United Nations CAC/COSP/IRG/II/5/1/Add.4

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
26 July 2024

Original: English

Implementation Review Group
First resumed fifteenth session
Vienna, 28 August–6 September 2024
Agenda item 4
State of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

Page

II. Executive summary 2

Samoa 2

V.24-14692 (E) 160824 190824

Please recycle

II. Executive summary

Samoa

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

Samoa acceded to the United Nations Convention against Corruption on 16 April 2018.

The implementation by Samoa of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle. The executive summary of that review was issued on 2 July 2020 (CAC/COSP/IRG/I/4/1/Add.69).

Relevant legal instruments include the Public Service Act, the Audit Act, the Crimes Act, the Electoral Act, the Money-Laundering Prevention Act, the Ombudsman Act, the Public Finance Management Act, the Proceeds of Crime Act, the Mutual Assistance in Criminal Matters Act and the Treasury Instructions.

Institutions with mandates relevant to preventing and countering corruption include the Public Service Commission, the Office of the Ombudsman, the Office of the Attorney-General, the Samoa Audit Office and the Financial Intelligence Unit.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Samoa does not have a comprehensive national anti-corruption policy. There are different policies and legal instruments that provide for the prevention and criminalization of corruption, including the country's medium-term development plan, entitled "Pathway for the development of Samoa FY2021/22–FY2025/26", as well as sectoral plans and various laws that promote good governance, integrity, transparency and accountability. The development of a national anti-corruption policy represents a commitment by the Government to strengthen integrity, accountability and coordination.

The aforementioned policies were developed through broad-based stakeholder consultations involving public consultations in all districts, various sectors, including the private sector, civil society and the Government.

Corruption prevention practices are carried out mainly using the existing legislation and the various policies of the Government on good governance. Efforts to enhance preventive practices based on assessments of effectiveness are ongoing.

Law reform is promoted either on the initiative of the Attorney-General or by individual ministries whenever the need arises. The Law Reform Commission of Samoa supports the review and revision of laws on the initiative of the Prime Minister, the Cabinet, the Minister for Law Reform or the Attorney-General, including at the request of government ministries, or on its own initiative, and conducts consultations with relevant stakeholders. The Electoral Act is reviewed after every general election.

Samoa is involved in the anti-corruption initiatives of the International Organization of Supreme Audit Institutions and the Pacific Association of Supreme Audit Institutions, is a participant in the Pacific Public Service Commissioners' Conference and is a member of the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat and the Association of Pacific Island Financial Intelligence Units. Samoa is also a chapter member of the Association of Certified Fraud Examiners and a member of the International Ombudsman Institute, Australasia and Pacific Ombudsman Region.

There are four main bodies tasked with corruption prevention that are vested, as constitutional offices, with a measure of legal and operational independence, as

discussed in the following paragraph. Other relevant bodies include the Money-Laundering Prevention Authority, the Financial Intelligence Unit and the Ministry of Finance. Guidelines have been developed by the Public Service Commission on cooperation and the coordination of investigations on matters of integrity, and the relevant agencies meet regularly through the National Coordinating Committee. At the time of the country visit, steps were under way to establish a fully independent national integrity office, which would solidify anti-corruption efforts, further enhance public education and awareness-raising activities and strengthen coordination.

The Ombudsman, the Attorney-General, the Auditor-General and members of the Public Service Commission are appointed by the Head of State acting on the advice of the Prime Minister or, in the case of the Ombudsman, on the recommendation of the Legislative Assembly (arts. 41, 82A, 84, 97 and 99F of the Constitution; sects. 6 and 15 of the Ombudsman Act). Removal procedures follow the same process, except that members of the Public Service Commission may be removed in the same manner as judges of the Supreme Court (art. 85 of the Constitution) and no procedure is stipulated for the removal of the Attorney-General. Some offices, such as those of the Ombudsman and the Attorney-General, are accorded financial stability under the Constitution.

There is a need to strengthen the legal and financial independence of the aforementioned bodies, and for continued investment in resources and the specialized training of staff.

Samoa was reminded of its obligation under article 6 of the Convention to inform the Secretary-General of the United Nations of the name and address of its authority or authorities responsible for corruption prevention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Sections 18, 35 and 36 of the Public Service Act provide that appointments and promotions must be made on the basis of merit. Efficiency, merit, equity and aptitude are principles of the public service (sect. 18). Vacancies are to be advertised in accordance with section 34 of the Act.

For agencies not under the Public Service Commission, pursuant to article 83(i) of the Constitution and section 3 of the Public Service Act, conditions for appointment, suspension and termination are established under separate legislation (e.g. the Police Service Act, the Prisons and Corrections Act and legislation applicable to constitutional authorities and State-owned enterprises).

The rate of salaries and allowances as determined by the Public Service Commission must be reasonable (sects. 18 and 23 of the Public Service Act) and is reviewed by the Remuneration Tribunal. General salary scales are published in the annual report of the Commission, together with statistics on breaches of the code of conduct and information on overall trends, vacancies and other public service data.

Enhanced recruitment procedures are in place for some categories of officials at risk of corruption, such as senior executives and police officers. Public service ethics training is provided to groups including customs, immigration and police officers, and cashiers and officers in payroll, accounting, legal and policy departments, as identified in the draft national anti-corruption policy. Rotation procedures are not in place.

