



# Samoa

*Gender and Investment Climate Reform Assessment*

*In Partnership with AusAID*

January 2010 Sonali Hedditch & Clare Manuel

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## Preface and Acknowledgements

*This report is the result of collaboration between the Australian Agency for International Development (AusAID) and the International Finance Corporation (IFC), a member of the World Bank Group.*

The report has been produced for:

- *The Government of Samoa*: to make recommendations for reform actions for government to further enable women in Samoa to participate effectively in the country's economic development.
- *International Finance Corporation (IFC)*: to inform any potential work on Samoa's investment climate.
- *AusAID*: to assist development programs to mainstream gender and to enable women to benefit equitably from improvements in the business climate.

Research for the report was primarily carried out during a mission to Samoa from February 15–20, 2009. The mission team, led remotely by Sonali Hedditch (IFC), included Keirsten Pedersen (IFC consultant), Mark Blackden (IFC consultant), Fiona MacCulloch (The Law & Development Partnership), Vijaya Nagarajan (AusAID consultant), Tamara Haig (AusAID consultant), and supported by locally-based experts Margaret Malua (economist) and Fiona Ely (lawyer). Kristie Druzca (AusAID) and Anna Hutchens (AusAID consultant) undertook useful preparatory research during August 2008.

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## Foreword

*Pacific Island women are a powerful force for economic growth and development, making important contributions to the economy as entrepreneurs and employees, and to the welfare of their families. Studies show that when women are given economic opportunity, the benefits are large also for their families, their communities, and ultimately for national development efforts. Opening economic options for women puts poverty reduction on a faster track.*



Across the Pacific, some obstacles in the investment climate such as a prevailing culture of informality among female entrepreneurs, unequal access to property, credit, justice, women's lack of experience, and comfort with formal business processes such as business and license registration, have a disproportionately greater adverse impact on women. These constraints hinder women from contributing more to their country's growth and development. Further, overly cumbersome regulations can unintentionally hurt women, young, and low skilled workers more than others and raise the risk of excluding them from doing business, due to a lack of education and lack of confidence to deal with government authorities and financial institutions. Women are less able to lobby government to have cumbersome regulations reduced, in part because female political representation in the Pacific is among the lowest in the world. Removing such obstacles can help not only to empower women but also to unlock the full economic potential of Pacific nations.

IFC and the World Bank Group more generally are committed to reducing gender based barriers in the investment climate, increasing access to finance for women entrepreneurs, and helping governments understand the gender dimensions of business reform and growth. Our Practitioners Guide on Gender and Investment Climate Reform was piloted in the Pacific region, resulting in a series of six Gender and Investment Climate Reform Assessments, on Papua New Guinea, Samoa, Solomon Islands, Timor Leste, Tonga, and Vanuatu. These Assessments will guide the World Bank Group in the mainstreaming of gender into its investment climate projects in the Pacific, in particular through the Pacific Regional Program on Regulatory Simplification and Investment Policy Promotion (in Tonga, Solomon Islands, Papua New Guinea, and Vanuatu), and the Timor Leste Public Private Dialogue and Business Registration projects.

The experience of Pacific Island countries in implementing the targets and activities recommended by this report should provide valuable lessons globally in mainstreaming gender in investment climate reform. I am grateful for the support and funding from the Australian Agency for International Development (AusAID), New Zealand's International Aid and Development Agency (NZAID) and Japan International Cooperation Agency (JICA), and the Gender unit of IFC which has made this important effort possible.

A handwritten signature in black ink, appearing to be 'P. Guislain', written in a cursive style.

Pierre Guislain  
Director  
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## Abbreviations

<b>ADR</b>	Asian Development Bank
<b>ADR</b>	Alternative Dispute Resolution
<b>AusAID</b>	Australian Agency for International Development
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>IFC</b>	International Finance Corporation
<b>M&amp;E</b>	Monitoring and evaluation
<b>MCIL</b>	Ministry of Commerce, Industry and Labor
<b>MFI</b>	Micro Finance Institutions
<b>MNRE</b>	Ministry of Natural Resources and Environment
<b>NPD</b>	National Provident Fund
<b>NZAID</b>	New Zealand International Aid and Development Agency
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>PPD</b>	Public Private Dialogue
<b>SBEC</b>	Small Business Enterprise Center
<b>WIBDI</b>	Women in Business Development Inc
<b>VAGST</b>	Value Added Goods and Service Tax

# Executive summary

## *Introduction*

### Report purpose

This Report is one of six Gender and Investment Climate Reform Assessments undertaken in six Pacific nations including Samoa.<sup>1</sup> The Report analyses gender-based investment climate barriers which constrain private sector development, and identifies solutions to address them. Six key investment climate areas are considered:

- Public private dialogue
- Starting and licensing a business
- Access to justice and alternative dispute resolution
- Access to, and enforcement of, rights over registered land
- Access to finance, and
- Access to, and enforcement of, rights over intellectual property.

In each area the Report considers legal, regulatory, and administrative barriers to private sector development with a gender perspective. It asks whether women face different or additional constraints to those faced by men. And it makes recommendations aimed at ensuring that women benefit from ongoing efforts to improve Samoa's investment climate on the same basis as their male counterparts.

IFC, in partnership with Pacific Island Governments, aims to enable women's greater participation in private sector development in the Pacific by improving the business enabling environment for women through its existing Investment Climate programs. IFC does not currently have an investment climate program in Samoa, but the findings presented in this Report will contribute towards developing IFC's regional approach to gender and investment climate issues and any future investment climate work in Samoa.

This Report does not aim to cover all gender issues in Samoa, or all gender issues in private sector development or investment climate reform. Gender constraints in Samoa are wide-ranging and entrenched in cultural and historical factors. It is hoped that the recommended reforms in this Report could be part of broader reform in Samoa to create equal opportunities for women and men.

The primary audience for this Report is IFC and Pacific Island Governments, especially Ministries focused on private sector development. It is hoped that the Report's analysis of investment climate barriers with a gender lens will also be a useful tool for stakeholders working to increase women's economic empowerment.

### Country context

Samoa's population has increased gradually over the last ten years and the 2006 National Census had a total population of 180,741. About a third of Samoa's population lives in the Apia Urban Area, and the rest in the rural areas. The Samoan economy is mainly based on agriculture with about 70 percent of the population depending on subsistence agriculture. Tourism and services are key growth areas. Remittances make up around one-third of the GDP. Key challenges facing the private sector include inflation, high interest rates, and the high costs of imports. Most Samoan households' income comes from salaries, remittances, plantations and fishing, old age pensions, and from businesses.<sup>2</sup>

The private sector in Samoa faces the typical challenges of operating in a small island state including:

- Remoteness and isolation resulting in relatively high transport costs, coupled with a small domestic market
- Susceptibility to natural disasters and environmental change
- Limited diversification because of small domestic markets
- Limited capacity in the public and private sector, and

<sup>1</sup> The others are Papua New Guinea, Solomon Islands, Timor-Leste, Tonga and Vanuatu.

<sup>2</sup> Government of Samoa, 2006 Census Report.



- Openness, resulting in heavy exposure to events in global markets and trade regimes, over which it has little influence.

Samoa scores relatively well in the World Bank's Doing Business in 2010 index, ranking 57 out of 183 economies. But Samoa ranks behind several other small island states including Singapore (first); St Lucia (36th); Tonga (52nd), and Fiji (54th), and, as can be seen from the table below, the average score masks poor performance in some important areas.

