6 of the Extradition Act outlines restrictions on extradition.

Extradition Act 1974

2. Interpretation –

(1) In this Act, unless the context otherwise requires:

“extradition country” means:

(a) a Commonwealth country that is designated by Order under section 3, together with the dependencies (if any) of that country; or

(b) a foreign country with which an extradition treaty is in force;

“extradition offence” in relation to an extradition country, means:

(a) an offence (including an offence of a purely fiscal character) against the law of that extradition country that—

(i) is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and

(ii) is constituted by an act or omission that would constitute an offence against the law of Samoa if it took place within Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Samoa; or

(b) an offence (including an offence of a purely fiscal character) against the law of that extradition country that does not carry a penalty under the law of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Samoa;
4. Person liable to extradition –

Subject to the provisions of this Act, a person found in Samoa who is accused of an extradition offence in an extradition country or who is alleged to be unlawfully at large after conviction of an extradition offence in an extradition country may be arrested and returned to that extradition country as provided by this Act.

6. General restrictions on extradition –

(1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for habeas corpus or for review of the order of committal:

(a) that the offence of which that person is accused or was convicted is an offence of a political character;

(aa) that the offence of which the person is accused or was convicted is an offence under the military law, but not under the ordinary criminal law, of the requesting country;

(b) that the request for extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing the person on account of his or her race, religion, ethnic identity, nationality, or political opinions; or

(c) that the person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions.

(2) A person accused of an offence shall not be extradited under this Act to any country, or committed to or kept in custody for the purpose of his or her extradition, if it appears as aforesaid, that if charged with the offence in Samoa the person would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Act to any country, or committed or kept in custody for the purposes of such extradition, unless provision is made by the law of that country, or by an arrangement made with the country, for securing that the person will not, unless he or she has first been restored or had an opportunity of returning to Samoa, be dealt with in that country, for or in respect of any offence committed before extradition under this Act other than:

(a) the offence in respect of which the extradition under this Act is requested;

(b) any lesser offence proved by the facts proved before the Court of committal; or

(c) any other offence being an extradition offence in respect of which the Minister may consent to his or her being so dealt with.

(4) An arrangement mentioned in subsection (3) may be or an arrangement made for the particular case an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Minister responsible for Foreign Affairs confirming the existence of an arrangement with a country and stating its terms is conclusive evidence of the matters contained in the certificate.

7. Authority to proceed –

(1) Subject to the provisions of this Act relating to provisional warrants, a person is not to be dealt with thereunder except under an order of the Minister (in this Act referred to as an
“authority to proceed”) issued in pursuance of a request made to him or her by or on behalf of the extradition country in which the person to be extradited is accused or was convicted.

(2) Subject to subsection (2A), a request made on behalf of any extradition country (in this subsection and in subsections (2A) and (2B) called the requesting country) for the extradition of a person accused of an offence shall be accompanied by:

(a) a warrant for the arrest of the person issued in the requesting country; and
(b) particulars of the person; and
(c) particulars of the facts upon which, and the law under which, the person is accused; and
(d) evidence for the purposes of section 9(4)(a).

(2A) If the requesting country is a Commonwealth country and an order under section 3(3) directs that extradition between Samoa and the requesting country is to be conducted on the basis of record of case, the request shall be accompanied by:

(a) a record of the case in respect of the alleged offence that contains the following particulars and documents—
(ii) particulars of each offence in respect of which extradition is sought, specifying the date and place of commission, the legal definition of the offence and the relevant provisions of the law of the requesting country, including a certified copy of any such definition in the written law of the requesting country;
(iii) the original, or a certified copy, of any warrant or process issued in the requesting country against the person sought;
(iv) a recital of the evidence acquired to support the extradition of the person sought;
(v) a certified copy, reproduction or photograph of each exhibit, or item of documentary evidence, mentioned in that recital of evidence; and
(b) an affidavit, sworn statement or affirmation of an officer of the investigating authority of the requesting country stating that—
(i) the record was prepared by, or under the direction of, that officer; and

(c) a certificate of the Attorney General of the requesting country stating that, in the Director of Public Prosecutions opinion, the record discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(2B) A certification required by subsection (2A)(a) may be done by any person in the requesting country who is, or holds office as, the Attorney General or a legal practitioner, notary public, commissioner of oaths or commissioned police officer.

(2C) A request made on behalf of any extradition country for the extradition of a person unlawfully at large after conviction of an offence shall be accompanied by:
(a) a certificate of the conviction and sentence in that country; and
(b) a statement of the amount (if any) of that sentence which has been served; and,
(c) particulars of the person; and
(d) particulars of the facts upon which, and the law under which the person was convicted.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to the Minister that an order for extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

(b) Observations on the implementation of the article

Extradition requests submitted to Samoa are subject to the conditions prescribed in the EA and the conditions set forth in the applicable extradition treaties (s. 20, EA), including those relating to the minimum penalty requirements for extradition (s. 2, EA) and the grounds for refusal of extradition (s. 6, EA).

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

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

Samoa provided the following information regarding the implementation of this provision:

Section 7 of the Extradition Act outlines the information that must accompany a request for extradition.

Extradition Act 1974

7. Authority to proceed –

(1) Subject to the provisions of this Act relating to provisional warrants, a person is not to be dealt with thereunder except under an order of the Minister (in this Act referred to as an “authority to proceed”) issued in pursuance of a request made to him or her by or on behalf of the extradition country in which the person to be extradited is accused or was convicted.

(2) Subject to subsection (2A), a request made on behalf of any extradition country (in this subsection and in subsections (2A) and (2B) called the requesting country) for the extradition of a person accused of an offence shall be accompanied by:

(a) a warrant for the arrest of the person issued in the requesting country; and
(b) particulars of the person; and
(c) particulars of the facts upon which, and the law under which, the person is accused; and
(d) evidence for the purposes of section 9(4)(a).

(2A) If the requesting country is a Commonwealth country and an order under section 3(3) directs that extradition between Samoa and the requesting country is to be conducted on the basis of record of case, the request shall be accompanied by:

(a) a record of the case in respect of the alleged offence that contains the following particulars and documents—

(i) particulars of the description, identity, nationality and, if available, the whereabouts of the person sought;

(ii) particulars of each offence in respect of which extradition is sought, specifying the date and place of commission, the legal definition of the offence and the relevant provisions of the law of the requesting country, including a certified copy of any such definition in the written law of the requesting country;

(iii) the original, or a certified copy, of any warrant or process issued in the requesting country against the person sought;

(iv) a recital of the evidence acquired to support the extradition of the person sought;

(v) a certified copy, reproduction or photograph of each exhibit, or item of documentary evidence, mentioned in that recital of evidence; and

(b) an affidavit, sworn statement or affirmation of an officer of the investigating authority of the requesting country stating that—

(i) the record was prepared by, or under the direction of, that officer; and

(ii) the evidence referred to in the record has been preserved for use in Court; and

(c) a certificate of the Attorney General of the requesting country stating that, in the Director of Public Prosecutions opinion, the record discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(2B) A certification required by subsection (2A)(a) may be done by any person in the requesting country who is, or holds office as, the Attorney General or a legal practitioner, notary public, commissioner of oaths or commissioned police officer.

(2C) A request made on behalf of any extradition country for the extradition of a person unlawfully at large after conviction of an offence shall be accompanied by:

(a) a certificate of the conviction and sentence in that country; and

(b) a statement of the amount (if any) of that sentence which has been served; and,

(c) particulars of the person; and

(d) particulars of the facts upon which, and the law under which the person was convicted.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to the Minister that an order for extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.
(b) Observations on the implementation of the article

The extradition procedure involves both a judicial and an administrative procedure.

Requests for extradition should be submitted through diplomatic channels, as it was confirmed during the country visit, for transmission to the Minister of Justice who may issue an authority to proceed unless an order for extradition could not be made in accordance with the provisions of the EA (s. 7, EA).

An arrest warrant of the person sought for extradition may be issued by a District Court Judge (s. 8, EA). The arrested person should be brought as soon as practicable before a Court of committal. After hearing any evidence tendered, the Court should commit the person to custody to await extradition or discharge that person from custody (s. 9, EA). The order of committal is subject to appeal before the Supreme Court (s. 10, EA).

Where a person is committed to await extradition and is not discharged by order of the Supreme Court, the Minister may order the person to be extradited or decide otherwise, for instance, if the person could be or has been sentenced to death in the requesting country or if the person is a citizen of Samoa (s. 11, EA).

The EA is silent on the procedures to follow if an arrest warrant was not issued pursuant to its section 8.

Samoa has not taken sufficient measures to expedite extradition procedures and to simplify evidentiary requirements relating thereto.

It is recommended that Samoa clarify the procedures to follow if a warrant was not issued and endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

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

Samoa provided the following information regarding the implementation of this provision:

Sections 8 and 9 of the Extradition Act provide for the issue of provisional warrants.

Sections 3-6 of the London Scheme for Extradition within the Commonwealth, incorporating the amendments agreed at Kingstown in November 2002 deals with warrants, provisional warrants, committal proceedings and optional alternative committal proceedings.

Extradition Act 1974

8. Arrest for the purposes of committal –
(1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued by a District Court Judge:

(a) on the receipt of an authority to proceed by a District Court Judge;

(b) without such an authority by a District Court Judge upon information that the person is or is believed to be on his way to Samoa,

and any warrant issued by virtue of paragraph (b) is in this Act referred to as a provisional warrant.

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the District Court Judge, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence.

(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Minister, and transmit to the Minister the information and evidence, or certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if the Minister decides not to issue an authority to proceed in respect of the person to whom the warrant relates by order cancel the warrant and, if that person has been arrested thereunder, discharge the person from custody.

(4) A warrant of arrest issued under this section may be executed by any person to whom it is directed or by any police officer.

9. Proceedings for committal –

(1) A person arrested in pursuance of a warrant under section 8 shall (unless previously discharged under section 8(3)) be brought as soon as practicable before a Court presided over by a District Court Judge (in this Act referred to as the Court of committal).

(2) For the purpose of proceedings under this section, a Court of committal has the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as if the proceedings were the hearing of an information for an offence triable before a District Court Judge.

(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of that person, the Court of committal may fix a reasonable period (of which the Court shall give notice to the Minister) after which the person will be discharged from custody unless such an authority has been received.

(4) Where:

(a) an authority to proceed has been issued in respect of the person arrested;

(b) subject to subsection (5), the Court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence; and—

(i) where that person is accused of the offence, that the evidence would be sufficient to warrant the person’s trial for that offence if it had been committed within the jurisdiction of the Court;
(ii) where that person is alleged to be unlawfully at large after conviction of the offence, that the person has been so convicted and appears to be so at large; and

(c) committal of the person is not prohibited by any other provision of this Act, -

the Court shall commit the person to custody to await extradition; but, if the Court is not so satisfied or if the committal of that person is so prohibited, the Court shall discharge the person from custody.

(5) In a case in which the request for the extradition of a person for an alleged offence is accompanied, in accordance with section 7(2A), by a record of the case, the requirements of subsection (4)(b) are met if the Court is satisfied that the record of the case indicates that:

(a) the offence to which the authority to proceed relates is an extradition offence; and

(b) according to the law of the country requesting the extradition of the person, the person has committed the offence to which the record relates.