With regard to training, section 18 of the Public Service Act states, as a principle of employment, that employees must have reasonable access to training and development opportunities. Various training courses are conducted on ethics and integrity.

The Constitution prescribes eligibility requirements for election as a member of the Parliament, including requirements related to nationality and to the absence of a disqualification under the Constitution or any other law (art. 45). Article 18 of the Constitution sets out the qualification requirements for the Head of State, who is elected every five years by the Parliament.

By law, persons who do not meet specified qualification criteria and those who have been convicted of a criminal offence or a corrupt practice and whose name has not been removed from the Corrupt Practices List under section 139 of the Electoral Act are disqualified from standing for election (sect. 8 of the Act). The list is not public but is available to the Electoral Commission, which conducts eligibility screenings.

There is no legislative or administrative requirement to file or disclose information regarding the funding of political parties, electoral campaigns or expenditure.

The code of conduct for public servants and chief executive officers (sect. 19 of the Public Service Act) provides that employees and chief executive officers must disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment. The term “conflict of interest” is not defined; however, some guidance for chief executive officers on managing breaches of the code of conduct is contained in the Discipline Manual and the guidelines on managing conflicts of interest issued by the Public Service Commission. Breaches of the code of conduct are subject to disciplinary sanctions (sects. 44–47 of the Public Service Act).

Additional conduct-related requirements are included in the Public Service Regulations, including a prohibition on secondary employment except as approved by the Public Service Commission (regulation 34) and a prohibition on requesting or receiving gifts from any person or entity concerned with any matter connected with an employee’s official duties (regulation 40).

The Cabinet Handbook prohibits conflicts of interest, whether real or apparent, between the public duties of ministers and their private interests (sect. 1.33). Ministers are expected to, inter alia, devote the whole of their time to duties of their offices and receive remuneration from public funds, and must, from the outset of their appointment, declare their private pecuniary interests to the Prime Minister. However, there is no requirement to declare non-pecuniary interests. Ad hoc disclosures by ministers and requests for recusal are also required before a meeting of the Cabinet, by declaration to the Prime Minister (sect. 1.35). It is unclear whether these requirements are implemented in practice.

A code of conduct for members of the Parliament is contained in part 4 of the Legislative Assembly Powers and Privileges Ordinance of 1960. Members of the Legislative Assembly are prohibited from accepting or attempting to accept any form of bribe, compensation or benefit for their actions or inactions as members, and violations can result in a term of imprisonment of up to two years (sect. 20 of the Ordinance). Members can be found in contempt for various actions, such as the unauthorized publication of committee evidence, assault or obstruction of fellow members or officers and receipt of a conviction for offences under the Ordinance (sect. 21). The Assembly has the authority to refer such matters to the Privileges and Ethics Committee or the Prime Minister for further investigation and potential legal proceedings (sect. 21(3)). Punishments for contempt may include reprimand or suspension, during which the member’s salary and allowances are withheld (sect. 21(4)–(5)). Members are also prohibited from taking part in the discussion of any parliamentary matter in which they have a direct pecuniary interest without disclosing the extent of that interest (sect. 23). Failure to disclose can be considered contempt, subjecting the member to the same penalties as other contempt offences (sect. 23(2)). These rules are applied in practice, as the Privileges and Ethics Committee has suspended members for contempt and breach of parliamentary privileges.

The Code of Parliamentary Ethics in the Parliamentary Standing Orders further prescribes that members of the Parliament should responsibly manage private affairs, use information from public office ethically and exercise influence solely for the public interest (order 15). Members must declare any conflicts of interest and take steps to address them (order 15). Special rules for ministers and officeholders require these members to strictly adhere to ethical principles and avoid decisions that benefit them personally (order 15). Breaches of the Code can be addressed by the Privileges and Ethics Committee or as determined by the Parliament (order 15). It was explained that these rules require members to declare any private, financial or pecuniary

interests that could conflict with their public duties, particularly in legislative matters, and that members must arrange their private affairs to avoid such conflicts.

Public servants must disclose personal interests and any material changes to their supervisors (part 3(f) of the Discipline Manual). Chief executive officers are also required to report their private interests (sect. 19 of the Public Service Act).[1] Furthermore, ministers are required, from the outset of their appointment, to declare their private pecuniary interests to the Prime Minister and to make ad hoc disclosures before Cabinet meetings to the Prime Minister requesting absence from the consideration of a particular item if they have a direct personal interest in the outcome of the Cabinet's consideration of it (sect. 1.35 of the Cabinet Handbook). Additional ad hoc disclosure requirements apply to certain offices, such as that of the Ombudsman, and to members of the Government Tenders Board. For information on asset declarations, see the section on article 52, paragraph 5, of the Convention below.

Public servants can report corruption internally to liaison officers of the Ombudsman posted in all ministries and public bodies, or externally, as described in the section on article 13 of the Convention below. The Public Service Commission is developing an online portal for public servants in ministries to anonymously report wrongdoing. A whistle-blower policy is being developed.

The independence of the judiciary is not enshrined as a principle by law or in the Constitution.