### Samoa's Doing Business 2010 rankings<sup>3</sup>

Doing Business indicators	Samoa's ranking out of 183 economies
Starting a business	20
Dealing with construction permits	48
Employing workers	18
Registering property	81
Getting credit	127
Protecting investors	27
Paying taxes	67
Trading across borders	88
Enforcing contracts	83
Closing a business	139

The Government of Samoa is taking initiatives to improve Samoa's investment climate, most importantly by the introduction of a new Companies Act. This Report considers these efforts from a gender perspective. The aim is to ensure that ongoing reforms are taken forward so that they benefit all businesses – those run by women as well as men.

### Methodology

An assessment team<sup>4</sup> undertook a mission to Samoa for six days from February 15–20, 2009. The methodology for the assessment was guided by the IFC's Gender and Investment Climate Reform Practitioner's Guide. Interviews, using semi-structured questionnaires, were held with a wide variety of stakeholders including private sector operators, banks, lawyers, Government Departments, and the Judiciary. A full list of people consulted is at Annex A. During the mission a half day Business Women's Forum was held and attended by 23 business women. This was an opportunity to canvass views from business women on the investment climate issues considered in this Report. Notes from the Forum and a full list of participants are at Annex B. An extensive literature review was undertaken (see Bibliography).

To supplement the analytical work, a number of in-depth, one-on-one interviews with a range of Samoan businesswomen were conducted and compiled into case studies which are used throughout this report to highlight the investment climate constraints faced by women, and celebrate the successes that they have achieved. Some of these case studies will also be published in November 2009 in a joint IFC-AusAID publication entitled Economic Opportunities for Women in the Pacific.

<sup>3</sup> World Bank, 2009 Doing Business in 2010. World Bank, Washington, DC.

<sup>4</sup> Funded by IFC and AusAID. The team comprised: Sonali Hedditch (IFC remote team leader), Keirsten Pedersen (IFC consultant), Mark Blackden (IFC consultant), Fiona MacCulloch (The Law & Development Partnership), Vijaya Nagarajan (AusAID consultant), Tamara Haig (AusAID consultant); and supported by locally based experts Margaret Malua (economist) and Fiona Ely (lawyer).

## *Key findings and recommendations*

### **Social, cultural, and legal constraints**

Women are engaged in the private sector in Samoa, but their businesses tend to be small and informal. Women's role in economic activity is constrained by cultural expectations about their domestic and social role. Generally women have a limited public or leadership role in Samoan society. Women's limited access to land also significantly affects their ability to enter the private sector. Samoa has entered into international commitments to gender equality including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Constitution guarantees non-discrimination, including on the grounds of sex, and the Courts have held that such Constitutional guarantees prevail over customary law practices. But Samoa's statute law continues to contain provisions that discriminate against women.

### **Public Private Dialogue**

There are a number of private sector representative bodies in Samoa including the Chamber of Commerce, Samoa Association of Manufacturers and Exporters, and the Small Business Association. The Chamber of Commerce has recently become the umbrella organization for the formerly disparate representation of the many private sector bodies. However, lack of a secretariat hampers its ability to effectively represent the private sector in Samoa. There are two significant organizations in Samoa that provide assistance and training to business women: Women in Business Development Inc, and the Samoa Small Business Enterprise Centre. Their focus is on business development skills and the provision of loan finance, rather than on policy reform.

On the Government side, the Ministry of Women, Community & Social Development is responsible for women's affairs. Its focus is on ensuring women benefit from financing of economic activities. Each village now also has a woman government representative who provides the link on activities and policies promoted by Government to the village and communities. Responsibility for private sector development lies with the Ministry of Finance and with the Ministry of Commerce, Industry and Labor. The Government's over-arching policy document, the Strategy for the Development of Samoa<sup>5</sup> does not give particular prominence to the role of women in economic development.

Recommendations for strengthening women's voice in the country's developing policies and plans for private sector development are:

- Institutionalize the Business Women's Forum, facilitated by IFC in Samoa in February 2009, to provide a space for business women (from large to small businesses) to network, both with each other and with similar organizations across the regions. The Forum could also provide training opportunities for women on key investment climate issues such as business start up and formalization.
- Government should ensure that business women and private sector representative organizations are consulted as part of the CEDAW reporting process, and that women's economic empowerment is identified as a core issue for Government action.

### **Starting and licensing a business**

Women are estimated to head over 40 percent of businesses in Samoa. Most are micro-businesses, which comprise 80 percent of the private sector. There is a general lack of awareness of the different business forms and processes of formalization. Key recommendations include:

- Ensure the new Companies Registry's operations fully take on board the needs of women. Opening hours and facilities should be designed with the needs of women in mind. Registration should be made accessible to rural women (for example by using existing NGO networks for outreach and support with the registration process and distributing and assisting with the completion of registration forms). Staff in the registry should be aware of the special needs of female applicants (lower literacy levels, may need to bring children to the registry with them).
- Undertake extensive outreach, including to women's groups, on the benefits of the new Companies Act.
- Develop a simple handbook aimed at women on how to start a business, including a company. Accompany this with innovative methods of dissemination, such as drama, storytelling, radio soaps, TV dramas.
- In partnership with civil society and the Chamber of Commerce, develop a standard and simple Partnership agreement for businesses in which more than one person is involved, but which do not wish to register as companies.

<sup>5</sup> Ministry of Finance, Strategy for the Development of Samoa, 2008-2012.

### Access to justice and alternative dispute resolution

Traditional justice is important in rural Samoa. In urban areas most urban disputes go to Court, a process that can be both time consuming and expensive. There is widespread recognition that women face particular difficulties in accessing the Court system which is dominated by male judges, Magistrates, and lawyers. Key recommendations include:

- Promote more suitably qualified women to Magistrates Courts
- Undertake training in gender issues for Magistrates
- Enhance use of alternative dispute resolution by:
  - Providing training for judges and lawyers in order to increase acceptance among the legal profession
  - Introducing a Small Claims Process for disputes of less than 500 Samoan tala (US\$200) which can be presided over by trained mediators.
- Establish a Help Desk for business women at either the Community Legal Centre or the Ministry of Justice that can be the first port of call for advice on legal disputes
- In partnership with appropriate NGOs, support women and have links to the community level. Government should undertake an information campaign (including to rural women) on what women's rights are (including property and commercial rights) and how to enforce them.

### Access to and enforcement of rights over registered land

In practice Samoan women have limited access to customary land and are largely excluded from dealings in customary land, such as customary leases. Although Samoan women have equal rights over freehold land, they do not fare well in practice as women do not often avail themselves of the right to be included on the title as a registered owner. Current divorce and inheritance laws do not give adequate protection to women. Key recommendations include:

- Develop new transfer forms which contain space for both husband and wife to be entered as joint purchasers as land
- In partnership with NGOs, enhance information to women about their land rights and how to claim them, including the importance of writing wills. Use innovative methods, for instance drama and radio soaps as well as pamphlets.

### Access to finance

With customary land unavailable for collateral and only 4 percent of Samoa's land comprising freehold, obtaining credit is a problem for everyone. The situation is worse for women, who are even less likely than men to have land title. Women have benefited from micro-credit and stand to gain from a planned new regime to strengthen asset-based lending in Samoa. Key recommendations are:

- Enact the planned Personal Property Act and introduce an electronic registry for personal property security interests
- Develop the new credit reference bureau, ensuring that: (i) women can establish their independent credit rating (separate from their husbands'), and (ii) that they can benefit from repayment histories established under microfinance schemes
- Strengthen the delivery of financial planning and financial literacy education for women, focusing on rural areas.

### Access to, and enforcement of, rights over intellectual property

Although there is a straightforward system for the protection of intellectual property rights, there is little awareness of the regime and processes involved among women. Key recommendations aimed at developing this awareness include:

- Supplement public awareness initiatives by developing and distributing simple information in a brochure form in Samoan and English from the Intellectual Property Office and on the Ministry of Commerce, Industry and Labor website, and through NGO and industry organizations
- Conduct outreach sessions to rural communities in Upolu and Savaii to target rural producers and those for whom it is difficult to attend workshop sessions in Apia, and provide information on the registration process and rights
- Consider the use of a certification mark as a way of branding Samoan handicrafts which can be used to identify certain handicraft techniques or geographical origins.