London Scheme for Extradition within the Commonwealth

WARRANTS, OTHER THAN PROVISIONAL WARRANTS

3. (1) A person sought will only be extradited if a warrant for arrest has been issued in the country seeking extradition and either -

(a) that warrant is endorsed by a competent judicial authority in the requested country (in which case, the endorsed warrant will be sufficient authority for arrest), or

(b) a further warrant for arrest is issued by the competent judicial authority in the requested country, other than a provisional warrant issued in accordance with clause 4.

(2) The endorsement or issue of a warrant may be made conditional on the competent executive authority having previously issued an order to proceed.

PROVISIONAL WARRANTS

4. (1) Where a person sought is, or is suspected of being, in or on the way to any country but no warrant has been endorsed or issued in accordance with clause 3, the competent judicial authority in the destination country may issue a provisional warrant for arrest on such information and under such circumstances as would, in the authority’s opinion, justify the issue of a warrant if the extradition offence had been an offence committed within the destination country.

(2) For the purposes of paragraph 1, information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a person sought may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that person.

(3) A report of the issue of a provisional warrant, with the information in justification or a certified copy thereof, will be sent to the competent executive authority.

(4) The competent executive authority who receives the information under paragraph (3) may decide, on the basis of that information and any other information which may have become available, that the person should be discharged, and so order.

COMMITTAL PROCEEDINGS
5. (1) A person arrested under a warrant endorsed or issued in accordance with clause 3(1), or under a provisional warrant issued in accordance with clause 4, will be brought, as soon as practicable, before the competent judicial authority who will hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including power to remand and admit to bail, as if the person were charged with an offence committed in the requested country.

(2) The competent judicial authority will receive any evidence which may be tendered to show that the extradition of the person sought is precluded by law.

(3) Where a provisional warrant has been issued in accordance with clause 4, but within such reasonable time as the competent judicial authority may fix:

(a) a warrant has not been endorsed or issued in accordance with clause 3(1), or

(b) where such endorsement or issue of a warrant has been made conditional on the issuance of an order to proceed, as mentioned in clause 3(2), no such order has been issued,

the competent judicial authority will order the person to be discharged.

(4) Where a warrant has been endorsed or issued in accordance with 3(1) the competent judicial authority may commit the person to prison to await extradition if-

(a) such evidence is produced as establishes a prima facie case that the person committed the offence; and

(b) extradition is not precluded by law but, otherwise, will order the person to be discharged.

(5) Where a person sought is committed to prison to await extradition as mentioned in paragraph (4), notice of the fact will be given as soon as possible to the competent executive authority of the country in which committal took place.

OPTIONAL ALTERNATIVE COMMITTAL PROCEEDINGS

6. (1) Two or more countries may make arrangements under which clause 5(4) will be replaced by paragraphs 2-4 of this clause or by other provisions agreed by the countries involved.

(2) Where a warrant has been endorsed or issued as mentioned in clause 3(1), the competent judicial authority may commit the person sought to prison to await extradition if-

(a) the contents of a record of the case received, whether or not admissible in evidence under the law of the requested country, and any other evidence admissible under the law of the requested country, are sufficient to warrant a trial of the charges for which extradition has been requested; and

(b) extradition is not precluded by law, but otherwise will order that the person be discharged.

(3) The competent judicial authority will receive a record of the case prepared by an investigating authority in the requesting country if it is accompanied by-

(a) an affidavit of an officer of the investigating authority stating that the record of the case was prepared by or under the direction of that officer, and that the evidence has been preserved for use in court; and
(b) a certificate of the Attorney General of the requesting country that in his or her opinion the record of the case discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(4) A record of the case will contain -

(a) particulars of the description, identity, nationality and, to the extent available, whereabouts of the person sought;

(b) particulars of each offence or conduct in respect of which extradition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the requesting country, including a certified copy of any such definition in the written law of that country;

(c) the original or a certified copy of any document of process issued in the requesting country against the person sought for extradition;

(d) a recital of the evidence acquired to support the request for extradition; and

(e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

(b) Observations on the implementation of the article

An arrest warrant of the person sought for extradition may be issued by a District Court Judge (s. 8, EA).

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

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

Samoa provided the following information regarding the implementation of this provision:

Section 11 of the *Extradition Act* provides that the Minister may refuse to extradite a citizen of Samoa. This is at the Minister’s discretion on the basis of nationality. There is no requirement for Samoan authorities to instigate a domestic prosecution at the request of the country seeking extradition.

*Extradition Act 1974*

11. Order for extradition –

(1) Where a person is committed to await his or her extradition and is not discharged by order of the Supreme Court, the Minister may by warrant order the person to be extradited to the country by which the request for his or her extradition was made unless the extradition of that person is prohibited or prohibited for the time being, by section 6 or
this section, or the Minister decides under this section to make no such order in his or her case.

(2) An order is not to be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence, in Samoa:

(a) in the case of a person serving such a sentence, until the sentence has been served;
(b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), until the sentence has been served.

(3) The Minister shall not make an order under this section in the case of any person if it appears to the Minister, on the ground mentioned in section 10(3), that it would be unjust or oppressive to return that person.

(4) The Minister may make no order under this section in the case of a person accused or convicted of a relevant offence not punishable with death in Samoa if that person could be or has been sentenced to death for that offence in the country by which the request for his or her return is made.

(5) The Minister may make no order under this section for the return of a person committed in consequence of a request made on behalf of any country if another request for his or her return under this Act has been made on behalf of another country and it appears to the Minister, having regard to all the circumstances of the case and in particular:

(a) the relative seriousness of the offences in question;
(b) the date on which each such request was made; and
(c) the nationality or citizenship of the person concerned and the person’s ordinary residence,

that preference should be given to the other request.

(6) The Minister may refuse to extradite a person who is a citizen of Samoa.

(7) Notice of the issue of a warrant under this section shall forthwith be given to the person to be extradited thereunder.

(b) Observations on the implementation of the article

Section 11 of the Extradition Act provides that the Minister may refuse to extradite a citizen of Samoa. Although the EA does not mandate the submission of the case for prosecution if extradition is not granted, Samoa adopts the principle Aut dedere Aut Judicare based on the principle of the legality of prosecution coupled with the provisions on active personal jurisdiction.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking
the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

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

Samoa indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

The Extradition Act allows for the unconditional extradition of Samoan nationals.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

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

Samoa indicated that it has not implemented the provision under review.

(b) Observations on the implementation of the article

The legislation does not provide for the enforcement of foreign penal judgments (except for confiscation, s. 49, MACMA).

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

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

Samoa provided the following information regarding the implementation of this provision:

Section 10 of the Extradition Act provides some protection for personal liberties.

Extradition Act 1974

10. Actions concerning personal liberty –

(1) Where a person is committed to custody under section 9, the Court shall inform the person in ordinary language of the person’s right of action in the Supreme Court for
redress of a contravention of the person’s right to personal liberty or for review of the order of committal, and shall forthwith give notice of the committal to the Minister.

(2) A person committed to custody under section 9 shall not be extradited under this Act:

(a) in any case, until the expiration of the period of 15 days beginning with the day on which the order for his or her committal is made;

(b) if an action has been instituted in the Supreme Court for redress of a contravention of his or her right to personal liberty or for review of the order of committal so long as proceedings on that action are pending.

(3) In any such action, the Supreme Court may, without prejudice to any other jurisdiction of the Court, order the person committed to be discharged from custody if it appears to the Court that:

(a) by reason of the trivial nature of the offence of which he or she is accused or was convicted; or

(b) by reason of the passage of time since he or she is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(c) because the accusation against the person is not made in good faith in the interests of justice,—

it would, having regard to all the circumstances, be unjust or oppressive to extradite him or her.

(4) On any such application, the Supreme Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 or under subsection (3).

(5) For the purposes of this section, proceedings in an action for redress of a contravention of a person’s right to personal liberty or for review of an order shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave may be made, if the appeal is not brought or the application made within that time.

(b) Observations on the implementation of the article

The Constitution guarantees fundamental rights for all persons regardless of their nationality including the rights to personal liberty, fair trial, and freedom from discriminatory legislation (ss. 6, 9, 15). A person shall not be extradited if that person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions (s. 6(1)(c) EA). The EA also provides for procedures that allow persons sought for extradition to defend themselves (ss. 9 to 12).

Article 44 Extradition

Paragraph 15
15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons.

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

Samoa provided the following information regarding the implementation of this provision:

Section 6(c) of the Extradition Act provides restriction for extradition where the person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions.

Extradition Act 1974

6. General restrictions on extradition –

(1) A person shall not be extradited under this Act to an extradition country or committed to or kept in custody for the purposes of such extradition if it appears to the Minister, or to the Court of committal or the Supreme Court on an application for habeas corpus or for review of the order of committal:

(a) that the offence of which that person is accused or was convicted is an offence of a political character;

(aa) that the offence of which the person is accused or was convicted is an offence under the military law, but not under the ordinary criminal law, of the requesting country;

(b) that the request for extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing the person on account of his or her race, religion, ethnic identity, nationality, or political opinions; or

(c) that the person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions.

(2) A person accused of an offence shall not be extradited under this Act to any country, or committed to or kept in custody for the purpose of his or her extradition, if it appears as aforesaid, that if charged with the offence in Samoa the person would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be extradited under this Act to any country, or committed or kept in custody for the purposes of such extradition, unless provision is made by the law of that country, or by an arrangement made with the country, for securing that the person will not, unless he or she has first been restored or had an opportunity of returning to Samoa, be dealt with in that country, for or in respect of any offence committed before extradition under this Act other than:

(a) the offence in respect of which the extradition under this Act is requested;

(b) any lesser offence proved by the facts proved before the Court of committal; or

(c) any other offence being an extradition offence in respect of which the Minister may consent to his or her being so dealt with.

(4) An arrangement mentioned in subsection (3) may be or an arrangement made for the particular case an arrangement of a more general nature; and for the purposes of
that subsection a certificate issued by or under the authority of the Minister responsible for Foreign Affairs confirming the existence of an arrangement with a country and stating its terms is conclusive evidence of the matters contained in the certificate.

(b) **Observations on the implementation of the article**

Samoa complies with the provision under review in accordance with the provisions of section 6(1) of the EA and section 15 of the Constitution (Freedom from discriminatory legislation).

**Article 44 Extradition**

**Paragraph 16**

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

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

Samoa provided the following information regarding the implementation of this provision:

Section 2 of the *Extradition Act* defines an extradition offence to include an offence of a purely fiscal character.