The Supreme Court consists of the Chief Justice, who is appointed by the Head of State acting on the advice of the Prime Minister, and other judges appointed by the Head of State acting on the advice of the Judicial Service Commission (art. 66 of the Constitution). Supreme Court judges must possess qualifications prescribed by the Head of State acting on the advice of the Commission and must have been in practice for at least 10 years (art. 66).

The Chief Justice cannot be removed from office, except by the Head of State on the decision of the Parliament (art. 67(6) of the Constitution). By constitutional amendment, the parliamentary process that previously governed the removal of judges has been replaced by the power of the Head of State, acting on the advice of the Judicial Service Commission, to determine conditions for the tenure, suspension and removal of judges of the Supreme Court and the subordinate court from office (art. 79). The Judicial Service Commission is established under article 79 of the Constitution. The majority of its members are appointed by the executive. A review of the independent budget of the judiciary and judicial remuneration is under way.

Non-binding judicial conduct guidelines have been established but are not publicly available. Some training on judicial ethics is conducted.

The Attorney-General is appointed by the Head of State acting on the advice of the Prime Minister, and holds office for such term and under such conditions as determined by the Head of State acting on the advice of the Prime Minister. The Attorney-General must be qualified to be a judge of the Supreme Court (art. 41 of the Constitution). The draft national anti-corruption policy provides for the reinstatement of an independent prosecution service. Prosecutors in Samoa are civil servants governed by the Public Service Act. A prosecutors' code of conduct was developed but is no longer in force, and some ethics training is conducted.

Public procurement and management of public finances (art. 9)

Public procurement is regulated by the Public Finance Management Act (part 12) and the Treasury Instructions (sect. 6, part K). The Treasury Instructions apply to all government departments and bodies and cover all government procurement using

[1] In total, 19 chief executive officers fall under the jurisdiction of the Public Service Commission and are required to report to it. The remaining chief executive officers of public and constitutional bodies report to the board of the relevant entity (in the case of a public body) and as prescribed under the applicable legislation (in the case of a constitutional body).

public funds (instruction K.1.1.2), except activities excluded under the Procurement Operating Manual.[2]

The Ministry of Finance has overall responsibility for public sector procurement and for developing public procurement policy, procedures and documentation, for informing legislation and for monitoring the effectiveness of the implementation of the policy.

The Government Tenders Board is constituted under section 88 of the Public Finance Management Act and reports to the Cabinet, which is responsible for approving public procurement valued above 500,000 tala (sect. B.2.1 of the Procurement Operating Manual).

Procurement must be advertised or disseminated publicly and be carried out in conditions of fair competition free of corruption or collusion, on the basis of transparency, accountability, effectiveness and efficiency (instruction K.2.1 of the Treasury Instructions). Open competitive bidding is the primary procurement method for procurement with a value above specified thresholds,[3] and alternative methods may be used with the prior written approval of the Government Tenders Board (instruction K.3 of the Instructions), regardless of the threshold. That written approval forms part of the record of procurement proceedings (sect. C.2.1 of the Procurement Operating Manual).

Bidding documents must be ready prior to publication of the procurement notice and contain detailed requirements, including the means for evaluation, as stipulated in instructions K.5 and K.6 of the Treasury Instructions.

Grounds for suspension or debarment, including conviction for an offence involving corruption or unethical conduct, have been established, and the Ministry of Finance is responsible for maintaining a register of debarred persons, firms and companies (instruction K.8A of the Treasury Instructions).

Persons with any form of conflict of interest are required to immediately disclose that interest to the relevant chief executive officer or procuring entity and to refrain from being involved in the procurement (instruction K.9B of the Treasury Instructions). Former employees of procuring entities are subject to a stand-down period of 12 months before being eligible to participate in public procurement, unless the absence of a conflict of interest has been proved (instruction K.5). The Procurement Operating Manual contains additional anti-corruption and conflict-of-interest standards for procuring officers (sect. C.8.2).

A complaints and review procedure by an independent adjudicator has been established (instruction K.9 of the Treasury Instructions), subject only to judicial review by the courts (instruction K.9.8).

Tender awards are published on the website of the Ministry of Finance. Capacity-building is provided through a programme aimed at professionalizing the public service and conducting compliance training.

Article 94 of the Constitution and section 23 of the Public Finance Management Act provide for the adoption of the national budget. Budget estimates and the budget address are available on the website of the Ministry of Finance. The Ministry's public communications policy encourages participatory budgeting, but this is not fully implemented.

The Public Finance Management Act sets out responsibilities for financial management and fiscal responsibility. The Treasury Instructions establish further provisions related to control of expenditure, annual estimates and appropriation

[2] These include the Government's central financial control functions, such as central banking by the Central Bank, management of government debt by the Ministry of Finance and essential security interests (sect. A.2 of the Procurement Operating Manual).

[3] According to the Procurement Operating Manual, the open competitive tender method is the default method for the procurement of works valued above 150,000 tala and of goods valued above 100,000 tala.

(sect. 2), and accounting and internal controls (sect. 3). The Financial Secretary, heads of department and accounting officers are each tasked with safeguarding the collection and custody of public money and property, ensuring economy, efficiency and effectiveness and the avoidance of waste and properly maintaining accounts and records (sect. 3, part C, of the Instructions).

Part D of the Treasury Instructions provides for a system of accounting and internal controls.