# Chapter 1. Economic, social, and cultural framework

## *Summary*

This chapter reviews the roles of men and women in Samoa's society and economy. Samoan women tend to focus on their traditional domestic role and only a third of women are economically active. When women work outside the home, they have to balance their economic role with domestic and traditional obligations. The traditional matai (chiefly) system means that women have a limited voice in political decision-making.

## *The economic, social, and cultural context is vital for 'gendered' investment climate reform*

This chapter provides an overview of the economic, social, and cultural context for women engaged in private sector development in Samoa. This provides essential background for the Report's recommendations designed to ensure that women benefit from investment climate reforms on the same basis as their male counterparts. Before considering in detail any particular investment climate constraint from a gender perspective, it is helpful to have a basic understanding of the different roles that men and women play in the economy and in society. For example:

- The cultural context may mean that women may be unlikely to participate in public meetings or to put forward their views in the same way in or the same forums as men. It may also impact on business women's ability to access commercial justice
- To the extent that investment climate reforms are focused on particular sectors (for example in relation to licensing reform) it is important to understand which sectors of the economy women on the one hand and men on the other operate in
- If women suffer from a 'double time burden' – combining domestic duties with income-generating activities – reforms aimed at simplifying processes such as in relation to business formalization, land registration, or commercial justice have the potential to have a disproportionately beneficial impact on women, and so it is particularly important to engage with women when taking forward such reforms
- When considering initiatives to encourage businesses to formalize, it is important to understand the different incentives to remain informal that may operate on women on the one hand and men on the other.

This chapter provides the background to assist with a consideration of these types of issues, and thus provides the framework for designing effective investment climate reform interventions – for women as well as men.

## *Only a third of Samoa's women participate directly in the economy...*

Samoa's 2006 National Census shows that just under a third of the economically active population are women<sup>6</sup>, with most women focusing instead on domestic work (see Table 1.1 below). The low level of participation can be attributed to gender role expectations within a traditional Samoan household where men deal mostly with work outside the house, while women are involved mainly in work in the house including domestic chores, caring for children, the sick, and the elderly, cleaning, and cooking.

<sup>6</sup> The Economically active population consisted of all persons aged 15 years and over who were employed and unemployed during the reference period. In the Economically inactive or Not Active population, this group comprised all persons attending school or mostly taking school courses during the reference period, persons involved in housework and caring, and all persons who were not doing any work due to disability, old-age, or any other reasons.

**Table 1.1. Labor force participation in Samoa**

Source: Census Report 2006.

	Women %	Men %
Overall	32	68
Subsistence employment	27	73
Non-economic activity (Domestic work/ housework)	72	28

*...although women workers dominate in Samoa's car wire assembling plant*

Women represent about 40 percent of private sector employees according to the 2006 Labor Market Survey. Women workers dominate in the manufacturing sector – comprising 60 percent of the workforce. The reason for this is the dominance of women working at the Samoa's biggest manufacturing company, Yazaki (Box 1.1 below). All other industries are dominated by men, though a large number of women are also employed in certain industries such as tourism, education, financial services, and wholesale/retail trade.

**Box 1.1. The Case of Yazaki EDS Limited**

Yazaki is the major car wire assembling plant in a Pacific island country and largest private sector employer in Samoa employing more than 1,000 women. Women were hired as they were more practical with their crafting and this provided employment opportunities for women in Samoa. However the impact of globalization combined with financial and economic issues in the global economy forced Yazaki to reduce its workforce to 600 in 2009. From this 600, 60 percent of those still employed are women. Given that the majority of workers were women the impact on women and families is huge. There are no major plans on the part of the company or government to address this unemployment impact therefore women who worked at Yazaki scrambled on their own to find other jobs or stay unemployed.

*Women derive limited benefit from Samoa's formal economy*

While the same approximate proportion of men and women are in each wage bracket (see Table 1.2 below), women tend to be in lower-paid occupations such as clerical and professional jobs. Forty five percent of public service employees are women. Only 30 percent of managers in Samoa are women (see Table 1.3 below).

**Table 1.2. Employees by salary/wages per annum and government tax rates, 2006**

Source: Census Report 2006.

Salary per annum US\$	Men %	Women %
0–12,000	66.7	63.7
12,001–15,000	6.8	6.5
15,001–20,000	7.1	8.8
20,001–40,000	8.0	10.1
40,000+	2.9	2.4
Not stated	8.5	8.4

**Table 1.3. Employment by occupation and sex, 2006**

Source: Census Report 2006

Types of Occupation	Men %	Women %
Managers	70	30
Professionals	50	50
Technical/Associates Professionals	65	35
Clerical	39	61
Service	57	43
Agriculture	92	8
Fishery	93	7
Home manufacturing for sale	39	61
Manufacturing/Factory assembling	74	26
Elementary occupations	58	42
Agriculture, Fishing, Handicrafts	59	41
Not stated	70	30
<b>TOTAL</b>	<b>68</b>	<b>32</b>

### *Women's businesses tend to be small-scale and home-based*

When women do participate in the labor force, they tend to work in home-based manufacturing, wholesale and retail trade, and education sectors, while men tend to work in agriculture (see Table 1.4 below).

**Table 1.4. Employment by industry and sex, 2006**

Source: Census Report 2006

Types of Industry	Total %	Men %	Women %
Agriculture	32	43	8
Fishing	4	5	1
Informal or Home-made manufacturing	10	3	27
Formal Manufacturing, Mining, Quarrying	5	4	8
Electricity, gas, water	2	2	1
Construction of buildings & structures	5	7	0
Wholesale & retail trade	7	6	10
Restaurants & hotels	4	3	5
Transport storage & communication	6	8	3
Financing loans insurance	2	1	3
Real state renting and business activities	1	1	1
Education	5	3	10
Health & Social work	2	1	3
Other Community & Personal services	5	4	6
Private households hiring employees	2	1	3
International organizations	1	0	1
Public Administration	5	5	5
Agriculture, Fishing, Handicrafts	4	4	5
Not stated	1	1	1
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>

Samoa has no sex-disaggregated data on business ownership. However, the number of women engaged in some small enterprises supported through the Samoa's Small Business Enterprise Centre (SBEC) provides an indication that 46 percent of these businesses are owned by women. Table 1.5 provides sex-disaggregated data for the types of businesses in each sector. Women are particularly associated with the fishing, handicrafts, retail, and tourism sectors.

**Table 1.5. Business Training and Small Business Loan Guarantees, by Sector and Sex**

Source: SBEC 2009

Sector/Type of Business	Business Training			Loan Guarantee Scheme		
	Men	Women	% Women	Men	Women	% Women
Agriculture and Food	63	66	51	104	61	37
Fishing	3	11	79	13	7	35
Handicrafts and Art	28	36	56	19	39	67
Manufacturing	44	33	43	76	95	56
Retail	77	135	64	138	144	51
Services	56	89	61	98	55	36
Tourism	15	19	56	16	20	56
Transportation	25	16	39	79	37	32
Unspecified or Other	185	172	48			
<b>TOTAL</b>	<b>496</b>	<b>577</b>	<b>54</b>	<b>543</b>	<b>458</b>	<b>46</b>

Income-generating activities are increasing for women, including micro and small businesses such as the fine mats initiative supported since 1992 by the NGO Women in Business Development. The initiative came about after consultations with families, especially men, on the importance of the woman's role in earning income through fine mat weaving. Men contribute to the processing of the pandanus leaves that are used for the mats, while women dominate in weaving the mats and in selling them, thus providing cash income to both women and men.