*Extradition Act 1974*

2. Interpretation –

(1) In this Act, unless the context otherwise requires:

“extradition offence” in relation to an extradition country, means:

(a) an offence (including an offence of a purely fiscal character) against the law of that extradition country that—

(i) is an offence for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of not less than 12 months; and

(ii) is constituted by an act or omission that would constitute an offence against the law of Samoa if it took place within Samoa or in the case of an extra-territorial offence, in corresponding circumstances outside Samoa; or

(b) an offence (including an offence of a purely fiscal character) against the law of that extradition country that does not carry a penalty under the law of that country but is constituted by conduct that, under an extradition treaty in relation to that country, is required to be treated as an offence for which the surrender of persons is permitted by that country and Samoa;

(b) **Observations on the implementation of the article**

Extradition offence” includes offences of a purely fiscal character (s. 2, EA), thus preventing the refusal of an extradition request on the sole ground that the offence is also considered to involve fiscal matters.
Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

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

Samoa provided the following information regarding the implementation of this provision:

Section 7 of the Extradition Act requires supporting documentation to be provided. In addition, section 7 of the London Scheme for Extradition within the Commonwealth also provides for supplementary information to be provided. However, there is no legislative requirement to consult prior to refusing extradition.

Extradition Act 1974

7. Authority to proceed –

(1) Subject to the provisions of this Act relating to provisional warrants, a person is not to be dealt with thereunder except under an order of the Minister (in this Act referred to as an “authority to proceed”) issued in pursuance of a request made to him or her by or on behalf of the extradition country in which the person to be extradited is accused or was convicted.

(2) Subject to subsection (2A), a request made on behalf of any extradition country (in this subsection and in subsections (2A) and (2B) called the requesting country) for the extradition of a person accused of an offence shall be accompanied by:

(a) a warrant for the arrest of the person issued in the requesting country; and

(b) particulars of the person; and

(c) particulars of the facts upon which, and the law under which, the person is accused; and

(d) evidence for the purposes of section 9(4)(a).

(2A) If the requesting country is a Commonwealth country and an order under section 3(3) directs that extradition between Samoa and the requesting country is to be conducted on the basis of record of case, the request shall be accompanied by:

(a) a record of the case in respect of the alleged offence that contains the following particulars and documents—

(i) particulars of the description, identity, nationality and, if available, the whereabouts of the person sought;

(ii) particulars of each offence in respect of which extradition is sought, specifying the date and place of commission, the legal definition of the offence and the relevant provisions of the law of the requesting country, including a certified copy of any such definition in the written law of the requesting country;

(iii) the original, or a certified copy, of any warrant or process issued in the requesting country against the person sought;
(iv) a recital of the evidence acquired to support the extradition of the person sought;
(v) a certified copy, reproduction or photograph of each exhibit, or item of documentary evidence, mentioned in that recital of evidence; and
(b) an affidavit, sworn statement or affirmation of an officer of the investigating authority of the requesting country stating that—
(i) the record was prepared by, or under the direction of, that officer; and
(ii) the evidence referred to in the record has been preserved for use in Court; and
(c) a certificate of the Attorney General of the requesting country stating that, in the Director of Public Prosecutions opinion, the record discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.

(2B) A certification required by subsection (2A)(a) may be done by any person in the requesting country who is, or holds office as, the Attorney General or a legal practitioner, notary public, commissioner of oaths or commissioned police officer.

(2C) A request made on behalf of any extradition country for the extradition of a person unlawfully at large after conviction of an offence shall be accompanied by:
(a) a certificate of the conviction and sentence in that country; and
(b) a statement of the amount (if any) of that sentence which has been served; and,
(c) particulars of the person; and
(d) particulars of the facts upon which, and the law under which the person was convicted.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to the Minister that an order for extradition of the person concerned could not lawfully be made, or would not in fact be made; in accordance with the provisions of this Act.

London Scheme for Extradition within the Commonwealth

SUPPLEMENTARY INFORMATION

7. (1) If it considers that the material provided in support of a request for extradition is insufficient, the competent authority in the requested country may seek such additional information as it considers necessary from the requesting country, to be provided within such reasonable period of time as it may specify.

(2) Where a request under paragraph (1) is made after committal proceedings have commenced the competent judicial authority in the requested country may grant an adjournment of the proceedings for such period as that authority may consider reasonable for the material to be furnished, which aggregate period should not exceed 60 days.

(b) Observations on the implementation of the article

The legislation does not provide for the requirement to consult with the requesting State before refusing extradition.
It is recommended that Samoa provide for the requirement to consult with the requesting State before refusing extradition.

**Article 44 Extradition**

**Paragraph 18**

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

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

Samoa indicated that it has not implemented the provision under review.

(b) **Observations on the implementation of the article**

Samoa has not concluded any bilateral extradition treaties.

It is recommended that Samoa seek, where appropriate, to conclude agreements or arrangements on extradition.

**Article 45 Transfer of sentenced persons**

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

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

The *Scheme for the Transfer of Convicted Offenders with the Commonwealth* applies to Commonwealth countries.

(b) **Observations on the implementation of the article**

The transfer of sentenced persons to and from Samoa is regulated by the provisions of the International Transfer of Prisoners Act of 2009 and relevant treaties in force. Such a transfer is possible with the Cabinet consent and regardless of the existence of a treaty. Samoa is only party to the Scheme for the Transfer of Convicted Offenders with the Commonwealth and has not concluded any other bilateral or multilateral agreements or arrangements on the transfer of sentenced persons.

**Article 46 Mutual legal assistance**

**Paragraphs 1 and 2**
1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

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

Samoa provided the following information regarding the implementation of this provision:

Section 3 of the *Mutual Assistance in Criminal Matters Act* outlines the objects of the Act which include a broad range of assistance. Assistance is limited to a “criminal matter” which is defined as criminal investigations and criminal proceedings and includes a matter (whether arising under the laws of Samoa or another foreign State) relating to the forfeiture or confiscation of property for an offence; or the restraining of dealings in property that may be forfeited or confiscated for an offence.

The *Mutual Assistance in Criminal Matters Act* provides for a wide range of mutual assistance including: assistance in locating or identifying persons (section 27); assistance in obtaining evidence in Samoa (section 28); assistance in arranging attendance of person to give evidence in foreign State (section 33); Section 39. Assistance in obtaining article or thing by search and seizure (section 39); Assistance in arranging service (section 46); enforcement of foreign confiscation order (section 49); enforcement of foreign restraining order (section 50). However, the application of these provisions is limited to the extent that dual criminality is required in mutual legal assistance.

The Attorney-General is Samoa’s central authority for mutual legal assistance. Outgoing mutual legal assistance requests must be made by or through the Attorney-General, while incoming requests must be made to the Attorney-General or a person authorized by him/her. Upon receiving a request, the Attorney-General will determine whether the requirements in the *Mutual Assistance in Criminal Matters Act* are met (e.g., whether there are reasonable grounds to believe evidence of an offense will be found). If so, the Attorney-General will issue an authorization for the request to be executed. Officials of the requesting State may attend Samoa to assist the execution of a request, if necessary.

**Mutual Assistance in Criminal Matters Act 2007**

2. **Interpretation** –

(1) In this Act, unless the context otherwise requires:

“criminal investigation” means:

(a) an investigation commenced in Samoa in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of Samoa; or

(b) in relation to a foreign State, an investigation commenced in the foreign State in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of that foreign State;

“criminal matter” means criminal investigations and criminal proceedings and includes a matter (whether arising under the laws of Samoa or another foreign State) relating to:

(a) the forfeiture or confiscation of property for an offence; or
(b) the restraining of dealings in property that may be forfeited or confiscated for an offence;

“criminal proceedings” means:

(a) proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Samoa, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence; or

(b) in relation to a foreign State, proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that foreign State, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence;

3. Object of Act –

The object of this Act is to enable Samoa to provide and obtain international assistance in criminal matters, including but not limited to:

(a) identifying and locating a person; and

(b) obtaining evidence, documents or any other article; and

(c) producing documents or other articles; and

(d) arranging for persons to give evidence or assisting investigations; and

(e) serving documents; and

(f) executing requests for search and seizure; and

(g) forfeiting or confiscating proceeds of crime; and

(h) recovering pecuniary penalties in respect of offences; and

(i) restraining dealings in property or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of serious offences; and

(j) locating property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of serious offences.

Section 1, Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth including amendments made by Law Ministers in April 1990, November 2002 and October 2005. However, the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth only applies to Commonwealth countries.

**Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth**

**PURPOSE AND SCOPE**

1. (1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of co-operation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.

(2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).

(3) Assistance in criminal matters under this Scheme includes assistance in
a) identifying and locating persons;
b) serving documents;
c) examining witnesses;
d) search and seizure;
e) obtaining evidence;
f) facilitating the personal appearance of witnesses;
g) effecting a temporary transfer of persons in custody to appear as a witness;
h) obtaining production of judicial or official records;
i) tracing, seizing and confiscating the proceeds or instrumentalities of crime; and
j) preserving computer data.

Mutual legal assistance can be provided in respect of any “criminal matter” which would include the offence of money laundering.

**Mutual Assistance in Criminal Matters Act 2007**

2. Interpretation –

(1) In this Act, unless the context otherwise requires:

“criminal investigation” means:

(a) an investigation commenced in Samoa in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of Samoa; or

(b) in relation to a foreign State, an investigation commenced in the foreign State in respect of an offence committed, or suspected on reasonable grounds to have been committed or to be likely to be committed, against the law of that foreign State;

“criminal matter” means criminal investigations and criminal proceedings and includes a matter (whether arising under the laws of Samoa or another foreign State) relating to:

(a) the forfeiture or confiscation of property for an offence; or

(b) the restraining of dealings in property that may be forfeited or confiscated for an offence;

“criminal proceedings” means:

(a) proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Samoa, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence; or

(b) in relation to a foreign State, proceedings instituted in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of that foreign State, and includes the trial of a person for the offence and any proceedings to determine whether or not a person should be tried for the offence;

4. Act not to limit other provision of assistance –

Nothing in this Act limits:
(a) the power of the Attorney General, apart from this Act, to make requests to foreign States or act on requests from foreign States for assistance in investigations or proceedings in a criminal matter; or

(b) the power of any other person or court, apart from this Act, to make requests to foreign States or act on requests from foreign States for forms of international assistance; or

(c) the nature or extent of assistance in criminal matters which Samoa may lawfully give to or receive from foreign States; or

(d) the existing forms of co-operation (whether formal or informal) in respect of criminal matters between Samoa and any other foreign State or the development of other forms of such co-operation.

22. Requests to be made to Attorney General—

(1) A request by a foreign State for assistance in a criminal matter under this Part is to be made:

(a) to the Attorney General; or

(b) to a person authorised by the Attorney General to receive requests by foreign States under this Part.

(2) Where a request by a foreign State is made to a person authorised under paragraph (b), the request is taken, for the purposes of this Act, to have been made to the Attorney General.

(b) Observations on the implementation of the article

Mutual legal assistance (MLA) in Samoa is regulated by the provisions of the MACMA. Samoa is bound by the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth and has not concluded any bilateral or multilateral MLA treaty.

The Attorney-General is Samoa’s central authority for MLA. Outgoing mutual legal assistance requests must be made by or through the Attorney-General, while incoming requests must be made to the Attorney-General or a person authorized by him/her (s. 22, MACMA). Upon receiving a request, the Attorney-General will determine whether the requirements in the MACMA are met. If so, the Attorney-General will issue an authorization for the request to be executed by the appropriate authorities.