Part 14 of the Public Finance Management Act stipulates the rules for financial reporting, including the submission of quarterly reports to the Audit Office and their publication (sect. 108). Public accounts and quarterly statements are made available online.

The Constitution stipulates that the Controller and Chief Auditor must audit all public accounts and funds and report at least annually to the Legislative Assembly (arts. 97A and 98). Audit reports become public on the date they are tabled in the Assembly (sect. 42 of the Audit Act). The Audit Act stipulates systematic follow-up on audit recommendations in the form of management letters.

Part 15 of the Public Finance Management Act sets out offences and discipline for failure to comply with the regulations on public financial management.

Pursuant to section 17 of the Public Records Act, persons and public entities responsible for the control of public records must take reasonable measures to ensure the safe custody and proper preservation of those records. Section 3, part C of the Treasury Instructions contains detailed time frames and retention periods.

Public reporting; participation of society (arts. 10 and 13)

Samoa does not have legislation on freedom of information, although a number of ministries and government agencies are mandated by law to make reports on their performance available. A policy on access to information is being developed.

Several initiatives have been undertaken to enhance public service delivery, such as the provision of community outreach services, referral systems and liaison officers. The “Talofa with a Smile” initiative is aimed at improving customer service delivery and address it as a corruption vulnerability at the leadership level.

Although some sectoral assessments have been carried out, there have been no comprehensive or periodic reports assessing the risk of corruption in the public administration.

Article 13 of the Constitution guarantees freedom of expression. Civil society participates in the development of anti-corruption policies, including through membership of various steering committees, as described in the section on article 5 of the Convention above. The media regularly reports on corruption-related developments. Public education programmes against corruption, such as school and university curricula, have not been developed.

The Ombudsman may receive confidential complaints against central government bodies and authorities. Reports can also be made to the Public Service Commission and the police. A national integrity office would provide a central place for the receipt of reports of corruption and increase visibility.

Private sector (art. 12)

Accounting and auditing requirements are set forth in the Companies Act (division IV, sects. 129–140) and part 3 of the Companies Regulations, as well as the International Companies Act (part 6). Division II, sections 117 to 123, of the Companies Act prescribes record-keeping requirements. Additional requirements apply to financial institutions. Public companies are required to prepare annual reports and adhere to international accounting standards (sect. 9 of the Companies Regulations) and to have their accounts audited (sect. 131 of the Companies Act).

Sanctions for violations of the Companies Act include fines and imprisonment, depending on the nature and gravity of the non-compliance. Fines range from 1,000 to 10,000 tala (approximately $360 to $3,6000), with the most commonly applied fine being 5,000 tala. It was reported that sanctions, particularly for legal persons, may not be sufficiently dissuasive or rigorously applied. There are no internal audit requirements, given the large number of small and medium-sized enterprises in the country.

The Companies Act also prohibits the making of false statements in company records and the falsification of records (sects. 340 and 342).

Licensing requirements are established in the Business Licences Act. The Chamber of Commerce cooperates with law enforcement authorities, including through a memorandum of understanding with the Ministry of Customs and Revenue.

With regard to State-owned enterprises, the Public Bodies (Performance and Accountability) Act and implementing regulations promote the performance and accountability of public bodies and set out principles governing their operation, appointment of directors and financial reporting. The recruitment and selection of personnel in State-owned enterprises through the screening of persons coming from the private sector was identified as a vulnerability by the Ombudsman.

No specific standards of business conduct or integrity have been developed, apart from an initiative for women-owned enterprises. Limited awareness of good governance by businesses and a need for training were reported.

Members of the public can access information about companies operating in Samoa through the Online Company Registry maintained by the Registrar of Companies (sect. 325 of the Companies Act).

Since 2020, the Ministry of Customs and Revenue has been collecting beneficial ownership information for all companies and legal arrangements registered and operating in Samoa (including trusts, foundations and non-profit organizations). All relevant entities are required to notify the Ministry in writing of any change in beneficial ownership (regulation 4(e) of the Business Licence Regulations). Access to beneficial ownership information is reserved for public authorities. The use of bearer shares continues to be allowed.

There are no cooling-off periods for former public officials transitioning to the private sector.

The specific accounting practices in article 12, paragraph 3, of the Convention are not proscribed in the legislation.

There is no provision under Samoan legislation for the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The Money-Laundering Prevention Act outlines the obligations of financial institutions to prevent money-laundering (including commercial banks, credit unions, money or value transfer services, trust or company service providers, lawyers, accountants, casinos, insurance businesses, real estate agents, virtual currency providers and non-profit organizations, pursuant to schedule 1 of the Act). The obligations include a requirement to identify and take all reasonable steps to verify the identity of customers (when establishing business relationships or conducting transactions, or when there is a suspicion of money-laundering or doubts about the veracity of previously obtained customer identification or verification information) and, according to the level of risk involved, to take reasonable steps to verify the identity of beneficial owners (sects. 16 and 16B of the Act). Beneficial ownership identification remains a challenge owing to the recent adoption of these requirements and the need for continued awareness-raising.

The Money-Laundering Prevention Act also prescribes record-keeping and monitoring requirements (sects. 18–20). Financial institutions, supervisory authorities and auditors are required to report suspicious transactions (sects. 23 and 24).