### *The majority of remittances appear to be sent by and to women*

Samoa women appear to be the main senders and beneficiaries of remittances, although there is no systematic sex-disaggregated data available. One business, Imex Money Transfer, undertook a special exercise to disaggregate their data for December 2008 to assist with the preparation of this Report. The data showed that for those sending money over in December 2008, 84 percent were women compared to 16 percent men. For those at the receiving end, 73 percent were women. While it is not possible to determine, on the basis of this information, the extent to which this captures seasonal or other differences among these businesses, it is certainly indicative of the fact that there are probably important gender dimensions to remittances in Samoa that need to be addressed, and that merit further research.

### *Women are still challenged by traditional gender roles and cultural obligations*

Samoa women who are engaged in economic activities face the challenge of balancing this role alongside their social and family obligations. At the Women in Business Workshop held in February 2009 with the IFC team, it was generally agreed that, in addition to the time women commit to running their businesses, they were also responsible for running their households and fulfilling the responsibilities expected of them in their families, communities, and church. Even the single women indicated that, in addition to their time spent at work, they too had responsibilities within their families and communities.

The close-knit structure of Samoan society brings with it many societal obligations, particularly to the village and church (see Box 1.2 below). These include both monetary and non-monetary contributions to village occasions such as ceremonies for the bestowing of titles, funerals, and village feasts. Regular contributions to the church are also expected. Such obligations (fa'alavelave) reduce the amount of cash available for health, education, and businesses.

## Box 1.2. Traditional Culture and Development<sup>7</sup>

Traditional village culture in Samoa can constrain business development. The accumulation of individual wealth, including through business initiative, is often interpreted negatively. Samoan's share wealth with family, the community, and the church, which can prevent the accumulation of capital needed to start a business. This system, known as fa'alavelave, also consumes a significant portion of remittances and many also seek consumer credit, sometimes on a virtually continuous basis, to meet these commitments.

Women are generally active in all aspects of village life both within their extended families and through village-wide structures such as women's committees. In some villages, all adult women are expected to participate in the women's committee (other villages are less prescriptive). Members of women's committees fall into three categories: wives of matais (faletua and tausii); daughters of matais (tamaitai or aualuma); and wives of matais' sons (aumaga taulelea), reflecting the strongly hierarchical nature of Samoan society.

### *Women enjoy good levels of education*

Samoa has achieved near gender parity in primary and secondary education. From 2000 to 2006, boys' enrolment in all years of primary education was four percent higher than girls. However, at the secondary level, 2 to 6 percent more girls than boys were enrolled from 2000 to 2006.<sup>8</sup>

### *Women are poorly represented in Government*

Universal suffrage was achieved in Samoa in 1991. However only matai (chiefs) can stand for Parliament. Traditionally, both men and women have the right to be matai. But it is more usual for males to be offered this role, and in most villages the rule prevails that only males can be matai (see Box 1.3 below). As a result only three out of 49 Parliamentarians are women.

## Box 1.3. The Matai (chief) System in Samoa

Each Samoan family has its own matai titles which are their identity in the village and the country as a whole. A matai title can only be bestowed to someone chosen by the family as their matai. A matai is a leader in the extended family and he/she represents the interests of his/her family to the village council and other gatherings. The matai title is strongly tied to the family lands and the place where it was originated.

From the 2006 Census, nine percent of the Samoa's population has matai titles, of which 80 percent are men.

<sup>7</sup> Flaming, Mark W, and Stuart Mathison. Financial Service Sector Assessment, Kiribati, Tuvalu, Samoa, Solomon Islands, Vanuatu. UNDP and UN Capital Development Fund 2007.

<sup>8</sup> Samoa Ministry of Education, Sports and Culture, 2007, Education for All: Mid-decade Assessment Report.



## Chapter 2. Legal and policy framework

### Summary

This chapter examines Samoa's international commitments and Constitutional guarantees in relation to gender equality. It considers the conflict between customary law and gender equality and the manner in which the Courts have addressed this issue. The chapter also reviews key laws that discriminate against women, and considers Government initiatives to promote equality between the sexes.

### *Samoa has entered into international commitments for sex equality*

The Government of Samoa has made a number of international and regional commitments to gender equality, including ratifying in 1995 the important Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (see Box 2.1 below).

#### **Box 2.1. Key international commitments to gender equality made by Samoa**

Convention on the Elimination of All Forms of Discrimination Against Women  
 International Covenant on Civil and Political Rights  
 Beijing Platform for Action  
 The Millennium Declaration  
 The Commonwealth Plan of Action for Gender Equality 2005– 2015  
 The Revised Pacific Platform for Action on Advancement of women and Gender Equality 2005– 2015

Samoa's accession to CEDAW on 25 September 1995 means that it has agreed to pursue by all appropriate means and without delay a policy of eliminating discrimination against women<sup>9</sup> and to take all appropriate measures to eliminate discrimination against women in the political and public life of the country.<sup>10</sup> Samoa submitted its first CEDAW report to the United Nations in September 2005 as required under the Convention.

### *The Constitution incorporates non-discriminatory provisions...*

The Samoan Constitution includes a number of provisions that guarantee non-discrimination. The central provision is Article 15 which states that *all persons are equal before the law and entitled to equal protection under the law*. The Article provides that no person shall be subject to any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, or place of birth, family status.

As discussed in Chapter one above, customary law in Samoa can discriminate against women, particularly in relation to matai titles. Despite this, Samoa's Constitution specifically recognizes the role of customary law in relation to chiefly titles and customary land.<sup>11</sup> Customary laws that had acquired the force of law under any legislation or court decision prior to Samoa's Independence in 1962 are also recognized as continuing in legal effect.<sup>12</sup>

<sup>9</sup> Article 2 CEDAW.

<sup>10</sup> Article 7 CEDAW.

<sup>11</sup> Articles 100 and 101.

<sup>12</sup> Article 114.

### *...and the Courts uphold these over customary law*

There are some ongoing tensions between Samoa's formal law system as enforced through the Courts and Samoa's customary law. However, in general, the Courts take the view that Constitutional guarantees of equality take precedence over customary law. The issue was addressed by the Supreme Court in the landmark August 2004 decision of *Leituala v Mauga*. In that case, the Court found that the Council of Chiefs (ali'i and faipule) of Lotofaga had breached a family's Constitutional right to freedom of movement by banishing them from their village.

### *Formal statute law contains provisions that hinder women's full economic participation*

Despite Samoa's Constitutional guarantees of equality, the country's legal framework retains some provisions that hinder women's full economic participation – particularly in relation to property rights (on divorce and widowhood) and employment rights.

#### **Women's property rights on divorce**

Samoa society is founded on Christian values and most marriages are monogamous, although polygamous marriages have been recognized as valid by the Courts.<sup>13</sup> On divorce, the courts divide matrimonial property on the basis that each party takes their share based on their financial contribution to the marriage. But women can fare badly under this practice because the courts disregard non-financial contributions to the marriage such as household and child rearing tasks.

Women seeking maintenance have to go to Court to obtain such an order. The onus is on women to demonstrate to the Court that they are eligible to such payments. As stated by Chief Justice Sapolu, the main problem with how the law works is the uncertainty involved – There is no legislative or judicial guidance so far, as to how to deal with matrimonial property disputes between married couples. No legal principles have been laid down on how to deal with such a situation.<sup>14</sup> When it is ordered, maintenance payments are usually fairly low between 50–100 tala (\$20–40) per month. Even when women are able to get such an order, enforcement of the order is very difficult. This means that women have to carry the burden of taking care of their children without regular support.