Samoa could provide assistance regardless of the existence of a treaty. The provisions on mutual legal assistance do not distinguish between offences for which a legal person could be held liable and other offences in respect of the possibility of assistance.

Article 46 Mutual legal assistance

Paragraph 3

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing originals or certified copies of relevant documents and records, including
government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for
evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested
State Party;
(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of
chapter V of this Convention;
(k) The recovery of assets, in accordance with the provisions of chapter V of this
Convention.

(a) Summary of information relevant to reviewing the implementation of the article
Samoa provided the following information regarding the implementation of this provision:
Sections 27, 28, and 39 provides assistance in locating or identifying persons and in obtaining
evidence, and obtaining article or thing by search and seizure, respectively. Section 46 allows
a foreign State to request assistance in effecting the service of process on a person in Samoa.
Section 33 provides for arrangement of attendance in the requesting country of a person in
Samoa.

Mutual Assistance in Criminal Matters Act 2007
27. Assistance in locating or identifying persons—
(1) A foreign State may request the Attorney General to assist in locating, or identifying
and locating, a person who is believed to be in Samoa.
(2) The Attorney General may authorise assistance under this section if the Director of
Public Prosecution is satisfied:
   (a) that the request relates to a criminal matter in respect of a foreign serious offence
   in the foreign State; and
   (b) that there are reasonable grounds for believing that the person to whom the
   request relates—
      (i) is or might be concerned in, or could give or provide evidence or assistance
      relevant to, the criminal matter; and
      (ii) is in Samoa.
(3) Where the Attorney General authorises assistance under this section, the Attorney
General shall forward the request to the appropriate authority in Samoa, and that authority
shall use its best endeavours to locate or, as the case may be, identify and locate the
person to whom the request relates, and shall advise the Attorney General of the outcome
of those endeavours.
(4) On receipt of such advice, the Attorney General shall inform the requesting foreign
State of the result of the inquiries made pursuant to the request.
28. Assistance in obtaining evidence in Samoa—
(1) A foreign State may request the Attorney General to assist in arranging the taking of
evidence in Samoa or the production of documents or other articles in Samoa.
(2) Where the Attorney General is satisfied that:

(a) the request relates to a serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the evidence can be taken or the document or article can be produced in Samoa, –

the Attorney General may authorise assistance under this section.

(3) Where the Attorney General authorises the taking of evidence under this section, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge, and shall:

(a) cause the evidence to be put in writing and certify that the evidence was taken by the Judge; and

(b) cause the writing and certificate to be sent to the Attorney General.

(4) Where the Attorney General authorises the production of documents or other articles, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, require the production of the documents or other articles, and unless the Judge otherwise orders, shall send the documents or copies of the documents (certified by the Judge to be true copies) or the other articles to the Attorney General.

29. Further provisions relating to obtaining evidence –

Subject to section 30, the laws of Samoa with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Samoa shall apply, so far as they are capable of application and with all necessary modifications, with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, for the purposes of section 28.

39. Assistance in obtaining article or thing by search and seizure –

(1) A foreign State may request the Attorney General to assist in obtaining an article or thing by search and seizure.

(2) Where the Attorney General is satisfied that:

(a) the request relates to a criminal matter in respect of a foreign serious offence; and

(b) there are reasonable grounds for believing that an article or thing relevant to the proceedings is located in Samoa, –

the Attorney General may direct an authorised officer to apply to a Judge or the Registrar of the Court for a search warrant under section 40.

40. Search warrants –

A Judge or Registrar of the Court may issue a search warrant in respect of a thing where the Judge or Registrar, as the case may be, is satisfied that there are reasonable grounds for believing that there is in or on any premises or thing:

(a) a thing upon or in respect of which a foreign serious offence has been, or is suspected of having been, committed; or

(b) a thing which there are reasonable grounds for believing will be evidence as to the commission of any such offence; or
(c) a thing which there are reasonable grounds for believing is intended to be used for the purpose of committing any such offence.

46. Assistance in arranging service –

(1) A foreign State may request the Attorney General to assist in effecting the service of process on a person in Samoa.

(2) Where the Attorney General is satisfied that:

(a) the request relates to a criminal matter in respect of a foreign serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the person to be served is in Samoa; and

(c) where the request relates to the service of a summon to appear as a witness in the foreign State, the foreign State has given an adequate undertaking in respect of the matters specified in section 47, –

the Attorney General may authorise assistance under this section.

(3) Where service is authorised under subsection (2), the Attorney General shall direct the appropriate authority to arrange service, and in such a case the authority shall:

(a) use its best endeavours to have the process served—

   (i) in accordance with procedures proposed in the request; or

   (ii) if those procedures would be unlawful or inappropriate in Samoa, or if no procedures are so proposed, in accordance with the law of Samoa; and

(b) if the document—

   (i) is served, transmit to the Attorney General for transmission to the foreign State making the request, a certificate as to service; or

   (ii) is not served, transmit to the Attorney General for transmission to the foreign State, a statement of the reasons which prevented the service.

49. Request for enforcement of foreign confiscation orders –

(1) A foreign State may request the Attorney General to assist with the enforcement of:

(a) a foreign forfeiture order, made in respect of a foreign serious offence, against property that is reasonably believed to be located in Samoa; or

(b) a foreign pecuniary penalty order, made in respect of a foreign serious offence, where some or all of the property available to satisfy the order is reasonably believed to be located in Samoa.

(2) Where the Attorney General is satisfied that:

(a) a person has been convicted of the offence in respect of which the foreign order was made; and

(b) the conviction and the order are not subject to further appeal in the foreign State, –

the Attorney General may apply to the Court for the registration of the foreign forfeiture order or the foreign pecuniary penalty order.

50. Request for enforcement of foreign restraining order –
(1) A foreign State may request the Attorney General to assist with the enforcement of a foreign restraining order in respect of property that is believed to be located in Samoa.

(2) Where the Attorney General is satisfied that:

(a) the request relates to a criminal matter in respect of a foreign serious offence; and
(b) there are reasonable grounds for believing that some or all of the property to which the order relates is located in Samoa, –

the Attorney General may apply to the Court for the registration of the foreign restraining order.

(b) Observations on the implementation of the article

MACMA provides for a wide range of mutual assistance including: locating or identifying persons (s. 27); obtaining evidence (s. 28); arranging attendance of persons to give evidence in foreign State (s. 33); obtaining articles or things by search and seizure (s. 39); arranging service (s. 46); enforcement of foreign confiscation orders (s. 49) and foreign restraining orders (s. 50). However, the application of these provisions is limited to cases where dual criminality as a requirement for mutual legal assistance is available.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

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

Samoa provided the following information regarding the implementation of this provision:

There is no provision in the Mutual Assistance in Criminal Matters Act that obligates Samoa to initiate assistance without prior request. However, section 4 of the Act provides that the Act shall not be interpreted as limiting the power of the Attorney General or any other person to act on requests from foreign countries for assistance in investigations or proceedings in a criminal matter.

Section 70 of the Mutual Assistance in Criminal Matters Act prohibits any person from disclosing to anyone the document that is sent to the Attorney General unless the disclosure is in compliance with the condition set forth by the requesting party, or the document is made of public or disclosed in the course of and for the purpose of any proceedings.
Mutual Assistance in Criminal Matters Act 2007

70. Privilege for foreign documents –

(1) Subject to subsection (2), a document sent to the Attorney General by a foreign State under a request by Samoa, is privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was so sent, is made public or disclosed in the course of and for the purpose of any proceedings.

(2) No person in possession of a document referred to in subsection (1), or a copy thereof, or who has knowledge of an information contained in the document, shall be required, in connection with a legal proceedings, to produce the document or copy or to give evidence relating to an information that is contained therein.

(3) Except to the extent required under this Act to execute a request by a foreign State for mutual assistance in criminal matters, no person shall disclose:

(a) the fact that the request has been received; or
(b) the contents of the request; or
(c) the fact that such a request has been granted or refused.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable upon conviction:

(a) for a natural person, to a fine of 500 penalty units or imprisonment for 5 years, or both; or
(b) for a body corporate, to a fine of 2,500 penalty units.

(b) Observations on the implementation of the article

Samoan authorities can exchange information spontaneously. That is not precluded by the MACMA and specifically provided for by the MLPA (s.7(1)(f)).

Section 20 of the MACMA on the “Restriction on use of evidence” appears to prevent Samoan authorities from disclosing received information that is exculpatory to an accused person.

For a greater legal certainty, it is recommended that Samoa explicitly provide for the disclosure of received information that is exculpatory to an accused person.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

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

Samoa provided the following information regarding the implementation of this provision:
Bank secrecy is not a ground for refusal expressly provided in the *Mutual Assistance in Criminal Matters Act*.

(b) **Observations on the implementation of the article**

Bank secrecy is not recognized as a ground for refusal of assistance (s. 24, MACMA).

**Article 46 Mutual legal assistance**

**Paragraph 9**

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

9. (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

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

Samoa provided the following information regarding the implementation of this provision:

The *Mutual Assistance in Criminal Matters Act* requires dual criminality for all mutual legal assistance, including non-coercive actions. Under sections 27(2)(a) and 28(2)(a) of the *Mutual Assistance in Criminal Matters Act*, a mutual legal assistance request from a foreign state shall be granted where the request relates to a serious offence in a foreign state. A request for assistance made for foreign serious offences or made by foreign states is to be complied with in respect of serious offences. The *Proceeds of Crime Act* defines a ‘serious offence’ as an offence against the laws of the foreign state that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activities against any law of Samoa.

*Mutual Assistance in Criminal Matters Act 2007*

27. Assistance in locating or identifying persons –

(1) A foreign State may request the Attorney General to assist in locating, or identifying and locating, a person who is believed to be in Samoa.

(2) The Attorney General may authorise assistance under this section if the Director of Public Prosecution is satisfied:

(a) that the request relates to a criminal matter in respect of a foreign serious offence in the foreign State; and

(b) that there are reasonable grounds for believing that the person to whom the request relates—

(i) is or might be concerned in, or could give or provide evidence or assistance relevant to, the criminal matter; and
(ii) is in Samoa.

(3) Where the Attorney General authorises assistance under this section, the Attorney General shall forward the request to the appropriate authority in Samoa, and that authority shall use its best endeavours to locate or, as the case may be, identify and locate the person to whom the request relates, and shall advise the Attorney General of the outcome of those endeavours.

(4) On receipt of such advice, the Attorney General shall inform the requesting foreign State of the result of the inquiries made pursuant to the request.

28. Assistance in obtaining evidence in Samoa –

(1) A foreign State may request the Attorney General to assist in arranging the taking of evidence in Samoa or the production of documents or other articles in Samoa.

(2) Where the Attorney General is satisfied that:

(a) the request relates to a serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the evidence can be taken or the document or article can be produced in Samoa,

the Attorney General may authorise assistance under this section.

(3) Where the Attorney General authorises the taking of evidence under this section, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge, and shall:

(a) cause the evidence to be put in writing and certify that the evidence was taken by the Judge; and

(b) cause the writing and certificate to be sent to the Attorney General.