The Governor of the Central Bank is the Money-Laundering Prevention Authority appointed under section 4(2) of the Money-Laundering Prevention Act. The following are anti-money-laundering supervisory authorities (schedule 1 of the Money-Laundering Prevention Regulations):

(a) The Central Bank of Samoa is the supervisory authority for all financial institutions regulated or supervised by the Bank, as defined in section 2 and schedule 1 of the Money-Laundering Prevention Act;

(b) The Samoa International Finance Authority is the supervisory authority for all financial institutions regulated by the Authority, as defined in the Financial Institutions Act;

(c) The Samoa Institute of Accountants is the supervisory authority for accountants licensed by the Institute;

(d) The Financial Intelligence Unit is the supervisory authority for any other financial institution.

Samoa adopted a national policy and a national strategy to counter money-laundering and the financing of terrorism in 2016. A second national risk assessment was close to completion at the time of the country visit.

The Financial Intelligence Unit collaborates with government and non-governmental authorities and international partners, including the Asia-Pacific Group on Money Laundering, the Egmont Group of Financial Intelligence Units and the Association of Pacific Island Financial Intelligence Units, and through memorandums of understanding (sects. 7(1)(e), 8 and 9 of the Money-Laundering Prevention Act). On the basis of section 8(3) of the Act, the Financial Intelligence Unit may also cooperate and exchange information in the absence of an agreement, provided that confidentiality restrictions and limitations on the use of information are complied with.

Samoa implements a cross-border declaration regime whereby persons entering or leaving the country with more than 20,000 tala (or the equivalent in foreign currency) in cash or bearer negotiable instruments are required to declare such items to the Financial Intelligence Unit (sect. 13 of the Money-Laundering Prevention Act). Failure to report is a punishable offence. Authorized officers may search and seize cash or instruments on suspicion of the commission of an offence, and any false declarations or seizures must be reported to the Financial Intelligence Unit (sect. 13).

Financial institutions are required to include accurate originator information on all electronic funds transfers regardless of the transaction value, and such information must remain with the transfer (sect. 21 of the Money-Laundering Prevention Act). The remitting financial institution must include the full originator information in the transfer message or payment form accompanying the funds transfer (regulation 16 of the Money-Laundering Prevention Regulations). Financial institutions are further required to have risk-based policies and procedures on how to execute, reject or suspend wire transfers lacking the required originator or beneficiary information (sect. 21A(3) of the Act).

Samoa is guided by the anti-money-laundering standards of the Financial Action Task Force and underwent mutual evaluations by the Asia-Pacific Group on Money Laundering in 2006 and 2015. Samoa submitted its seventh enhanced follow-up report on 15 June 2022.

The Financial Intelligence Unit is a member of the Egmont Group and the Association of Pacific Island Financial Intelligence Units. A number of memorandums of understanding are in place.

2.2. Successes and good practices

- A wide range of information is published by government institutions on their performance, resources, training and other matters of public interest (art. 6, para. 2).
- Integrity training is provided for public officials at higher risk of corruption (art. 7, para. 1 (b)).
- The Cabinet Handbook sets out standards of probity and propriety and for the avoidance of conflicts of interest, including regular and ad hoc disclosure requirements. Detailed guidance is available for chief executive officers on managing breaches of the Code of Conduct, including conflicts of interest (art. 7, para. 4).
- Public servants can report corruption internally to liaison officers of the Ombudsman posted in all ministries and public bodies (art. 8, para. 4).

2.3. Challenges in implementation

It is recommended that Samoa:

- Adopt the national anti-corruption policy and conduct regular monitoring and evaluation of its implementation (art. 5, para. 1).
- Continue to assess the effectiveness of prevention practices (art. 5, para. 2).
- Determine whether a more periodic review of laws and administrative measures could enhance corruption prevention efforts (art. 5, para. 3).
- Strengthen the legal and financial independence of prevention bodies, including the offices of the Ombudsman, the Attorney-General and the Auditor-General, and the Public Service Commission, and continue to invest in resources and the specialized training of staff; furthermore, advance efforts to establish a national integrity office (art. 6, paras. 1 and 2).
- Endeavour to adopt procedures for the rotation of individuals in public positions considered especially vulnerable to corruption, where appropriate, in line with the draft national anti-corruption policy (art. 7, para. 1(b)).
- Consider adopting measures to enhance transparency in the funding of candidates for elected public office and of political parties (art. 7, para. 3).
- Endeavour to provide more specific guidance on identifying and preventing conflicts of interest, including a relevant definition and examples, to guide the conduct of public servants, and to strengthen the enforcement of rules for ministers prohibiting conflicts of interest, including non-pecuniary interests, and requiring their disclosure (art. 7, para. 4, and art. 8, para. 5).
- Consider adopting the whistle-blower policy (art. 8, para. 4, and art. 13, para. 2).
- Strengthen public procurement by lowering thresholds in the Procurement Operating Manual for the use of open competitive bidding, and continue efforts to professionalize the procurement service through capacity-building and procurement training (art. 9, para. 1).
- Strengthen participatory budgeting (art. 9, para. 2).
- Consider adopting and implementing procedures and regulations governing access to information (art. 10 (a)).
- Consider conducting a comprehensive assessment of corruption risks in the public administration (art. 10 (c)).
- Strengthen the independence of the judiciary and prosecution services, including procedures for appointing and removing judges and the Attorney-General, by reviewing the budget of the judiciary and judicial remuneration and by creating an independent public prosecution service in line with the draft national

anti-corruption policy; furthermore, endeavour to update and publish the judicial conduct guidelines and the prosecutors' code of conduct and strengthen training on judicial and prosecutorial ethics (art. 11).