The Government is considering changes to matrimonial property laws. Under the proposed changes, the law would adopt a presumption of equal contribution (where the parties have been married for more than two years) and the court would only depart from that presumption if warranted by the justice of the case. The reforms would also see the introduction of no fault divorce where the parties have been separated for more than two years.

Property rights are not recognized at all for de facto relationships where the parties have co-habited but have not legally married.

#### **Women's property rights on widowhood**

Samoa inheritance legislation does not discriminate between men and women (see Box 2.2 below). But customary land is not subject to these rules, with land being inherited only by those with customary matai title – predominantly men.

#### **Box 2.2. Property rights of the surviving spouse**

On the death of a spouse where there is no will (as is commonly the case), the surviving spouse is entitled to the personal effects of the deceased, and to one-third of the spouse's remaining property, with the other two-thirds being distributed to the children. Where the couple have no children, the surviving spouse retains two-thirds of the estate with the remaining third being given to the deceased's parents. The surviving spouse only takes the full estate where there are no children and the deceased's parents are also deceased.

<sup>13</sup> *Samoa Public Trustee v Annie Collins & Others* [1960] WSLR 52.

<sup>14</sup> *Elissra v Elissra* (1994) WSSC 14 < <http://www.paclii.org/cgi-bin/sinodisp/ws/cases/WSSC/1994/14.html?query=Elisara>>.

### Employment law

Forty five percent of total employees in the public sector are women and the Public Service Act expressly states that one of its objectives is to *establish a public service...in which decisions are made on their merits and without discrimination*.<sup>15</sup> Women in the public service are eligible to eight weeks paid maternity leave.<sup>16</sup>

There are no equivalent provisions on discriminatory practices or maternity leave in the private sector. The current Labor and Employment Act dates from 1972 and contains some discriminatory provisions that are in non-compliant with CEDAW (see Box 2.3 below).

#### Box 2.3. Outdated provisions in the Labor and Employment Act 1972

- No woman shall be employed in any place of employment between the hours of 12 midnight and 6 o'clock in the following morning, provided that this prohibition shall not extend to the nursing, medical, police postal, telephone, telegraphic, and other essential Government services (Section 33(1))
- No woman shall be employed in manual work unsuited to her physical capacity (Section 33(2)).

### *Government is taking forward policies to improve the position of women*

The Government of Samoa has developed a National Policy for Women of Samoa 2007–2017, through which it aims to expand opportunities for women, and ensure progress is made in implementing the CEDAW. The Policy is to be implemented by the Ministry of Women, Community & Social Development in collaboration with the ministries of Health, Justice and Courts Administration, and Education, Sports and Culture. Women benefit from financing of economic activities supported through the Ministry for Women, Community and Social Development. Each village now also has a woman government representative who provides the link on activities and policies promoted by Government to the village and communities.

Responsibility for private sector development lies with the Ministry of Finance and with the Ministry of Commerce, Industry and Labor. The Government's over-arching policy document, the Strategy for the Development of Samoa<sup>17</sup>, does not give particular prominence to the role of women in economic development (see Box 2.4 below).

#### Box 2.4. Strategy for the Development of Samoa, 2008–2012

In addition to providing the private sector with a stable macroeconomic environment, the Government will promote private sector development by: (1) investing in economic infrastructure (which will also support social development); (2) improving the enabling business environment through legal and regulatory reform; (3) facilitating the development of financial markets; (4) facilitating beneficial international trade through outward-oriented trade policies; and (5) investigating development potential (natural resource surveys, scientific, and market research). Government's investment in education and health will further support the private sector through provision of a healthy, skilled workforce – as will ensuring public security and improving public sector management.

The Government will seek to further improve the effectiveness of consultation with the private sector by investigating means of introducing a formal consultative mechanism. Options ranging from modification of the Trade, Commerce and Industry Development Board to a statutory authority with a small secretariat will be examined.

<sup>15</sup> Public Service Act, section 2.

<sup>16</sup> Administrative Order pursuant to the Public Service Act 2004.

<sup>17</sup> Ministry of Finance, Strategy for the Development of Samoa, 2008-2012.

**Table 2.1. Key statute laws in Samoa that hinder women's full economic participation**

Area of law	Statutory provision	The practice
Marriage	Marriage Ordinance 1961 recognizes customary marriages Age of marriage is 16 for girls (18 for men)	Discriminatory practices such as bride price and polygamy are common
<b>Property rights:</b>		
Divorce	Divorce and Matrimonial Causes Ordinance 1961. Divorce is either fault-based or on five years separation.  Maintenance and Affiliation Act 1967	No guidance in the legislation on division of property and the Courts generally only recognize financial (as opposed to non-financial) contributions, which generally discriminates against women.  No statutory guidelines on maintenance payments and generally the court orders low payments.
Inheritance (in the absence of a will)	Administration Act 1975	Although this Act provides for equal treatment, in practice customary law applies to land and discriminates against women.
<b>Employment rights:</b>		
Employment	Public Service Act – only protects women in the public service from discrimination and not private sector employees.  Labour and Employment Act 1972 – Outmoded provisions preventing women from working from 12 midnight to 6 am in certain capacities exist	Private sector employees do not get any maternity leave although public servants are eligible for eight weeks leave.

## Chapter 3. Public private dialogue

### *Summary*

This chapter reviews private sector representative organizations and public private dialogue mechanisms in Samoa. It concludes that women's business interests are not currently making an effective impact on the country's developing policies and plans for private sector development, and makes recommendations for strengthening women's voice in this process.

### *Business women's interests are represented in existing business associations*

There are a number of private sector representative bodies in Samoa. As can be seen from Table 3.1 below, all have female members. The Chamber of Commerce has recently become the umbrella organization for the formerly disparate representation of the many private sector bodies. However, lack of a secretariat hampers its ability to effectively represent the private sector in Samoa. Once it is fully established and operational, the new Samoa Institute of Directors, which is open to membership from both the public and private sectors, may have the potential to significantly strengthen the interface between these sectors.<sup>18</sup>

**Table 3.1. Key institutions representing the private sector in Samoa**

\* Representation of men/women in the institution or of men's/women's businesses.

Name	Member-ship (#)	% Women*	Main Purpose
Chamber of Commerce	145	28	Lobby and advocacy for business interests and Investment promotion
Samoa Association of Manufacturers and Exporters	50	20	Promoting and advocating for the manufacturing sector in Samoa
Small Business Association	20	80	Advocacy for business interests
Samoa Hotels Association	69	64	Promoting and advocating for the tourism development in Samoa

### *There is advice and assistance for women in business*

There are two significant organizations in Samoa that provide assistance and training to business women: Women in Business Development Inc, and the Samoa Small Business Enterprise Centre.

#### **Women in Business Development Inc. (WIBDI)**

WIBDI provides opportunities for skills building and engagement in projects, technology, technical advice, and basic business and financial training to women to support income generation, job creation, and participation by women and youths in the village economy. It also assists business women in accessing finance and markets.

### The Samoa Small Business Enterprise Centre (SBEC)

SBEC operates with support from NZAID to provide business training, (for example business management, financing, marketing, business plan development), assistance, and related advisory services to small businesses in Samoa. It works with commercial banks to provide, through its Small Business Loan Guarantee Scheme, an 80 percent loan guarantee on advances to emerging and expanding small businesses. SBEC also works with WIBDI to help businesses graduate from micro/informal status to formal. To date more than 1,000 small businesses have been supported under the Small Business Loan Guarantee Scheme (see Box 3.1 below).

#### Box 3.1. SBED's work with women

SBEC has mainstreamed gender equity awareness and practice into its activities. It has achieved a good balance of male and female clients, both in its training and business development activities. Most of SBEC's clients are couple-owned businesses. Statistics however do not tell the full story – many guaranteed loans in men's names are in fact for businesses run by their wives. Most businesses surveyed were being run by husband and wife teams with, more often than not, the wife being nominated for SBEC training. SBEC has always encouraged women applicants over a wide age spectrum through the nature and language of its promotional village and national programs. The manner in which it has conducted its training and the empowerment it has given its successful customers has encouraged others.