(4) Where the Attorney General authorises the production of documents or other articles, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, require the production of the documents or other articles, and unless the Judge otherwise orders, shall send the documents or copies of the documents (certified by the Judge to be true copies) or the other articles to the Attorney General.

Proceeds of Crime Act 2007

2 Interpretation –

In this Act, unless the context otherwise requires:

“serious offence” means an offence:

(a) against a law of Samoa that would constitute unlawful activity; or

(b) against the law of a foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activity against any laws of Samoa;
Samoa has a dual criminality requirement in respect of requests relating to both coercive and non-coercive actions. Samoa has in practice provided assistance by locating witnesses and obtaining witness statements in the absence of the dual criminality requirement.\textsuperscript{14}

(b) Observations on the implementation of the article

The MACMA requires dual criminality for all MLA, including those not involving coercive actions. Under the MACMA, MLA should be granted where the request relates to a serious offence in a foreign State. The POCA defines a ‘serious offence’ as an offence against the laws of the foreign State that, if the relevant act or omission had occurred in Samoa, would be an offence that would constitute unlawful activities against any law of Samoa (s. 2).

It is recommended that Samoa allow for the provision of MLA that does not involve coercive action in the absence of dual criminality.

Article 46 Mutual legal assistance

Paragraphs 10, 11 and 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:
(a) The person freely gives his or her informed consent;
(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:
(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;
(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

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

\textsuperscript{14} MER p106.
Samoa provided the following information regarding the implementation of this provision:

Section 34 of the *Mutual Assistance in Criminal Matters Act* allows for a transfer of a person in Samoa who is a prisoner where the Attorney General is satisfied that:

(a) the request relates to the attendance of the person concerned at a hearing in connection with any criminal matter in respect of a foreign serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the person is capable of giving evidence relevant to the proceedings; and

(c) the person has freely consented to give evidence in the foreign State; and

(d) the foreign State has given adequate undertakings in respect of the matters specified in section 35.

Section 35(e) provides, as one of the undertakings to be satisfied, such other matters as the Attorney-General thinks appropriate.

Section 35 of the *Mutual Assistance in Criminal Matters Act* requires the requesting country to keep the transferred person in custody and to return the person to Samoa as soon as practicable after giving the evidence.

Section 37 of the Act provides that where a prisoner who is serving a term of imprisonment for an offence against the law of Samoa is released pursuant to a request by a foreign State under section 34, the prisoner shall, while in custody in connection with the request (including custody outside Samoa), be deemed to be continuing to serve that term of imprisonment.

Section 35 of the *Mutual Assistance in Criminal Matters Act* requires that the transferred person not be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person’s departure from Samoa.

*Mutual Assistance in Criminal Matters Act 2007*

34. Assistance in arranging attendance of prisoner –

(1) A foreign State may request the Attorney General to assist in arranging the attendance, in that foreign State, of a person in Samoa who is a prisoner (whether or not in custody) for the purposes of giving or providing evidence or assistance in relation to a criminal matter in respect of a foreign serious offence in that foreign State.

(2) Where the Attorney General is satisfied that:

(a) the request relates to the attendance of the person concerned at a hearing in connection with a criminal matter in respect of a foreign serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the person is capable of giving evidence relevant to the proceedings; and

(c) the person has freely consented to give evidence in the foreign State; and

(d) the foreign State has given adequate undertakings in respect of the matters specified in section 35, –

the Attorney General may authorise assistance under this section.
(3) Where assistance is authorised under subsection (2), the Attorney General may:

(a) for a prisoner who is being held in custody, direct that the prisoner be released from the penal institution in which that person is detained for the purpose of traveling to the foreign State to give evidence at the hearing, and may make arrangements for the prisoner to travel to the foreign State in the custody of a police or prison officer appointed by the Attorney General for the purpose; and

(b) for any other person who has been released from custody on parole or other order of licence to be at large—

(i) approve and arrange the travel of the person to the foreign State to give evidence at the hearing; and

(ii) obtain such approvals, authorities and permissions as are required for the purpose, including the variation, discharge or suspension of the conditions of the person’s release, or the variation, cancellation or suspension of the person’s sentence or of the conditions of the person’s sentence.

(4) A direction given under subsection (3)(a) by the Attorney General in respect of a prisoner shall be sufficient authority for the release of the prisoner from the penal institution in which the person is detained, for the purposes of the direction.

35. Undertakings required from foreign State—

The Attorney General shall, before authorising assistance under section 33 or 34, obtain undertakings from the foreign State in relation to the following matters:

(a) that the person to whom the request relates shall not—

(i) be detained, prosecuted or punished for an offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person’s departure from Samoa; or

(ii) be subjected to any civil proceedings in respect of an act or omission of the person that is alleged to have occurred, or that occurred, before the person’s departure from Samoa, being civil proceedings to which that person could not be subjected if the person were not in the foreign State; or

(iii) be required to give or provide evidence or assistance in respect of any criminal matter in the foreign State other than the matter to which the request relates, –

unless the person has left the foreign State, or has had the opportunity of leaving the foreign State and has remained in that foreign State otherwise than for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates; and

(b) that an evidence given by the person in the criminal proceedings to which the request relates is inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign State other than the offence of perjury in relation to the giving of that evidence; and

(c) that the person will be returned to Samoa in accordance with arrangements agreed by the Attorney General as soon as practicable after giving the evidence; and

(d) in a case where the request relates to a person who is a prisoner in Samoa and the Attorney General requests the foreign State to make arrangements for the keeping of the person in custody while the person is in the foreign State—
(i) that appropriate arrangements will be made for that purpose; and

(ii) that the person will not be released from custody in the foreign State without the prior approval of the Attorney General; and

(iii) if the person is released in the foreign State, at the request of the Attorney General, before the completion of the proceedings to which the request relates, that the person’s accommodation and expenses will be met by the foreign State; and

(e) such other matters as the Attorney General thinks appropriate.

36. Penalty not to be imposed for refusal to consent –

The person, to whom the request under section 33 or 34 relates, shall not be subject to a penalty or liability nor otherwise prejudiced in law by reason only of that person’s refusal or failure to consent to attend as requested.

37. Effect of removal to foreign State on prisoner’s term of imprisonment –

Where a prisoner who is serving a term of imprisonment for an offence against the law of Samoa is released under a request by a foreign State under section 34, the prisoner shall, while in custody in connection with the request (including custody outside Samoa), be deemed to be continuing to serve that term of imprisonment.

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

PERSONAL APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY

25. (1) A request under this Scheme may seek assistance in facilitating the personal appearance of the witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify

(a) the subject matter upon which it is desired to examine the witnesses;

(b) the reasons for which the personal appearance of the witnesses is required; and

(c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.

(3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired; and

(a) ask whether they agree to appear;

(b) inform the Central Authority of the requesting country of their answer; and

(c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

(4) A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.

PERSONAL APPEARANCE OF PERSONS IN CUSTODY

26. (1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.
(2) The request shall specify:
   (a) the subject matter upon which it is desired to examine the witnesses;
   (b) the reasons for which the personal appearance of the witnesses is required.

(3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.

(4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.

(5) A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested country.

(6) Where persons in custody are transferred, the requested country shall notify the requesting country of:
   (a) the dates upon which the persons are due under the law of the requested country to be released from custody; and
   (b) the dates by which the requested country requires the return of the persons and shall notify any variations in such dates.

(7) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under sub-paragraph (6).

(8) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.

(9) The period during which the persons transferred are in custody in the requesting country shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.

(10) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

IMMUNITY OF PERSONS APPEARING

27. (1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.

(2) The immunity provided for in that paragraph shall cease:
   (a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of 15 consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;
(b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

(b) Observations on the implementation of the article

The MACMA is in line with the provisions under review (ss. 34, 35 and 37).

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

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

Samoa provided the following information regarding the implementation of this provision:

The Attorney-General is Samoa’s central authority for mutual legal assistance. The Attorney General’s Office is an independent office established under section 41 of the Constitution, the Attorney-General is both the chief prosecutor and chief legal adviser of Samoa. Outgoing requests must be made by or through the Attorney-General, while incoming requests must be made to the Attorney-General or a person authorized by the Attorney-General. Upon receiving a request, the Attorney-General will determine whether the requirements in the Mutual Assistance in Criminal Matters Act are met (e.g., whether there are reasonable grounds to believe evidence of an offense will be found). If so, the Attorney-General will issue an authorization for the request to be executed. Officials of the requesting state may attend Samoa to assist the execution of a request, if necessary.

**Mutual Assistance in Criminal Matters Act 2007**

22. Requests to be made to Attorney General—

(1) A request by a foreign State for assistance in a criminal matter under this Part is to be made:

(a) to the Attorney General; or

(b) to a person authorised by the Attorney General to receive requests by foreign States under this Part.
(2) Where a request by a foreign State is made to a person authorised under paragraph (b), the request is taken, for the purposes of this Act, to have been made to the Attorney General.

(b) Observations on the implementation of the article

The Attorney-General is Samoa’s central authority for MLA. The Secretary-General of the United Nations has not been notified in this regard. MLA requests should be submitted through diplomatic channels.

It is recommended that Samoa notify the Secretary-General of the United Nations of its central authority designated for MLA.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

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

Samoa provided the following information regarding the implementation of this provision:

The Mutual Assistance in Criminal Matters Act does not explicitly state that a request must be made in writing.

Section 14(2) of the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth provides that “A request shall normally be in writing, and if made orally in the case of urgency, shall be confirmed in writing forthwith.”

**Mutual Assistance in Criminal Matters Act 2007**

22. Requests to be made to Attorney General—

(1) A request by a foreign State for assistance in a criminal matter under this Part is to be made:

(a) to the Attorney General; or

(b) to a person authorised by the Attorney General to receive requests by foreign States under this Part.

(2) Where a request by a foreign State is made to a person authorised under paragraph (b), the request is taken, for the purposes of this Act, to have been made to the Attorney General.

23. Form of request—

(1) A request for assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates; and
(b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws; and

(c) give a description of the purpose of the request and of the nature of the assistance being sought; and

(d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in Samoa, give details of the offence in question, particulars of an investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of a relevant restraining or forfeiture order; and

(e) give details of a procedure that the requesting State wishes to be followed by Samoa in giving effect to the request, including details of the manner and form in which an information, document or thing is to be supplied to the foreign State under the request; and

(f) include a statement setting out any wishes of the requesting State concerning a confidentiality relating to the request and the reasons for those wishes; and

(g) give details of the period within which the requesting State wishes the request to be complied with; and

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in Samoa; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted even if the request does not comply with subsection (1).

(b) Observations on the implementation of the article

The MACMA does not determine the acceptable language(s) for MLA requests. It was confirmed during the country visit that the acceptable language for MLA requests is English. The Secretary-General of the United Nations has not been notified in this regard.

Section 23 of the MACMA implies that a request must be made in writing.

It is recommended that Samoa notify the Secretary-General of the United Nations of the acceptable language(s) for MLA requests.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:
   (a) The identity of the authority making the request;
   (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
   (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
   (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
   (e) Where possible, the identity, location and nationality of any person concerned; and
(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

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

Samoa provided the following information regarding the implementation of this provision:

Section 23 of the Mutual Assistance in Criminal Matters Act outlines the requirements a requesting party must include in a request for mutual assistance.

