



Samoa: “Lifting the Bar on International Finance”

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The above slogan recently utilised by the Samoa International Finance Authority (also known as SIFA) as the major sponsor for the 2007 International Weightlifting Federation World Cup, encapsulates the jurisdiction's aspirations in enhancing its reputation on the global front and its bid to attract international financial business. This is particularly pertinent to an industry where a compliance culture in relation to international standards is fast becoming the norm. There is a growing recognition that any jurisdiction with ambitions in the area of cross border financial activities is required to use its best endeavours in striving to achieve compliance with established and newly emerging standards on the supervision of licensed financial institutions. Samoa is no exception, as will become evident from this article.

The past 12 months has witnessed a flurry of activity in the Samoa International Finance Authority. As an umbrella body established more than two years ago to oversee, regulate and promote Samoa's international financial centre, SIFA has to date proven to adequately meet its statutory obligations. One of its foremost aims is to promote our offshore facilities to the global market. It is no secret, however, that since its inception in the late 1980s, Samoa has deliberately set its sights upon the Far East as its main market for several reasons. These include the excellent diplomatic relations with the Peoples Republic of China (being one of the first countries to recognise the sovereignty of the currently fastest growing economy in the world). Additionally, Samoa's geographical location just east of the International Dateline has lent SIFA the ability to incorporate a company yesterday for the Asian client, and the

distinction of being the last International Financial Centre in the world to close business for the day.

The other rationale behind SIFA's strategic vision in targeting Asia is the rugby prowess of its national Manu Samoa Rugby 7s Team, greatly admired by avid followers of the prestigious Hong Kong 7s Rugby Tournament. It has become a well known tradition since the early 1990s for Samoa to plan its promotional activities in Asia to coincide with the Hong Kong rugby tournament in order to capitalise on this much needed hype and publicity. Indeed, the popularity of the Manu Samoa Rugby 7s Team recently reached lofty heights in March 2007, when it won the much acclaimed Hong Kong Cup, a fitting finale to SIFA's vigilant promotional efforts conducted in Asia in March. Meetings conducted between the visiting Samoa delegation with the Hong Kong and Singapore principals of licensed trustee companies played a vital role in keeping abreast of modern user trends in cross border finance. The promotional visit also provided a valuable opportunity for SIFA to assure investors they placed their investment in a credible jurisdiction. The consistently held annual door knocking on potential users, in addition to other promotional functions and seminars in Asia, have resulted in a high level of patronage from these vibrant economies. This is reflected in how Samoa's offshore products have evolved over the years with special features catering for the Asian client. For example, Samoa is arguably the first jurisdiction to offer the ability to register a company name and or its Memorandum and Articles in the Chinese language provided there is a certified English translation. Promotional literature available to potential investors is printed in both English and the Chinese languages.

One of SIFA's cardinal legal

obligations is to monitor and supervise the conduct of international financial services provided within Samoa. This is most crucial in light of the intense scrutiny upon offshore financial centres which persists to date. In response, substantial efforts have been made which include the enactment of raft legislation in recognition of Samoa's responsibilities to the international community. These new laws are namely the Money Laundering Prevention Act 2007, the Proceeds of Crime Act 2007, and the Mutual Legal Assistance in Criminal Matters Act 2007. A noteworthy feature of the raft laws are the definitions and provisions common to all three pieces of legislation which are centrally defined in the Proceeds of Crime Act 2007. The Money Laundering Prevention Act 2007 establishes a Financial Intelligence Unit (FIU) which receives, collects and/or investigates information relevant to serious offences, money laundering activities or the financing of terrorism. Moreover, the FIU is empowered to enter into Memoranda of Understanding (MOU) agreements or arrangements not only with national but international government and non-governmental agencies and authorities. All offshore entities are caught under the Act by virtue of activities which deems them to be financial institutions. The schedule of activities as defined includes licensed international banks, trustee and insurance companies, and trusts.

The new law explicitly outlines all substantive requirements related to customer identification, verification, record keeping and maintenance plus suspicious transaction reports.

Further, the Act requires financial institutions to monitor transactions that have no apparent or visible economic or lawful purpose and pay special attention to complex transactions and business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or the financing of terrorism.