### *Women's voice is limited in PPD*

Public private dialogue (PPD) in Samoa is currently weak. Government and the private sector have been engaged in various forms of dialogue around improving the investment climate, and in the trade arena, there are regular meetings between the Government and the private sector. The Chamber of Commerce is engaged in dialogue with Government on a range of topics, but acknowledges limited capacity to participate effectively and to conduct the kind of analysis needed for effective policy-making. There were only a limited number of workshops to discuss the Strategy for the Development of Samoa, 2008–2012, and these were organized with little opportunity for advanced planning and preparation by private sector participants.

Discussion with both the private and public sectors revealed that institutional memories are short and that there is no ongoing formal process for dialogue on important issues. The Government should give the private sector a more central role in policy formulation, with a view to enhancing the understanding of business needs and incentive systems, and facilitating public–private partnerships. Towards this end, a private-public sector roundtable, facilitated by the Asian Development Bank in 2007, led to agreement to establish a formal process for public–private dialogue through an amended Revenue Board mechanism.

During the Business Women's Forum, facilitated by IFC in Samoa in February 2009, the need to improve the participation of women in the institutions involved with and the dialogue around the investment climate reform was highlighted. If there is to be a PPD process in Samoa it will be important to recognize the economic importance of women and ensure institutional opportunities for gender inclusion and for proactive outreach to women-in-business in policy making.

There continues to be the perception that women do not receive adequate attention when advocating for policy or legislative changes or when they are seeking support from Government agencies. The struggles that the NGO Women in Business Development Inc<sup>19</sup> had in terms of accessing cooperation and support from Government ministries is one example of such a case, until the Prime Minister took the lead in the development work that the organization was doing. Some women had indicated that because they did not have any 'chief titles' they were not taken seriously.

### *There is limited public sector representation of women*

As discussed in Chapter two above, the Ministry of Women, Community & Social Development is responsible for women's affairs. Responsibility for private sector development lies with the Ministry of Finance and with the Ministry of Commerce, Industry and Labor. The Government's over-arching policy document, the Strategy for the Development of Samoa<sup>20</sup>, does not give particular prominence to the role of women in economic development.

<sup>19</sup> See chapter 4 for more details on Women in Business Development Inc.

<sup>20</sup> Ministry of Finance, Strategy for the Development of Samoa, 2008-2012.

## *Recommendations*

- Institutionalize the Business Women's Forum, facilitated by IFC in Samoa in February 2009, to provide a space for business women (from large to small businesses) to network, both with each other and with similar organizations across the regions. The Forum could also support training opportunities for women on key investment climate issues such as business start up and formalization.
- Government should ensure that business women and private sector representative organizations are consulted as part of the CEDAW reporting process, and that women's economic empowerment is identified as a core issue for Government action.



## Chapter 4. Starting and licensing a business

### *Summary*

Women are estimated to head over 40 percent of businesses in Samoa. Most are micro businesses, which comprise 80 percent of the private sector. There is a general lack of awareness of the different business forms and processes of formalization. This chapter considers the particular challenges that women in Samoa face when seeking to formalize their businesses, particularly related to the patriarchal nature of society and the limited number of women with matai title. It goes on to review Samoa's new Companies Act. With its simplified and streamlined procedures it has the potential to be of particular benefit to women, but much will depend on the way it is implemented. Other business forms – sole traders, partnerships, and cooperatives are also potential business forms for female entrepreneurs. Samoa's licensing regime is suggested to be skewed in favor of male entrepreneurs.

### *Most businesses in Samoa are very small and not growth-orientated*

Samoa has a small, nascent private sector. Eighty percent of enterprises are micro or small, with less than five employees. A key challenge that has been identified for Samoa is to move from an informal/subsistence economy to a more growth-orientated commercial economy (see Box 4.1 below).

#### **Box 4.1. Personal insight – the informal sector needs to become more commercial**

How do we cause the informal sector to think like business people and undertake commercial instead of subsistence activity? This is what needs to happen so we can move forward.<sup>21</sup>

Many businesses are family-based, and are not structured on commercial lines. Inheriting a family business is a very common way of entering business for both men and women. It was suggested in discussions with business women that, because this is not an entrepreneurial model, the precautions and analysis that would normally precede business entry are commonly over-looked and the failure rate of such businesses is high.

The limited numbers of women matais has a negative impact on village women's role in a strongly patriarchal society. However, women often have significant power in the family sphere based on their roles as wives and mothers and through their frequent control of the family purse strings. Many women are assisted by their families in their business ventures. One such example is Agasa who, with the help of her family, is able to produce highly sought after Samoan fine mats or sae.

#### **Box 4.2. Case study: Business can be a family affair**

Agasa started selling her fine mats in her husband's village shop in an effort to bring in some extra money for the family, not knowing the international demand that existed for mats such as hers. In 1998 she was approached by Women in Business Development (WIBDI), a not for profit organization, to supply mats to local and international markets for their sponsorship orders program. Under this initiative WIBDI facilitates purchaser sponsorship of a fine mats and negotiates the price and conditions of sale on behalf of the weaver. WIBDI pays the weaver a weekly wage and the balance of the purchase price upon completion. With her mats taking an average of 5 months to complete, working up to ten hours a day, six days a week, Agasa finds it helpful to have someone negotiate and organize on her behalf and has been able to secure a fee of around 4,000 tala (\$1,600) per mat. Since she began working with WIBDI she has been able to earn a steady income for her family and has been able to purchase a water tank for her village with assistance from WIBDI.

Her family and her husband's family are very supportive of Agasa's work. Her father-in-law and husband, who works as a night watchman on a nearby construction site, have even taken on some of the traditionally female roles the family such as cooking in order for Agasa to be able to spend more time weaving. Additionally, her husband cuts and prepares the panadanus leaves that she uses for weaving.

<sup>21</sup> Source: Interview with CEO, Chamber of Commerce – Sina Retzlaff-Lima, during IFC mission.



Most large businesses tend to be foreign-owned. Foreign investors in Samoa are required to hold a Foreign Investment Registration certificate issued under the Foreign Investment Act 2000, and are not permitted to engage or invest in Reserved List activities<sup>22</sup> unless they enter into joint ventures with Samoans, employ locals, and source capital overseas. The restricted list is currently being overhauled, as is the process for employment of, and entry by, expatriate workers.

The business environment has improved over the past few years with the Government giving increasing priority to stimulating private sector development. While in many ways progress has been slow and lacking in depth,<sup>23</sup> recent reforms to business entry procedures have the potential to make a real difference to the ease of starting a business in Samoa.

### *Women face particular challenges in formalising and growing their businesses*

Business women interviewed during the course of the mission identified a number of potential constraints to business formalization. These include:

- Unresponsive government officials who tend to respond more positively to men, older rather than younger woman, and women holding matai titles<sup>24</sup>
- Lack of access to information
- Limited business skills including a lack of financial literacy, lack of awareness of the importance of conducting market analysis prior to a business being commenced, and a lack of ability to prepare business plans. They noted that a lack of awareness around compliance obligations and a lack of business skills were significantly more profound in the rural areas.<sup>25</sup>

These types of constraints may impact on men as well as women. But they are likely to be more burdensome on women because women have poorer business networks than men and have less time to deal with bureaucracy to weed out information or undertake entrepreneurial training because of their double time burden – the need to combine their businesses with domestic and child care obligations.