**Mutual Assistance in Criminal Matters Act 2007**

23. Form of request –

(1) A request for assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates; and

(b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws; and

(c) give a description of the purpose of the request and of the nature of the assistance being sought; and

(d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in Samoa, give details of the offence in question, particulars of an investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of a relevant restraining or forfeiture order; and

(e) give details of a procedure that the requesting State wishes to be followed by Samoa in giving effect to the request, including details of the manner and form in which an information, document or thing is to be supplied to the foreign State under the request; and

(f) include a statement setting out any wishes of the requesting State concerning a confidentiality relating to the request and the reasons for those wishes; and

(g) give details of the period within which the requesting State wishes the request to be complied with; and

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in Samoa; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted even if the request does not comply with subsection (1).

**Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth.**

14. (1) Except in the case of a request for the preservation of computer data under Article 1 (3) (j) of this Scheme, a request under the Scheme shall:

(a) specify the nature of the assistance requested;
(b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;

(c) indicate any time-limit within which compliance with the request is desired, stating reasons;

(d) contain the following information:
   (i) the identity of the agency or authority initiating the request;
   (ii) the nature of the criminal matter; and
   (iii) whether or not criminal proceedings have been instituted.

(e) where criminal proceedings have been instituted, contain the following information:
   (i) the court exercising jurisdiction in the proceedings;
   (ii) the identity of the accused person;
   (iii) the offences of which he stands accused, and a summary of the facts;
   (iv) the stage reached in the proceedings; and
   (v) any date fixed for further stages in the proceedings.

(f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of known facts.

(b) Observations on the implementation of the article

Section 23 of the MACMA outlines the requirements a requesting State must include in a request for MLA.

The MACMA does not prevent the Attorney General from requesting additional information that appears necessary for the execution of the request or when it can facilitate such execution.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

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

Samoa provided the following information regarding the implementation of this provision:

Part 3 of the Mutual Assistance in Criminal Matters Act applies to requests for mutual assistance by foreign States and outlines the requirements under Samoan law for a request for mutual legal assistance.

Mutual Assistance in Criminal Matters Act 2007
PART 3 - REQUEST BY FOREIGN STATE

21. Application of this Part –

A request for assistance under this Part may be made by a foreign State.

(b) Observations on the implementation of the article

MLA requests are executed in accordance with the domestic law of Samoa and where possible, in accordance with the procedures specified in the request (s. 46(3), MACMA).

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

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

Samoa provided the following information regarding the implementation of this provision: Section 31 of the Mutual Assistance in Criminal Matters Act permits examination or cross-examination through a video or internet link from the requesting country, of any person giving evidence or producing a document or other article.

Mutual Assistance in Criminal Matters Act 2007

31. Conduct of proceedings –

(1) A person to whom the proceedings under section 28(3) or (4) relate and any other person giving evidence or producing documents or other articles at the hearing and the Competent Authority of the foreign State, may appear and may be represented by counsel.

(2) The certificate by the Judge under section 28(3)(a) must state whether or not any of the persons listed in subsection (1) were present at the hearing and, if so, whether or not they were legally represented.

(3) If the requesting foreign state has so requested, the Judge may permit examination or cross examination through a video or internet link from that foreign State, of a person giving evidence or producing a document or other article at the hearing by:

(a) a person to whom the proceeding in the requesting foreign State relates or that person’s legal representative; or

(b) the legal representative of the Competent Authority of that foreign State.

(b) Observations on the implementation of the article
The MACMA permits examination or cross-examination through a video or internet link from the requesting country, of any person giving evidence or producing a document or other article (s. 31).

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

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

Samoa provided the following information regarding the implementation of this provision:

Section 20 of the Mutual Assistance in Criminal Matters Act imposes restrictions on use of evidence other than the criminal matters to which the request relates without consent of the requesting party and the person from whom evidence, information or article is obtained.

Mutual Assistance in Criminal Matters Act 2007

20. Restriction on use of evidence –

An evidence, information, document or article that is obtained under a request made under this Part, shall be used only for the purposes of, or in connection with, the criminal matter to which the request relates, unless:

(a) the foreign State to which the request was made; and

(b) the person, in the case of any evidence, information, –

document or article obtained from a person while the person is in Samoa under a request made under section 11, consents to the use of the evidence, information, document or article for any other purpose.

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

LIMITATION OF USE OF INFORMATION OR EVIDENCE

12. The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the requested country.

(b) Observations on the implementation of the article

The MACMA is in line with the provisions under review (s. 20).

Article 46 Mutual legal assistance
Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

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

Samoa provided the following information regarding the implementation of this provision:

Section 23(1)(f) of the Mutual Assistance in Criminal Matters Act allows the requesting party to include in the requesting form a statement setting out any wishes concerning any confidentiality.

Mutual Assistance in Criminal Matters Act 2007

23. Form of request –

(1) A request for assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates; and

(b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws; and

(c) give a description of the purpose of the request and of the nature of the assistance being sought; and

(d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in Samoa, give details of the offence in question, particulars of an investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of a relevant restraining or forfeiture order; and

(e) give details of a procedure that the requesting State wishes to be followed by Samoa in giving effect to the request, including details of the manner and form in which an information, document or thing is to be supplied to the foreign State under the request; and

(f) include a statement setting out any wishes of the requesting State concerning a confidentiality relating to the request and the reasons for those wishes; and

(g) give details of the period within which the requesting State wishes the request to be complied with; and

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in Samoa; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted even if the request does not comply with subsection (1).

Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

CONFIDENTIALITY
11. The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

(b) Observations on the implementation of the article

The MACMA is in line with the provisions under review (s. 23(1)(f)).

Article 46 Mutual legal assistance

Subparagraph 21 (a)

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;
(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;
(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

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

Samoa provided the following information regarding the implementation of this provision:

Section 24 of the Mutual Assistance in Criminal Matters Act provides two grounds for refusal and postponement.

A request by a foreign State for assistance may be

(a) refused if, in the opinion the Attorney-General, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice; and/or

(b) postponed if, after consulting with the Competent Authority of the foreign State, the Attorney-General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

In addition, section 23(2) provides that even if a request for assistance does not conform with the requirements of section 23(1), the request may still be granted.

Mutual Assistance in Criminal Matters Act 2007

23. Form of request –

(1) A request for assistance shall:

(a) give the name of the authority conducting the investigation or proceeding to which the request relates; and

(b) give a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws; and
(c) give a description of the purpose of the request and of the nature of the assistance being sought; and

(d) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in Samoa, give details of the offence in question, particulars of an investigation or proceeding commenced in respect of the offence, and be accompanied by a copy of a relevant restraining or forfeiture order; and

(e) give details of a procedure that the requesting State wishes to be followed by Samoa in giving effect to the request, including details of the manner and form in which an information, document or thing is to be supplied to the foreign State under the request; and

(f) include a statement setting out any wishes of the requesting State concerning a confidentiality relating to the request and the reasons for those wishes; and

(g) give details of the period within which the requesting State wishes the request to be complied with; and

(h) where applicable, give details of the property to be traced, restrained, seized or confiscated, and of the grounds for believing that the property is believed to be in Samoa; and

(i) give any other information that may assist in giving effect to the request.

(2) A request for mutual assistance from a foreign State may be granted even if the request does not comply with subsection (1).

(b) Observations on the implementation of the article

The MACMA is in line with the provisions under review (s. 24).

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

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

Fiscal matters are not listed as a ground for refusal under the Mutual Assistance in Criminal Matters Act.

(b) Observations on the implementation of the article

The fact that an offence also involves fiscal matters is not recognized as a ground for refusal of assistance (s. 24, MACMA).

Article 46 Mutual legal assistance

Paragraph 23
23. Reasons shall be given for any refusal of mutual legal assistance.

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

Samoa provided the following information regarding the implementation of this provision:

Section 25 of the *Mutual Assistance in Criminal Matters Act* requires that notice of refusal be given with the reasons for refusal.

*Mutual Assistance in Criminal Matters Act 2007*

25. **Notification of refusal** —

If a request by a foreign State for assistance under this Part is refused in whole or in part, the Attorney General shall give to the Competent Authority of the requesting foreign State the notice of refusal, together with the reasons for the refusal.

Section 31 of the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* also only requires consultations, not reasons for refusal to be given.

(b) **Observations on the implementation of the article**

In case of refusal of the MLA, the attorney General is required to provide the requesting State with the notice of refusal be given with the reasons for refusal (s. 25, MACMA).

**Article 46 Mutual legal assistance**

**Paragraph 24**

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

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

Samoa provided the following information regarding the implementation of this provision:

No procedures exist (legislatively or otherwise) that guide the execution of mutual legal assistance requests in a time-bound manner nor for providing requesting States with information on the status and progress on the measures being undertaken.

(b) **Observations on the implementation of the article**

Samoa has not established clear and efficient processes for the execution of MLA requests in a timely way and without undue delays and for communicating with foreign authorities. No regulation was issued pursuant to Section 73 of the MACMA, as it was confirmed during the country visit.

It is recommended that Samoa ensure that MLA requests are executed in a timely manner, taking into account any deadlines requested, including by giving thought to adopting a manual
and procedures or guidelines on MLA that would outline in greater detail the steps to be followed by authorities in executing and making such requests, as well as any requirements and timeframes to be followed, for further clarity, for the benefit of Samoan authorities and of requesting States.

**Article 46 Mutual legal assistance**

**Paragraph 25**

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

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

Samoa provided the following information regarding the implementation of this provision:

Section 24 of the *Mutual Assistance in Criminal Matters Act* provides that a request by a foreign State for assistance may be postponed if, after consulting with the Competent Authority of the foreign State, the Attorney-General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

**Mutual Assistance in Criminal Matters Act 2007**

24. **Refusal of assistance** –

A request by a foreign State for assistance under this Act may be:

(a) refused in whole or in part if, in the opinion the Attorney General, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice; or

(b) postponed in whole or in part, if, after consulting with the Competent Authority of the foreign State, the Attorney General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

(b) **Observations on the implementation of the article**

A request for assistance may be postponed in whole or in part, if, after consulting with the requesting State, the Attorney General considers that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa (s. 24(b), MACMA).

**Article 46 Mutual legal assistance**

**Paragraph 26**

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.
(a) Summary of information relevant to reviewing the implementation of the article

Section 24 of the Mutual Assistance in Criminal Matters Act provides that a request may be postponed in whole or in part, if, after consulting with the Competent Authority of the foreign State, the Attorney General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

Mutual Assistance in Criminal Matters Act 2007

24. Refusal of assistance –

A request by a foreign State for assistance under this Act may be:

(a) refused in whole or in part if, in the opinion the Attorney General, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa or would be against the interest of justice; or

(b) postponed in whole or in part, if, after consulting with the Competent Authority of the foreign State, the Attorney General is of the opinion that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa.

25. Notification of refusal –

If a request by a foreign State for assistance under this Part is refused in whole or in part, the Attorney General shall give to the Competent Authority of the requesting foreign State the notice of refusal, together with the reasons for the refusal.

