

Samoa's anti-money laundering legislation - A defining moment

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The current experience of the Samoa jurisdiction cannot be seen in isolation, as it is part of a fast emerging global process, stemming from concerns about significant gaps in the global system in relation to financial supervision and money laundering. We are seeing, therefore, the unfolding of various global initiatives, including the Financial Stability Forum (FSF), and the Financial Action Task Force (FATF) on Money Laundering, both of which are promoting standards of best practice in financial supervision and anti-money laundering measures respectively.

Prior to these initiatives however, the government, out of self-interest for the long-term viability of the Samoa Offshore Finance Centre, conducted a review of its offshore laws with the assistance of the Commonwealth Secretariat in 1996. The review resulted in significant changes being made to both the Offshore Banking and International Insurance Acts in 1998. The amendments include the introduction of gateway provisions, allowing regulator to regulator disclosure for supervisory purposes only, and the imposition of stricter controls on banking and insurance licence holders. Being mindful of our responsibilities to the global community in combating money laundering, the most notable new legislation resulting from the review is the Money Laundering Prevention Act 2000.

Samoa's anti-money laundering regime, enacted on the 14 June 2000, is based on the Commonwealth model.

The Commonwealth model was chosen in the light of resource constraints, as its objective is to prevent money laundering fairly, without imposing an undue administrative, or financial burden on government or financial institutions. The Act is in compliance with international standards, as it encompasses the benchmark Forty Recommendations of the Financial Action Task Force (FATF) on Money Laundering. At the regional level, the Act is testimony to our commitment to the 1992 Honiara Declaration of the Pacific Forum Island nations, which entails having the requisite legislation to strengthen cooperation in the region in efforts to combat transnational crime.

A noteworthy feature of the new regime is that definitions and provisions are common to all parts of the law, thus the importance of section two on interpretation. The crucial terms defined include "money laundering", "proceeds of crime", "identification record" and "competent authority". "Money laundering" is defined as engaging, whether directly or indirectly, in any transaction that involves property which is the proceeds of crime, or having reasonable grounds for believing the property represents the proceeds of crime. The penalties for a person guilty of money laundering include imprisonment for a maximum period of seven years and/or a fine not exceeding SAT 1,000,000 (approximately US\$300,000).

Other salient features of the Act

1. Money Laundering is about ill-gotten gains, and therefore presupposes that

an offence has been committed. Offences caught under the Act, are listed in Schedule 2, with Part "A" specifying local offences in line with domestic requirements, and Part "B" prescribing offences in offshore activities in generic terms.

2. It sets up a Money Laundering Authority within the Central Bank of Samoa, which is charged with obligations that include the following:
 - (a) To receive reports of suspicious transactions issued by financial institutions; and
 - (b) To consider suspicious transaction reports and, if warranted, refer them for investigation by the competent authority (the Attorney General and Commissioner of Police).
3. It covers all financial institutions whose activities are widely listed in Schedule 1 of the Act, and include offshore banking business services, insurance business transactions, trust company business, accountants, solicitors, money transmission services etc.
4. It imposes mandatory obligations on financial institutions, which are essentially "know your customer" principles, and other responsibilities such as:
 - (a) Keeping a business transaction record of any new business transaction exceeding SAT 30,000 (approximately US\$10,000) for a period of seven years, following completion of the transaction;
 - (b) Developing policies and procedures to combat money laundering; and
 - (c) Complying with guidelines issued by the Money Laundering Authority.

5. It overrides secrecy obligations in any enactment, if there is a money laundering investigation.
6. It introduces currency reporting at the border, and provides that any person who leaves Samoa with more than SAT 10,000 (approximately US\$3,000) in cash or negotiable bearer instruments without first declaring the fact to the Money Laundering Authority, commits an offence under the Act. Penalties on conviction include imprisonment for a maximum period of five years and/or a fine not exceeding SAT 10,000 (approximately US\$3,000).
7. It introduces Mutual Assistance in relation to Money Laundering for example, facilitating cooperation between governments to ensure that a legal and administrative framework exists for cross-border investigations into money laundering.

Our competent authority is therefore able to assist a foreign state with whom Samoa has mutual assistance arrangements, in a money laundering investigation, by obtaining

search warrants, or freezing and forfeiture orders.

Conversely, our competent authority amongst other things, is able to issue to a foreign state for instance, a request sanctioned by a court order to a non-resident person to deliver himself, or any document to the court's jurisdiction. There is also provision for asset sharing with a foreign state, of the whole, or part of the forfeited property, or its value pursuant to a ministerial order.

8. It makes money laundering an offence for the purposes of extradition or rendition of fugitive offenders.

The newly created Money Laundering Authority has hosted a public seminar to raise the awareness of the financial community regarding the rationale of the Act and their statutory obligations. Moreover guidelines on "know your customer" rules for instance, are being considered, with regard to the wide scope of activities of financial institutions contained within the law.

Further illustrations of Samoa's

commitment to the fight against money laundering are its endorsement of the United Nations Programme Against Money Laundering prior to September 2000 and its membership of the Asia Pacific Group (APG) on Money Laundering in June 2000. Despite the novelty of its membership status, the jurisdiction most recently welcomed the opportunity to be evaluated, not only by the Asia Pacific Group on Money Laundering, but by the Offshore Group of Banking Supervisors. The Samoa authorities view such evaluations as a valuable opportunity to obtain an independent assessment of the performance of the regulators in the financial sector and to ascertain, and identify areas which require improvement.

Such a view is consistent with the recognition that the reputation of Samoa as a responsible jurisdiction is to be maintained, hence the need to continually review its operations in the light of internationally recognised standards.