The new Proceeds of Crime legislation fills a gap in Samoa's compliance with international standards as promulgated by the Financial Action Task Force (FATF) on Money Laundering. "Proceeds of crime" is defined as "any property wholly or partly derived or realised whether directly or indirectly from a serious offence whether situated within or outside Samoa". The Act further defines a "serious offence" as an offence against any law of Samoa that would constitute unlawful activity or against the law of a foreign state that if the relevant act or commission had occurred in Samoa would be an offence that would constitute unlawful activity.

"Unlawful activity" means any act or omission that constitutes an offence that is punishable under the law of Samoa for a maximum period of not less than 12 months. The low threshold with respect to penalties incurred for an offence deemed to constitute unlawful activity demonstrates the seriousness which the jurisdiction attaches to its international responsibilities.

Samoa's ability to assist in matters of international co-operation is further enhanced by the range of powers afforded to the Attorney General to make application to the court for the forfeiture and confiscation of all proceeds of crime. The Act also allows for the general freezing and confiscation, freezing and forfeiture of instrumentalities used in or intended for use in the commission of a serious offence. In addition, the court may order a pecuniary penalty order in lieu of forfeiture where the proceeds of crime cannot be traced or confiscated.

Additional enhancements to Samoa's position in relation to international co-operation, is by way of the Mutual Assistance in the Criminal Matters Act 2007. There is now scope for a foreign jurisdiction to obtain information on a wide array of criminal matters including criminal tax matters, e.g. a mutual legal assistance request from a foreign state can be made to the Attorney General or other person authorised by him, for assistance or information where the Attorney General is satisfied that the request relates to a criminal matter, in respect of a foreign serious offence, and there are reasonable grounds for believing evidence can be taken or a document or article can be produced in Samoa.

Any request may be refused in whole or in part if in the Attorney General's opinion, the request would be likely to prejudice the sovereignty, security or other essential public interest of Samoa, or would be against the interests of justice.

Other efforts of the Samoa International Finance Authority towards elevating its standards on international finance are apparent from its membership of peer regulatory groups which promote adherence to prevailing international standards. They include the Asia Pacific Group (APG) on Money Laundering, the International Association of Insurance Supervisors (IAIS) and the Offshore Group of Insurance Supervisors (OGIS). Additionally, the proactive stance of Samoa in all international fora, which has implications on the future development of its offshore industry, is most evident from the various leadership roles it plays. For instance, Samoa is Co-Chair of the Sub Group on the Level Playing Field and the OECD Global Tax Forum.

A further testament to Samoa's efforts in lifting the bar in cross border financial services is its willingness to embrace independent evaluations of its supervisory regimes and practices by multinational organisations. In February 2007, Samoa underwent its second assessment by the International Monetary Fund (IMF) pursuant to the OFC Assessment Programme. The resulting IMF Report noted progress being made by the local authorities in complying with the Basel Core Principles for Effective Banking Supervision. For example, the International Banking Act 2005 which deals extensively with the issue of "shell banks" compels licensed banks to establish physical premises in Samoa, to employ at least one full time individual, and to keep its operations and records within the jurisdiction. Other major changes enacted in the new banking regime include the need to have a minimum of two directors who must be natural persons, one of which must be a resident director.

The requirement for managers, and controllers of a bank to be "fit and proper" in terms of their integrity, competence and solvency is also made explicitly clear.

Besides its application to regulatory standards, the SIFA slogan is inextricably linked to how, as a jurisdiction, we respond to the commercial needs of the global investor. Since inception, the main strategy underpinning the operation of Samoa's International Financial Centre, has been the development of a highly efficient and innovative centre, which can be depended upon and trusted by the financial community. Within this context, the key administrative features are the timely registration of companies with the minimum of red tape. To further improve its efficiency, SIFA recently introduced the first phase of a registry project to facilitate direct online name checks by the locally licensed trustee companies. The long-term objective which is essential in maintaining Samoa's competitiveness especially in this day and age is to operate a paperless registry. To this end, the local authorities are committed to ensuring that the new computerised system to assist the trustee companies and SIFA to handle all documentation electronically will eventuate in the near future. Such a milestone event for Samoa will become another notch in lifting the standards on international finance.



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