Section 31 of the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth provides for consultation upon request.

Consultation

31. The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

(b) Observations on the implementation of the article

A request for assistance may be postponed in whole or in part, if, after consulting with the requesting State, the Attorney General considers that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa (s. 24(b), MACMA). It was further confirmed during the country visit that consultations are done, as a matter of practice, before refusing an MLA request.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe
conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

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

Samoa provided the following information regarding the implementation of this provision:

Section 35 of the Mutual Assistance in Criminal Matters Act requires the requesting party to submit undertakings that the person to whom the request relates shall not be detained, prosecuted or punished for any offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person’s departure from Samoa unless the person has left the foreign State, or has had the opportunity of leaving the foreign State and has remained in that foreign State otherwise than for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates. However, the provision does not provide a specific time period for the safe conduct to cease.

Mutual Assistance in Criminal Matters Act 2007

35. Undertakings required from foreign State

The Attorney General shall, before authorising assistance under section 33 or 34, obtain undertakings from the foreign State in relation to the following matters:

(a) that the person to whom the request relates shall not—

(i) be detained, prosecuted or punished for an offence against the law of the foreign State that is alleged to have been committed, or that was committed, before the person’s departure from Samoa; or

(ii) be subjected to any civil proceedings in respect of an act or omission of the person that is alleged to have occurred, or that occurred, before the person’s departure from Samoa, being civil proceedings to which that person could not be subjected if the person were not in the foreign State; or

(iii) be required to give or provide evidence or assistance in respect of any criminal matter in the foreign State other than the matter to which the request relates, unless the person has left the foreign State, or has had the opportunity of leaving the foreign State and has remained in that foreign State otherwise than for the purpose of giving or providing evidence or assistance in respect of the matter to which the request relates; and

(b) that an evidence given by the person in the criminal proceedings to which the request relates is inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign State other than the offence of perjury in relation to the giving of that evidence; and

(c) that the person will be returned to Samoa in accordance with arrangements agreed by the Attorney General as soon as practicable after giving the evidence; and

(d) in a case where the request relates to a person who is a prisoner in Samoa and the Attorney General requests the foreign State to make arrangements for the keeping of the person in custody while the person is in the foreign State—

(i) that appropriate arrangements will be made for that purpose; and
(ii) that the person will not be released from custody in the foreign State without the prior approval of the Attorney General; and

(iii) if the person is released in the foreign State, at the request of the Attorney General, before the completion of the proceedings to which the request relates, that the person’s accommodation and expenses will be met by the foreign State; and

(d) such other matters as the Attorney General thinks appropriate.

14. Immunities and privileges –

(1) Subject to subsection (3), a person who is in Samoa pursuant to a request made under section 11, shall not:

(a) be detained, prosecuted or punished in Samoa for an offence that is alleged to have been committed, or that was committed, before the person’s departure from the foreign State under the request; or

(b) be subjected to any civil proceedings in Samoa in respect of an act or omission that is alleged to have occurred, or that occurred, before the person’s departure from the foreign State under the request, being civil proceedings to which the person could not be subjected to if the person were not in Samoa; or

(c) be required to give or provide evidence or assistance in relation to a criminal matter in Samoa other than the criminal matter to which the request relates; or

(d) be required, in the proceedings or investigation to which the request relates, to answer a question that the person would not be required to answer if those proceedings or that investigation were taking place in the foreign State; or

(e) be required, in the proceedings or investigation to which the request relates, to produce a document or article that the person would not be required to produce if those proceedings or that investigation were taking place in the foreign State.

(2) For the purposes of subsection (1), a duly authenticated foreign law immunity certificate is admissible in proceedings as prima facie evidence of the matters stated in the certificate.

(3) Subsection (1) does not apply to a person, if:

(a) the person has left Samoa and then returns otherwise than under the same or another request; or

(b) the person has had the opportunity to leave Samoa and has remained in Samoa otherwise than for—

(i) the purpose to which the request relates; or

(ii) the purpose of giving evidence in a criminal proceeding in Samoa certified by the Attorney General, in writing, to be proceedings in which it is desirable that the person give evidence; or

(iii) the purpose of giving assistance in relation to an investigation in Samoa certified by the Attorney General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(4) A certificate given by the Attorney General for the purposes of subparagraph (b)(ii) or (b)(iii) has effect from the day specified in the certificate and may have retrospective effect.

(b) Observations on the implementation of the article

55. The MACMA is in line with the provisions under review (s. 14).

Article 46 Mutual legal assistance

Paragraph 28
28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

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

Samoa provided the following information regarding the implementation of this provision:

Expenses are not covered by the *Mutual Assistance in Criminal Matters Act*. However, section 26 provides that assistance may be subject to such conditions as the Office of the Attorney General determines in a particular case.

**Mutual Assistance in Criminal Matters Act 2007**

26. Assistance may be provided subject to conditions –

Assistance under this Part to a requesting foreign State may be subject to such conditions as the Attorney General determines in a particular case or class of cases.

Section 13 of the *Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth* covers “expenses for compliance”. This has restricted scope.

**Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth**

13. (1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.

(3) If in the opinion of the requested country, the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

(b) **Observations on the implementation of the article**

The MACMA does not address the costs of executing MLA requests.

It is recommended that Samoa outline the responsibility for the costs of executing MLA requests.

**Article 46 Mutual legal assistance**

**Paragraph 29**

29. The requested State Party:
(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

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

Samoa provided the following information regarding the implementation of this provision:

Section 28 of the *Mutual Assistance in Criminal Matters Act* allows the requesting party to request the Attorney-General to assist in arranging the production of documents when certain requirements are met.

The term “document” is broadly defined in the *Mutual Assistance in Criminal Matters Act*.

*Mutual Assistance in Criminal Matters Act 2007*

2. Interpretation –

(1) In this Act, unless the context otherwise requires:

“document” means a record of information, and includes:

(a) anything on which there is writing; and

(b) anything on which there are marks, figures, symbols, or perforations having a meaning for persons qualified to interpret them; and

(c) anything from which sounds, images or writings can be produced, with or without the aid of anything else; and

(d) a map, plan, drawing, photograph or similar thing; and

(e) an electronic document;

28. Assistance in obtaining evidence in Samoa –

(1) A foreign State may request the Attorney General to assist in arranging the taking of evidence in Samoa or the production of documents or other articles in Samoa.

(2) Where the Attorney General is satisfied that:

(a) the request relates to a serious offence in the foreign State; and

(b) there are reasonable grounds for believing that the evidence can be taken or the document or article can be produced in Samoa,

the Attorney General may authorise assistance under this section.

(3) Where the Attorney General authorises the taking of evidence under this section, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge, and shall:

(a) cause the evidence to be put in writing and certify that the evidence was taken by the Judge; and

(b) cause the writing and certificate to be sent to the Attorney General.

(4) Where the Attorney General authorises the production of documents or other articles, a Judge may, subject to sections 29 and 30 and to any regulations made under this Act, require the production of the documents or other articles, and unless the Judge otherwise
orders, shall send the documents or copies of the documents (certified by the Judge to be true copies) or the other articles to the Attorney General.

29. Further provisions relating to obtaining evidence –

Subject to section 30, the laws of Samoa with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for an offence against the law of Samoa shall apply, so far as they are capable of application and with all necessary modifications, with respect to the compelling of persons to attend before a Judge, and to give evidence, answer questions and produce documents or other articles, for the purposes of section 28.

(b) Observations on the implementation of the article

The MACMA is in line with the provisions under review (s. 28).

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

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

Samoa indicated that it has implemented the provision under review.

(b) Observations on the implementation of the article

Although Samoa has not concluded any bilateral or multilateral MLA treaty besides the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, it could provide assistance regardless of the existence of a treaty. Moreover, the MACMA does not prevent Samoan authorities from concluding, as may be necessary, bilateral or multilateral agreements or arrangements on MLA.

(c) Technical assistance needs identified to improve implementation of the Convention

- Capacity building on handling MLA requests;
- Assistance in developing a case management system at the Attorney General’s Office.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.
(a) **Summary of information relevant to reviewing the implementation of the article**

There is no legislative provision for the transfer of criminal proceedings.

(b) **Observations on the implementation of the article**

There are no provisions governing the transfer of criminal proceedings.

It is recommended that Samoa consider establishing a framework for transferring criminal proceedings.

**Article 48 Law enforcement cooperation**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) **Summary of information relevant to reviewing the implementation of this provision**

Samoa provided the following information regarding the implementation of this provision:
The Money Laundering Prevention Authority (MLPA) is responsible for overall co-ordination of anti-money laundering issues, and the Money Laundering Prevention Task Force is the advisory body to the MLPA. Memoranda of Understanding have been signed between the MLPA/Samoan Financial Intelligence Unit (SFIU) and a number of key agencies.

**Money Laundering Prevention Act 2007**

7. Functions and powers of the Financial Intelligence Unit –

(1) The Financial Intelligence Unit:

…

(e) may enter into Memoranda of Understanding, agreements or arrangements with Samoan Government and non-governmental agencies and authorities, including the Police Service, the Customs Department, the Immigration Department, the Central Bank and the Samoa International Finance Authority, so as to ensure close liaison, cooperation and the secure exchange of information;

(b) **Observations on the implementation of the article**

Samoan law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including INTERPOL. Samoa Financial Information Unit (SFIU) can also cooperate with its foreign counterparts through its membership in the Egmont Group. SFIU is a member of the Association of FIUs in the Pacific. The Samoan TCU is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre (PTCCC) is hosted by the Government of Samoa.

Samoan has a range of tools for communication and analysis at the international level. Standard communication channels are used, in addition to secure covert channels like INTERPOL’s I24/7 database and Egmont Secure Web (ESW).

New Zealand and Australia have placed Liaison Officers who as appropriate act as advisers/mentors to the Samoa Police and help cooperate operationally. Samoa has been involved in exchanges of personnel, notably with Australia and New Zealand and Australia.

Samoan considers the Convention as the basis for mutual law enforcement cooperation. SFIU has also signed MOUs with the FIUs of Fiji, Indonesia and Papua New Guinea, and with the Association of Pacific Islands FIUs.

Part 18 of the CA (ss. 205 - 220) is dedicated to “crimes involving electronic systems” which allows Samoa to cooperate to respond to offences covered by the Convention committed through the use of modern technology. The Fraud Squad under the Criminal Investigation Division has specialized personnel to handle cyber-crimes.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations*
may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

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

Samoa provided the following information regarding the implementation of this provision:

All operational agencies (the Samoan Financial Intelligence Unit, Police, Transnational Crimes Unit (TCU), Revenue, Immigration and Customs) have established some form of relationship—bilateral, multilateral or both—with their overseas counterparts in the Pacific region. Informal information sharing occurs on a regular basis amongst those agencies. The Attorney General’s Office shares information with other AGOs and Police spontaneously via email.\(^{15}\)

The nature of information shared on this informal basis can range from access to case law to assisting with the location of a person of interest.