During discussions, women lamented rising church and family contributions and family dependency issues that erode capital accumulation for investment purposes.<sup>26</sup> They noted that contributions to church, family, and the village community (fa'alavelave) comprise a large and what is perceived sometimes as a debilitating share of disposable income, and that it is not uncommon for 10–20 percent of income to be contributed to the church (see Box 4.3 below). Women feel that they are unfairly disadvantaged in terms of fa'alavelave in the sense that it is they who give much of their time to attend to the planning of such events, and it is they who contribute the funds, the gifts, the woven mats, and more, but at the same time they are not recognized at the receiving end. The mission was informed that: The elders take the best gifts and the remaining gifts get distributed to the men, but not the women. This practice helps the men to get ahead.

#### **Box 4.3. Personal insight: cultural challenges of running a business**

Samoans don't want to start up a business because they are afraid that everyone will come and borrow from them. A woman in business won't have much power unless she operates within her own family. We have a business mind, but a communal mindset. Those who have survived have used the family network. We do business plans, but we don't incorporate our reciprocity obligations into the business plan – you need to incorporate your family into your supply chain and marketing plan – otherwise they will definitely come and ask you for money<sup>27</sup>

<sup>22</sup> (i) providing buses for transportation of the general public, (ii) taxis, (iii) offering vehicles for hire, (iv) retailing, and (v) sawmilling.

<sup>23</sup> The Enterprise Research Institute, Samoa – A Private Sector Assessment - Keeping Reform Alive 2003.

<sup>24</sup> See Chapter 1 for explanation of matai system.

<sup>25</sup> This constraint was confirmed in interviews with the CEO, Ministry of Women – “Our information is that business skills training is not reaching grass roots women. We have devolved small business training to Women in Business, but lately our information shows that these grass roots women are asking for our help”.

<sup>26</sup> See statement by CEO, Ministry of Women, Community and Social Development of Samoa, on the occasion of the 53rd Session of the Commission on the Status of Women, New York, 6th March, 2009. “We recognise also the fact that value systems are changing, labour migration is on the rise and urban drift is also increasing. These have direct implications on our concept of ‘sharing responsibilities and collective caring’, thus placing women at the lower end of the scale with most of the responsibilities.”

<sup>27</sup> Interview with Samoa Umbrella for Non Governmental Organizations (SUNGO) during IFC mission.

## *The long-awaited new Companies Act has the potential to make a real difference to business start-up...*

In 2008 the Government operationalized a new Companies Act. It took seven years for the Act to come into force following its enactment in 2001 while the legislation was refined and further amended. But now that it is operational, the Act has introduced profound improvements for businesses wishing to operate as incorporated entities (see Box 4.4 below).

### **Box 4.4. Key improvements introduced by Samoa's new Companies Act**

- Allowing single person companies (previously a company was required to have at least two shareholders) and removing the requirements for a company secretary
- Removing the need for the filing of Articles and Memoranda of Association, and replacing this with a model constitution and providing simple standard forms for incorporation
- Phasing out stamp duty for incorporation documents
- Removing the need for companies to obtain an annual company license to maintain a company on the register
- Removing the need for nominal capital
- Introducing greater protections for minority shareholders
- Removing criminal offence provisions for late filing and replacing these with penalties, and
- Removing the need to go to Court when re-registration is sought by a company which has been struck off.

Company incorporation in Samoa is administered by the Registration of Companies and Intellectual Property Division of the Ministry of Commerce, Industry and Labor, which provides advice and data on companies and other legal entities to various users. Officials in the Companies Registry informed the mission about significant administrative gains that have been made as a result of the new Act:

- It takes only a single day to incorporate a company: immediately after an applicant registers, he/she is allocated a registration number pending approval of the proposed company name, which may be confirmed within a few hours
- Administrative steps have been eliminated: for example the need to make a separate application for company name approval prior to registration
- Registration is now effected by filing a single form
- Work is being undertaken to put the companies name database online.

The introduction of the new Companies Act in July 2008 led to a massive improvement in Samoa's scores in the World Bank Doing Business indicators in 2009 in relation to business start-up, with a ranking of 20 (an improvement in ranking from 131 in the previous year). However, compared with best ranking country in the region New Zealand, there is still room for improvement (see Table 4.1 below).

**Table 4.1. Starting a business – benchmarking in the Doing Business index<sup>28</sup>**

Indicator	Samoa	New Zealand	East Asia and Pacific	OECD
Procedures (number)	5	1	8.1	5.7
Duration (days)	9	1	41.0	13.0
Cost (% of income per capita)	9.9	0.4	25.8	4.7
Paid in minimum share capital (% of GNI per capita)	0	0	21.3	15.5

Making it quicker and easier to form a company is an important step for Samoa. History shows that the take off of the limited liability company as a business vehicle is key to economic development <sup>28</sup> for the reasons discussed in Box 4.5 below.

<sup>28</sup> See Gower, LCB, et al, 1979. Gower's Principles of Modern Company Law, 4th ed. London: Stevens & Sons.

**Box 4.5. Advantages of incorporating as a limited liability company**

Company incorporation is recognized internationally as a highly advantageous business form because:

- It separates the business in law from its owner, so protecting an entrepreneur's personal assets if the business fails
- It facilitates the continuation of the firm beyond the initial owner(s)
- It encourages risk taking and the pooling of resources, thus enabling entrepreneurs to form joint enterprises, and facilitating greater investment in the businesses.

*...especially for women*

While it is too early to properly assess the impact of the new Companies Act, it is clear that the Act has the potential to be of particular benefit to women entrepreneurs. The ability to incorporate with a single shareholder may be especially significant. It means that a woman can start up a formal business registered as a company on her own without having to bring in a male relative (husband or brother, for example as a second shareholder.) In addition, the overall simplification of the process may be particularly advantageous to Samoan women because:

- They tend to have less access to business advisory networks and less confidence and experience in dealing with bureaucracy and officialdom
- They are frequently time poor – responsible for domestic and childcare duties as well as their businesses and so have less ability to deal with complex and bureaucratic procedures
- They tend to have less exposure to business/official matters (preferring in many instances to leave such issues to the men) and so, again, may find navigating complex incorporation processes more challenging than their male counterparts.

*The Samoan Companies Act is in line with best practice in the region*

Companies legislation (recently commenced or proposed) in Samoa, Tonga, and the Solomon Islands is heavily based on the New Zealand Companies Act 1993.<sup>29</sup> However, the islands' legislation is significantly simplified and streamlined compared to the New Zealand precedent so that it is more appropriate for the economic and business context in which it will be used.<sup>30</sup> As Table 4.5 at the end of this chapter shows, the new Samoan Act is in line with best practice in the region.

*But careful implementation, including targeted information for women, will be vital if the potential of the Act is to be realised*

The alternative to forming a company is for a business to operate as a sole trader (if the business is owned by one individual), as a partnership (if it is jointly owned), or as a co-operative. Table 4.4 at the end of this chapter compares companies, sole traders, and partnerships as business forms. (Co-operatives are largely defunct in Samoa and are discussed later in this chapter). A sole trader or partnership offers the simplest business form with the least regulatory compliance requirements. However, the main disadvantage of both forms of business is that the business owners (that is, sole trader or partners) take full personal liability for any business failure and unpaid business debts, and thus tend to be risk averse. Incorporation of a company involves greater formalities and regulatory compliance, but it has the advantage of protecting a business person's personal assets from business failures, as well as facilitating hand-over to new owners and enabling joint enterprises and investment in the business.

Now that registering a company is a far simpler, cheaper, and faster process than it was previously, there is scope for even small businesses to adopt the corporate form. For a woman this may have the advantage of providing a legal separation between her business and her family finances. But business interviewees complained that Samoa's current tax regime provides a disincentive to register a business as a company (see Box 4.6 below). The apparent tax disadvantages of the corporate form will need to be addressed if Samoa is to reap the full benefit of its state-of-the-art Companies Act.