- Strengthen integrity in the private sector, including with regard to the recruitment and selection procedure in State-owned enterprises, and by raising awareness of corruption among businesses, such as by developing standards or principles of business ethics and training, establishing and applying dissuasive sanctions for violations of the Companies Act, enhancing transparency regarding beneficial ownership of legal entities, disallowing the use of bearer shares and introducing cooling-off periods for former public officials transitioning to the private sector (art. 12, para. 1). Furthermore, prohibit the accounting practices referred to in article 12, paragraph 3, of the Convention, and prohibit the tax deductibility of expenses that constitute bribes (art. 12, para. 4).

- Strengthen public information and education programmes against corruption, such as school and university curricula (art. 13, para. 1).

- Pending the establishment of a national integrity office, ensure that the relevant anti-corruption bodies are known to the public and can receive reports, including anonymously (art. 13, para. 2).

- Continue to strengthen the capacity and resources of anti-money-laundering supervisory authorities, improve the quality of information disseminated and promote beneficial ownership identification by financial institutions (art. 14, para. 1).

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

- Capacity-building, research/data-gathering and analysis, international cooperation (art. 5).

- Capacity-building (art. 6).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Mutual legal assistance is governed by the Mutual Assistance in Criminal Matters Act and the Proceeds of Crime Act, which apply to any foreign State, in addition to multilateral agreements (namely, the Commonwealth Scheme on Mutual Legal Assistance in Criminal Matters (the Harare Scheme) and the United Nations Convention against Transnational Organized Crime).

Dual criminality is required for assistance with asset recovery, including requests for the enforcement of foreign confiscation and restraining orders, search warrants and requests for restraining, production and monitoring orders (which are governed under sections 49, 50 and 54 to 57 of the Mutual Assistance in Criminal Matters Act) and for non-coercive actions, by virtue of the definition of a serious offence. The confiscation and forfeiture provisions in the Proceeds of Crime Act apply equally if a person is convicted of a serious offence or where the person charged has absconded (sect. 22 of the Proceeds of Crime Act).

Samoa has not received any requests for assistance with asset recovery in the past five years.

Samoa can cooperate in the recovery of assets in the absence of a treaty and considers the Convention as a basis for mutual legal assistance. The same set of measures and procedures that are available in domestic criminal proceedings apply in the context of international cooperation (sect. 52 of the Mutual Assistance in Criminal Matters Act; sect. 27 of the Proceeds of Crime Act).

The Mutual Assistance in Criminal Matters Act does not preclude other forms of cooperation, whether formal or informal, in criminal matters with foreign States. Competent authorities have a legal basis for providing cooperation and sharing information spontaneously and do so in practice (e.g. sects. 7(f) and (r) of the Money-Laundering Prevention Act; sect. 329 of the Customs Act; sect. 24 of the Financial Institutions Act; sect. 37(3) of the International Banking Act).

Samoa is a party to multilateral agreements on international cooperation in criminal matters, which include provisions related to asset recovery, as mentioned above.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

As mentioned above, financial institutions must identify and take all reasonable steps to verify the identity of customers at specified stages and, according to the level of risk involved, take reasonable steps to verify the identity of beneficial owners (sects. 16 and 16B of the Money-Laundering Prevention Act).

Financial institutions must take reasonable measures to determine whether a customer is acting on behalf of another person, including a beneficial owner or controller; if so, they must obtain and verify the identity of the other person by using relevant information or data obtained from an independent source and independently sourced documents (regulation 9 of the Money-Laundering Prevention Regulations).

Financial institutions are required to implement appropriate risk management systems to determine whether a customer or beneficial owner is a politically exposed person and, if so, undertake enhanced due diligence, which includes enhanced scrutiny of the source and legitimacy of funds, transaction monitoring and customer profiling (regulation 14 of the Money-Laundering Prevention Regulations). Financial institutions are required to obtain approval from senior management when establishing or continuing business relationships with politically exposed persons (sect. 16B of the Money-Laundering Prevention Act; regulation 14 of the Money-Laundering Prevention Regulations). The definition of a politically exposed person in the Money-Laundering Prevention Act refers to persons who hold, or who held at any time in the preceding 12 months, any of the enumerated prominent public functions in any overseas country, including their immediate family members (defined as spouses, partners and parents) and close associates who are natural persons (sect. 2). The definition contained in the Act and Regulations only covers foreign politically exposed persons and does not include persons who are or have been entrusted with a prominent function by an international organization. The Money-Laundering Prevention Guidelines strongly encourage financial institutions to apply similar standards to domestic politically exposed persons (part 3); however, the Guidelines are advisory in nature and not enforceable.

The Money-Laundering Prevention Guidelines and a series of brochures on preventing money-laundering detail customer due diligence requirements, including requirements regarding the enhanced scrutiny of higher risk accounts, persons and transactions. Advisories have also been issued, for instance on cryptocurrency and fraudulent schemes.