The Samoa Police regularly work with the New Zealand and Australian Police and the TCU shares and receives information through Interpol and the Pacific Transnational Crime Coordination Centre (PTCCC) on a daily basis.

The Samoa International Finance Authority (SIFA), in its supervisory role, exchanges information with its foreign counterparts. Through its competent authority the Ministry of Revenue, Samoa is also required to exchange and provide information under the United States’ Foreign Account Tax Compliance Act (FATCA) regime. Steps have been taken to commence negotiations with the United States for an Inter-governmental Agreement between Samoa and the US Internal Revenue Service (IRS). This will enable FIs to exchange the relevant information through the Ministry of Revenue to the IRS.\(^{16}\)

The ability to share information informally is enhanced by Samoa’s membership of various regional bodies eg. the Oceania Customs Organisation, Pacific Transnational Crime Network, the Pacific Immigration Directors Conference and the Association of Financial Supervisors of the Pacific Countries (AFSPC). SIFA is a member of a variety of organisations, including the Group of International Finance Centre Supervisors (GIFCS), Group of International Insurance Centre Supervisors (GIIICS), International Tax Planning Association (ITPA), Corporate Registers Forum (CRF), International Conference of Banking Supervisors (ICBS), and the Peer Review Group, Sub-Group of the OECD Global Forum (PRG). In addition, the provisions of various tax information exchange agreements permit the sharing of information with foreign counterparts in appropriate circumstances. Membership of these organisations enables SIFA to connect with peer regulators to seek assistance on an informal basis regarding supervisory and regulatory issues.\(^{17}\)

The Samoan Financial Intelligence Unit (SFIU) is a member of the Association of FIUs in the Pacific and has provided assistance to and received it from FIUs in PNG, Vanuatu, Cook Islands, New Zealand and Fiji. Through its membership of the Egmont Group (since 2011), the SFIU can request information from other FIUs that are members of the Egmont Group through the Egmont secure web account, and this occurred for the first time in 2014.


Information is also exchanged with non-counterparts. The SFIU regularly works with the New Zealand and Australian Police.

The Central Bank has signed a multilateral MOU with the Australian Prudential Regulatory Authority (APRA) on supervision matters including information sharing on AML issues for banks. It is noted however that APRA is not the anti-money laundering regulator in Australia, but rather AUSTRAC. Samoa does not have an exchange instrument in place with AUSTRAC. The Central Bank also has a close working relationship with the Reserve Bank of Fiji, and is a member of the Association of Supervisors. Samoa is proactive in seeking informal assistance and willingly provides assistance on request. There are operational measures in place to ensure that appropriate safeguards are applied (eg. there is secure communication of information through the Egmont Group website and through Interpol).18

The Financial Intelligence Unit has powers under the *Money Laundering Prevention Act* to share information with relevant foreign agencies.

*Money Laundering Prevention Act 2007*

7. *Functions and powers of the Financial Intelligence Unit* –

(1) The Financial Intelligence Unit:

…

(f) may provide information concerning a money laundering offence or an offence of the financing of terrorism, without the need for a request, to foreign agencies concerned with the prevention or investigation of money laundering or the prevention and suppression of terrorism, when such information comes to the attention of the FIU and may assist that foreign agency; and

…

(r) may disclose any report, any information derived from such report or any other information it receives to a government of a foreign State or an institution or agency of a foreign State or of an international organization established by the governments of foreign States that has powers and duties similar to those of the FIU as set out in sections 8 and 9, if on the basis of its analysis and assessment, the FIU has reasonable grounds to suspect that the report or information would be relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of financing of terrorism.

8. *Exchange of information agreements* –

(1) The Financial Intelligence Unit may, with the approval of the Authority, enter into an agreement or arrangement in writing with:

(a) the government of a foreign State; or

(b) an institution or agency of a foreign State or an international organization established by the governments of foreign States that has powers and duties similar to those of the Financial Intelligence Unit; or

(c) a foreign law enforcement or supervisory authority, regarding the exchange of information between the FIU and the government, institution, authority or agency, as the case may be.

(2) Agreements or arrangements entered into under subsection (1) shall:

(а) restrict the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence or an offence of the financing of terrorism, or an offence that is substantially similar to such offence; and

(b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the FIU.

(3) With or without any Memorandum of Understanding, agreement or arrangement, the Authority may approve any request for assistance and information received from a foreign agency concerned with the prevention of money laundering or the financing of terrorism; but any information given is to be subject to the restrictions provided in subsection (2).

(4) A request approved under subsection (3) shall be treated as a matter to be investigated and analysed by the FIU and the foreign agency shall have all authority and powers of request for information and instructions and enforcement, as are available to the FIU for any other matter being investigated and analysed by it and such authority and power shall be exercised by the FIU on behalf of the foreign agency.

9. Disclosure to foreign agencies –

(1) The Financial Intelligence Unit may disclose any information to an institution or agency of a foreign State or to an international organization or other institution or agency established by the governments of foreign States that has powers and duties similar to those of the FIU, on such terms and conditions as are set out in the agreement or arrangement between the FIU and that foreign State or international organization or its institution or agency, as the case may be, regarding the exchange of such information.

(2) Nothing in subsection (1) limits the power of the Financial Intelligence Unit to disclose its information to an institution or agency of a foreign State or to an international organization or other institution or agency established by the governments of foreign States that has powers and duties similar to those of the FIU, for the purposes of an investigation, prosecution or proceedings relating to a serious offence, a money laundering offence or an offence of the financing of terrorism.

Samoa provided the following as examples of the implementation of those measures:

Samoa regularly seeks informal assistance from other countries, particularly Australia and New Zealand. Such requests are made as required and Samoa reports that its requests are generally dealt with promptly and efficiently. Samoa was not able to provide comprehensive data on the countries from which informal assistance was requested, or the number, type and outcome of requests made to foreign countries relating to predicate offences for money laundering. However, the following examples were provided as part of the Mutual Evaluation Report conducted by the Asia-Pacific Group on Money-Laundering:19

Informal international co-operation with Australia and New Zealand

Mr S – this defendant was prosecuted for fraud. The defendant was an acting CEO in a Government institution in which he corruptly used his position to steal money from the Government of Samoa.

---

There were many issues with this case, including the fact that, as the case arose some years after the first offence, the paper trail of evidence had been disposed of. Furthermore, many of the witnesses had left Samoa to reside overseas. The AGO informally sought the assistance of the New Zealand and Australian Governments to locate witnesses and obtain witness statements. These statements were then submitted as evidence at trial. The New Zealand and Australian Police became the liaisons between Samoa AGO and the witnesses. The co-ordination of this case was a success resulting in the prosecution of the defendant.

**Informal international co-operation with New Zealand**

Mr A – the defendant was an employee of the Government corporation, investigated for fraud against his employer. The defendant escaped the jurisdiction on a Samoan passport and went to New Zealand on a visa. The Samoa AGO sought the assistance of the New Zealand Police to locate the defendant. The New Zealand Police put the defendant under surveillance over a two-year period as the defendant was elusive to the Police. The New Zealand Police were able to arrest him and he was deported as an over stayer. The defendant was successfully prosecuted and is awaiting sentencing before the Supreme Court of Samoa.

**Co-operation through the Egmont Group Possession of narcotics** – In August 2014, the SFIU (on behalf of the Attorney General’s Office) requested from Country X’s FIU information in relation to a Samoan couple who fled to Country X while under investigation for possession of narcotics. Country X’s FIU provided a report in November 2014 and SFIU acknowledged the report. The SFIU distributed the report to relevant local agencies (as authorised by Country X’s FIU) for information and to assist with their investigations. The case is still pending.

**Suspected structuring of funds** – In August 2014, the SFIU made a request to Country A’s FIU regarding a local doctor who had been transferring funds (via internet banking) from his account in Country A to his SAT account. The doctor is suspected of structuring funds in order to avoid the $10,000 threshold. SFIU received a report in October 2014 from Country A FIU, which highlights that the doctor has an internet banking system limit of $10,000. SFIU acknowledged Country A’s assistance.

(b) **Observations on the implementation of the article**

Samoan Police is able to work jointly with foreign counterparts pursuant to Part IV of the Police Powers Act and has done so with both New Zealand and Australian Federal Police.

**Article 50 Special investigative techniques**

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full
compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

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

Samoa provided the following information regarding the implementation of this provision:

The **Police Powers Act** allows for members of the police to apply for a surveillance warrant to intercept a private communication by means of an interception device and/or to record visually or observe an activity of a person by means of an optical surveillance device in any case where there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence.

The term “serious offence” is defined by reference to the term “unlawful activity” which is any offence punishable by at least 12 months imprisonment except for those that relate to the regulation, imposition, calculation or collection of taxes or the enforcement of exchange control regulations.

Section 46 of the **Counter Terrorism Act** provides for controlled delivery for offences under that Act.

**Police Powers Act 2007**

2. Interpretation—

(1) In this Act, unless the contrary intention appears:

“interception device” means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication;

“optical surveillance device” means any device capable of being used to record visually or observe an activity but does not include spectacles contact lenses or a similar device used by a person with impaired sight to overcome that impairment;

“serious offence” means an offence against any law of Samoa that would constitute unlawful activity;

“surveillance device” means an interception device or an optical surveillance device;

“unlawful activity” means any act or omission that constitutes an offence and that is punishable, under the laws of Samoa, by imprisonment for a maximum period of not less than 12 months, 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;

**PART 2 - SURVEILLANCE WARRANTS**

3. Application for a surveillance warrant—
(1) An application may be made in accordance with this section to a Judge for a warrant for any member of the police to:

(a) intercept a private communication by means of an interception device; or

(b) to record visually or observe an activity of a person by means of an optical surveillance device; or

(c) to use both an interception device and an optical surveillance device, –

in any case where there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence.

(2) An application under subsection (1) shall be in writing and on oath, and set out the following particulars:

(a) the facts relied upon to show that there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence; and

(b) a description of the manner in which it is proposed to intercept private communications or record or observe activities; and

(c) the name and address, if known, of the person whose private communications or a record or observations of whose activities there are reasonable grounds for suspecting will assist the police investigation of the case or if the name and address of the suspect are not known, a general description of the premises, place, thing, or type of facility in respect of which it is proposed to intercept private communications or record or observe activities; and

(d) the period for which a warrant is requested.

3A. Purpose of surveillance warrants –

The purpose of a surveillance warrant is to allow police to gather information and evidence that will assist them in their fight against organised crimes.

Counter Terrorism Act 2014

46. Controlled delivery of property –

An authorised officer who has reasonable grounds to believe that a person has committed, is committing or about to commit an offence under this Act, may allow the person’s property to enter, leave or move through Samoa, for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

(b) Observations on the implementation of the article
Special investigative techniques envisaged under the PPA may be used in relation to offences covered by the Convention, including communication interception and surveillance. Those methods can be made available in the context of international cooperation.

Samoa does not regulate undercover operations. Controlled delivery is only possible in relation to terrorist offences.

Samoan legislation does not prevent the conclusion of appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques.

It is recommended that Samoa take measures to widen the scope of special investigative techniques to allow for the use of controlled delivery and, where appropriate, undercover operations, and make those methods available in the context of international cooperation.