

New Anti-Money Laundering Legislation – Samoa

Samoa has enacted a new suite of anti-money laundering legislation this year, which comprises the following acts: the *Money Laundering Prevention Act 2007* (“**MLPA**”); *Proceeds of Crime Act 2007* (“**POCA**”) and the *Mutual Assistance in Criminal Matters Act 2007*. The new legislation strengthens Samoa’s anti-money laundering legislation significantly. We summarise the legislation below.

Proceeds of Crime Act 2007

The definition of a money laundering offence has been broadened. 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.

Knowledge, intent or purpose may be inferred from objective factual circumstances. It remains an offence to aid and abet the commission of a money-laundering offence.

Importantly, predicate offences for money laundering no longer rely upon a threshold being met. Previously, predicate offences were referred to in the definition of unlawful activity, which required punishment by death or imprisonment for a period of not less than five years.

POCA introduces a new freezing and confiscation scheme. The new scheme:

- (a) applies to the proceeds of all serious offences, which are those offences punishable by a maximum period of twelve months or more;
- (b) allows for pecuniary penalty orders to be

made, that is where a person has benefited from an offence, they can be ordered to pay to the State an amount equal to the value of the person’s benefit from the offence; extends investigative and tracing powers; provides the Court with power to void transactions, where the circumstances of the transaction give rise to a reasonable inference that the money, property or interest transferred was for the purpose of avoiding a forfeiture or pecuniary penalty order.

Money Laundering Prevention Act 2007

The MLP Act establishes a Money Laundering Prevention Task Force made up of government officials, whose functions include advising the Money Laundering Authority on matters relating to the prevention of money laundering or the financing of terrorism and to also ensure close co-operation between the various Government departments, statutory corporations, the MLA and Samoa’s Financial Intelligence Unit (“**FIU**”). Further, the MLP Act also provides a legislative basis for Samoa’s FIU and sets out its functions and the powers available to it.

In relation to currency reporting at the border, anyone leaving or entering Samoa with more than \$20,000 (previously \$10,000) in cash or negotiable bearer instruments must make a report to the FIU.

The MLP Act imposes new obligations on financial institutions. The term “financial institutions” is defined quite broadly in the First Schedule and includes banks, international banks, lenders and financiers of commercial transactions, money transmission services, lawyers and accountants (in relation to specific types of transactions), accountants, real estate agents and dealers in high value items.

Some of the obligations include:

1. Financial institutions to verify customers’ identity

A financial institution must identify and obtain satisfactory evidence of identity when:

- (a) establishing a business relationship; or
- (b) conducting any transaction;
- (c) there is a suspicion of a money laundering offence or the financing of terrorism;
- (d) the financial institution has doubts over the

veracity or adequacy of the customer identification or verification documentation or information it had previously obtained.

A financial institution shall take reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of any funds.

The above provisions do not apply where:

- (a) the transaction is part of an existing and regular business relationship, where the person has already produced satisfactory evidence of identity (unless the financial institution has reason to suspect that the transaction is suspicious or unusual);
- (b) if the transaction is a one-off transaction not exceeding \$50,000 unless there are reasonable grounds for believing that the transaction is linked with other transactions which exceed \$50,000 or the financial institution has reason to suspect the transaction is suspicious or unusual.

If satisfactory evidence of the identity of a customer is not produced, the bank shall not proceed any further with the transaction unless directed to do so by the FIU and shall report the transaction to the FIU as a suspicious transaction.

2. Financial Institution to Maintain Records

A financial institution is required to maintain records for a period of five years. These include all business transaction records and correspondence relating to the transactions; records of a person's identity; records of all reports made to the FIU and enquiries made to it by the FIU.

3. Financial Institutions to Monitor Transactions

Financial Institutions shall pay special attention to any complex, unusual or large transactions and any unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

Special attention shall also be paid to business relations and transactions with persons in jurisdictions that do not have adequate systems to prevent or deter money laundering or the financing of terrorism and electronic fund transfers that don't contain complete originator information.

Banks and money transmission service providers are required to include accurate originator information on electronic funds transfers.

4. Financial Institutions to Report Suspicious Transactions

Where a financial institution has reasonable grounds to suspect that a transaction or attempted transaction or information may be:

- (a) relevant to an investigation or prosecution of a person for a serious offence, money laundering offence or an offence of the financing of terrorism; or
- (b) of assistance in the enforcement of POCA; 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 must make a report to the FIU within two days.

Supervisory authorities or auditors of financial institutions are also under such an obligation.

There are also various preventative measures which are to be taken by financial institutions such as the appointment of compliance officers, maintaining systems and procedures and training.

Mutual Assistance in Criminal Matters Act 2007

Prior to this act, Samoa did not have a general law applying to mutual legal assistance, however it did provide assistance to other countries informally.¹ Under this Act, Samoa will provide assistance to foreign states where serious offences are concerned, that is, those offences punishable by a maximum period of 12 months imprisonment or more.

Generally

To date, there have been no investigations of money laundering or financing of terrorism offences in Samoa. One freezing order has been granted in Samoa, pursuant to a mutual legal assistance request from the USA.²

Samoa has undergone two mutual evaluations by the Asia/Pacific Group on Money Laundering ("APG"), the most recent of which occurred in February 2006. Some of the recommendations made by the APG will be satisfied by the passing of the legislation referred to above.

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¹Asia/Pacific Group on Money Laundering, Second Mutual Evaluation Report of Samoa, 4 July 2006

²Attorney General v Pacific International Development Bank of American Samoa [2000] WSSC 47