The Financial Intelligence Unit may issue instructions to financial institutions to enforce compliance with the Money-Laundering Prevention Act (sect. 7(1)(j)). The Financial Intelligence Unit may also notify financial institutions of higher risk persons or accounts in writing through its mailing list, website and quarterly meetings with compliance officers, and issue instructions to monitor those transactions. Financial institutions are required to have appropriate systems in place to comply with these notifications (sect. 12(3) of the Money-Laundering Prevention Guidelines).

Records are to be kept for a minimum period of five years from the date on which evidence of a person's identity was obtained, the transaction or correspondence was completed, or the account was closed or business relationship ceased, whichever was later (sect. 18(3) of the Money-Laundering Prevention Act).

International banks are required to establish a physical presence in Samoa (sect. 11 of the International Banking Act). Prudential guidelines currently being developed would prohibit the establishment of domestic shell banks. Financial institutions are required to have internal control measures to prohibit them from establishing relationships with shell banks (regulation 18 of the Money-Laundering Prevention Regulations). [4] However, there is no requirement to refrain from continuing correspondent banking relationships with shell banks or to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks. According to the Money-Laundering Prevention Guidelines, banks should review and terminate existing correspondent banking relationships with shell banks and should not open correspondent accounts with banks that deal with shell banks. However, the Guidelines are not enforceable.

Apart from the obligation to make ad hoc disclosures of conflicts of interest discussed in the section on article 8, paragraph 5, of the Convention above, Samoa has introduced the following ongoing requirements for two categories of public officials to disclose their financial interests, although it is unclear whether these requirements are applied in practice:

(a) Ministers are required, from the outset of their appointment, to declare their private pecuniary interests to the Prime Minister (sect. 1.35 of the Cabinet Handbook);

(b) Directors of public bodies are required to provide declarations of pecuniary interests and convictions within a month of appointment and at any time where there is a change thereafter to the Secretary of the Board and the Chief Executive Officer of the Ministry of Finance (sect. 20 of the Public Bodies (Performance and Accountability) Act).

Members of the Parliament are not subject to financial disclosure.

There is no obligation to declare bank accounts held or controlled overseas.

The Financial Intelligence Unit serves as the national centre for the receipt and analysis of suspicious transaction reports, cash transaction reports and border cash reports. One of its core functions is to disseminate intelligence assessment reports to domestic authorities for appropriate action. The operation of the Unit is fully funded by the Central Bank; however, there is a need for continued investment in the resources and specialized staff of the Unit.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Any legal person with legal capacity has standing to file a claim in the district courts of Samoa (sect. 36 of the District Courts Act); this includes foreign public entities, as demonstrated by case law (*United States Attorney's Office for the Western District of Washington v. Development Bank of American Samoa* [2000] WSSC 35 (6 October 2000); motion by the Commissioner of Taxation for the Australian Taxation Office in *Bolink Holdings Ltd v. Oriental Limited ATF The Direct Solutions Superannuation Fund* [2021] WSSC 53 (13 October 2021)). A similar rule applies in the Supreme Court (rule 80 of the Civil Procedure Rules). The Samoa Sentencing Act provides for sentences of reparation, including monetary compensation, for loss or damage to property or injuries arising from the commission of an offence (part 3, division 1, sect. 24). Section 193 of the Criminal Procedure Act further provides for civil claims in respect of criminal conduct.

Legal provisions in the Proceeds of Crime Act allow third parties, including legal persons, to claim an interest in property that may be the subject of a forfeiture or

[4] For the purposes of the regulation, the term "shell bank" means a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group (regulation 18).

restraining order (sects. 2, 21, 47 and 51(3)). Foreign public entities are included provided that they have legal personality (rule 80 of the Supreme Court Civil Procedure Rules).

Samoa may provide assistance to foreign States in relation to the enforcement of foreign forfeiture orders in respect of serious offences or serious foreign offences where the requirement of dual criminality is satisfied (sect. 49 of the Mutual Assistance in Criminal Matters Act). A foreign forfeiture order registered under section 51 of the Mutual Assistance in Criminal Matters Act has effect, and may be enforced, as if it were a forfeiture order issued by the court under the Proceeds of Crime Act (sect. 52 of the Mutual Assistance in Criminal Matters Act; sect. 27 of the Proceeds of Crime Act).

The court may order the confiscation of property of foreign origin if the predicate offence committed in the foreign country would have constituted a serious offence had it been committed in Samoa (sects. 2 and 19 of the Proceeds of Crime Act).

Section 22 of the Proceeds of Crime Act allows the court to order the forfeiture of property where a person has died or absconded. However, there is no clear legal basis for cooperation in non-conviction-based confiscation.

Samoa may provide assistance to foreign States in relation to the enforcement of foreign restraining orders in respect of serious offences (sect. 50 of the Mutual Assistance in Criminal Matters Act). Foreign restraining orders and foreign pecuniary penalty orders registered with the court in accordance with section 51 have the same effect as domestic orders (sect. 52 of the Act).

The Mutual Assistance in Criminal Matters Act provides for a range of assistance in relation to provisional measures leading to asset recovery. Section 39 of the Act outlines the procedure by which a foreign request for search and seizure is to be made. Section 54 provides for requests for search warrants in respect of tainted property, and sections 55 to 57 provide for requests for restraining orders, production orders and monitoring orders.

Part IV of the Proceeds of Crime Act sets out extensive powers in relation to facilitating investigations and preserving property. Under section 74 of the Act, an authorized officer of an enforcement agency may file an ex parte petition to the judge for a monitoring order for asset tracing purposes, and production orders may be sought under section 66. Powers of seizure are provided for under section 38 and powers to restrain property ex parte under sections 46 to 57. There has been limited application of these measures.

Owing to the absence of any incoming requests, the implementation of article 55, paragraphs 1 and 2, of the Convention could not be assessed.

The content requirements for requests for mutual legal assistance are stipulated in the Mutual Assistance in Criminal Matters Act (sect. 23). Samoa expressed an interest in developing guidance on mutual legal assistance to foreign States.

Samoa shared copies of its laws and regulations giving effect to article 55 of the Convention in the course of the review. Mutual legal assistance is not dependent on the existence of a treaty.

Section 24 of the Mutual Assistance in Criminal Matters Act outlines the grounds on which requests for assistance may be refused. The de minimis value of property is not included and no such threshold is applied. Assistance may be postponed if the request would prejudice an investigation or proceeding in Samoa. Requests may be granted even if they do not comply with the form requirements set out in the Mutual Assistance in Criminal Matters Act (sect. 23(2)).

In practice, before lifting any provisional measure, Samoa would give the requesting State an opportunity to present its reasons in favour of continuing the measure, although this is not stipulated in any internal procedures.

Third parties may claim an interest in property that may be the subject of a forfeiture or restraining order (sects. 21, 47 and 51(3) of the Proceeds of Crime Act), and these measures are applied in practice.

Return and disposal of assets (art. 57)

Samoa has a legal framework regulating the disposal of confiscated property. Under section 20(4) of the Proceeds of Crime Act, property forfeited by order of the court may be disposed of, and the proceeds applied or otherwise dealt with, as the administrator directs, after the determination or lapsing of any period of appeal.

In accordance with section 72 of the Mutual Assistance in Criminal Matters Act, any proceeds derived from tainted property confiscated in a foreign State or in Samoa pursuant to a request, to the extent available under any arrangement on the sharing of confiscated property, or otherwise, are credited to the Confiscated Assets Fund established under section 34 of the Money-Laundering Prevention Act. Section 71 of the Mutual Assistance in Criminal Matters Act authorizes asset sharing by the Attorney-General.

Furthermore, under section 35 of the Money-Laundering Prevention Act, the proceeds of assets forfeited under the Proceeds of Crime Act and money paid to Samoa by a foreign State under a mutual legal assistance treaty or arrangement, or in relation to asset recovery pertaining to serious offences, are paid into the Confiscated Assets Fund. Section 36 of the Money-Laundering Prevention Act provides for asset sharing.

In accordance with section 37 of the Money-Laundering Prevention Act, payments to foreign countries under asset-sharing arrangements that the Minister of Finance considers appropriate (sect. 36), payments considered necessary by the Minister to satisfy foreign asset recovery orders, and payments for authorized law enforcement or crime prevention programmes approved by the Minister (sect. 38) may be made from the Confiscated Assets Fund.

Apart from provisions on permissive asset sharing, there are no provisions on the return of confiscated property in line with article 57, paragraph 3, of the Convention.

The Mutual Assistance in Criminal Matters Act does not address the costs of executing requests pertaining to asset recovery.

There have been no cases of asset sharing or return.

3.2. Successes and good practices

- Samoa can provide assistance even if the request does not comply with the form requirements in its legislation (art. 55, para. 3).

3.3. Challenges in implementation

It is recommended that Samoa:

- Expand the definition of a politically exposed person in the Money-Laundering Prevention Act and the Money-Laundering Prevention Regulations to cover domestic politically exposed persons and persons who are or have been entrusted with a prominent function by an international organization, and require enhanced due diligence to be applied to accounts sought or maintained by legal persons that are close associates of politically exposed persons (art. 52, para. 1).
- Adopt measures to prohibit the establishment of domestic shell banks and to require financial institutions to refrain from continuing correspondent banking relationships with shell banks and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks (art. 52, para. 4).
- Consider strengthening the enforcement of financial disclosure rules for ministers and directors of public bodies, including their verification and sanctioning of non-compliance; furthermore, consider enhancing transparency of disclosures,

building on international good practice, and extending disclosure requirements to other categories of officials, such as members of the Parliament (art. 52, para. 5). Moreover, consider requiring appropriate public officials having an interest in or control over foreign financial accounts to report that relationship and to maintain appropriate records (art. 52, para. 6).

- Consider establishing a clear legal basis for cooperation in non-conviction-based confiscation (art. 54, para. 1 (c)).
- Proceed with developing guidance on mutual legal assistance to foreign States as intended (art. 55, para. 3).
- Adopt a mutual legal assistance checklist or procedure to guide the handling of mutual legal assistance requests, including consultations with requesting States (art. 55, para. 8).
- Adopt measures for the return of confiscated property in line with article 57, paragraph 3, of the Convention.
- Consider adopting measures regulating the costs of assistance in asset recovery (art. 57, para. 4).
- Continue to invest in the resources and the specialized training of staff of the Financial Intelligence Unit (art. 58).

V.24-14692