<sup>29</sup> Note the World Bank Doing Business indicators which rate New Zealand's performance in terms of ease of business entry as being the best in the world.

<sup>30</sup> There are some minor differences in approach between the various Pacific island economies. On the whole, however, the legislation analyzed below adopts the same approach to significant issues of company law. The Samoa and Solomon Islands laws signify major reform of companies law which was still in place from the colonial era. The Tonga legislation underwent significant modernization in 1995 (based on the 1993 New Zealand legislation), however, it is being updated to reflect more recent reforms in the region.

#### Box 4.6. Companies pay higher tax

Sole traders and partnerships are taxed on their profits at tiered tax rates – the top tiered tax rate for individuals including sole traders being 27 percent as of 1 January 2007. However, a flat tax rate of 29 percent applies to companies.<sup>31</sup> Further tax reforms proposed for 2008 have been put on hold, but may, when and if implemented, include further reductions in corporate taxes.

Officials in the Registration of Companies and Intellectual Property Division informed the mission that it is conducting an awareness campaign to alert business people of the changes and new procedures for incorporating, and the benefits of incorporation. It is important that this campaign is designed so that it reaches women as well as men and that it (i) clearly details the choices of business form and accompanying obligations, (ii) maps the process of incorporation, and (iii) describes the benefits of company incorporation.

A starting point would be to ensure that the reforms are reflected on the Ministry's website, which still refers to the old system of company registration despite having been updated in June 2008.<sup>32</sup>

### *The Company Registry needs to be made more accessible*

The mission undertook a sex equality assessment of the Company Registry in Samoa (see Table 4.2 below). A key issue that emerged from this was the need to make the Registry more accessible. Currently registration can only be undertaken personally by traveling to Apia, which is both expensive and inconvenient. For time-poor women with domestic responsibilities, this might make registration an impossibility. In addition, the Registry is a little difficult to find<sup>33</sup> and information on incorporation processes and its benefits is scarce.

**Table 4.2. Company Registry: sex equality assessment**

Question	Response
<b>The process:</b>	
Is personal attendance required? (Can discriminate against 'time poor' women)	Can send in forms via mail or someone else can drop them off. But given Samoan preference not to use the local mail system, and to do things in person, someone (usually the applicant) usually visits the office. The travel costs associated with the need to go to Apia (especially from Savaii) is a real issue
Are multiple visits required?	No (unless office isn't staffed for example at lunch)
How long does each visit take?	Twenty to thirty minutes for each of Companies Registry and Business License Registry
Are front counter staff men or women?	Both – but more women (especially in Companies Registry).
Is the registry a pleasant/facilitative environment for women?	Companies Registry – yes, but it is difficult to find. The registry itself is not signposted and is located behind a door marked 'staff only' (although non-staff can freely enter if you know where you're going). The front counter arrangement is for payment of fees, not for serving new applicants. Business license – easier to find (signs) and only has a front counter.
Is a woman permitted to submit an application alone, without consent of male relative, – either formally required or as a matter of practice?	Yes.
<b>Related Culture / social issues:</b>	
Do women find it more difficult than their male counterparts to make the time for the process (due the childcare/domestic responsibilities)?	Possibly. Although they could either take their children with them and perhaps a female relative to assist or have a female relative from the extended family care the children and domestic responsibilities while they are in town.
If travel is required, do women need consent from their husbands to do so?	No
Are women more susceptible to queue jumping or requests for bribes than men?	The issue is more one of who you know in the office who might move things along for you. However, both companies incorporation and business license registration can happen in a few days or a week.

<sup>31</sup> This is for resident companies and was brought into effect from 1 Jan 2007. Non-resident companies are taxed at 35 percent.

<sup>32</sup> See [http://www.mcil.gov.ws/rcip\\_register\\_company.html](http://www.mcil.gov.ws/rcip_register_company.html).

<sup>33</sup> The registry itself is not signposted and is located behind a door marked 'staff only' (although non-staff can freely enter if you know where you're going). The front counter arrangement is for payment of fees, not for serving new applicants. The Business Licensing Office is easier to find (signs) and only has a front counter.

Question	Response
Are any of the front office staff female? Are there cultural barriers for women dealing with male staff?	Yes – mostly female. Company Registry staff are all female bar one.
Are there opportunities for sexual or other harassment?	Mostly the procedure is free from harassment. The preponderance of female staff in the Registries helps against sexual harassment.

### *Cooperatives are an alternative corporate business form, but are seldom used*

A cooperative society is a business owned and controlled by members who use it, have equal say in its operations, contribute equitably to its capital, and who share in the results of its operation (see Box 4.7 below). With their foundation as grass roots community based organizations and with values of mutual support, cooperatives have in some countries been promoted as being a helpful business form for women entrepreneurs. However, cooperatives are not currently a common business form in Samoa.

#### **Box 4.7. Characteristics of Cooperatives**

Cooperatives tend to foster reciprocal, ongoing educational programs for members so they can teach and learn from each other in understanding and carrying out their respective roles. A freely elected organizing committee will be responsible for the setting up of business activities. After receiving the necessary education and determining the minimum volume of business necessary for economic operation, the Committee develop suitable bye-laws for the registration of the co-operative and prepare of plans for the setting up of the business of the co-operative, including the selection of business premises, the selection of a manager and supporting staff, the establishment of policies, procedures and methods of operations, the supervision and internal control systems, and registration.

Until the 1980s cooperatives were used in the agriculture sector, particularly for the production and marketing of copra and cocoa. But a number of factors contributed to the demise of the cooperative as a business form including a decline in demand for copra and cocoa and a corresponding decline in their production. Many cooperatives also experienced internal management difficulties including unequal sharing of roles and responsibilities and financial mismanagement.

Government marketing boards for agriculture products, which had previously worked with cooperatives, have also been abolished and export markets for Samoa's agriculture products have declined significantly. The Cooperative Societies Ordinance 1952, which regulates the registration and operation of cooperatives, is still law in Samoa, however, it is seldom, if ever, used. Recent cooperative efforts in areas such as organic farming and soap making have proceeded on an informal basis, often with the support and facilitation of an NGO and without the formal creation of a registered cooperative society.

### *Almost all businesses in Samoa need a business license*

There is no sector specific licensing regime in Samoa<sup>34</sup>, but all businesses are required to have a license under the Business Licenses Act 1998. It is an offence to carry on business without such a license. The only exception is the agricultural and fisheries sectors which are specifically exempted from the requirement. The business licensing regime is described in the Box 4.8 below. Although the system is administered by the Ministry for Revenue, and business licenses appear to be used primarily as a revenue raising tool, the Act does envisage a regulatory role for licensing. The Ministry may (in theory at least) inspect business premises to ensure they are suitable for the purpose, and the Act provides for licenses to be issued subject to general and/or special conditions such as stud height, lighting, ventilation, and cleanliness.

<sup>34</sup> The Mission was however informed that a proposed new standards regime for the tourism sector is intended to be introduced. It will be administered by a regulatory authority. Such structures tend to have considerable cost implications for firms and regulated standards, which are often introduced as a way of ensuring minimum standards of tourist accommodation, tend to be inflexible and restrictive and operate as a barrier to entry. On the other hand, industry driven star rating systems have been shown internationally to be useful mechanism for preserving availability of the broadest spectrum of tourist accommodation, and ensuring fees charged by each establishment are broadly commensurate with the facilities and services on offer.

#### **Box 4.8. Process for obtaining a business license**

The business license regime administered by the Ministry for Revenue is closely tied to registration for Value Added Goods and Services Tax (VAGST). Registration requires personal attendance in Apia or the urban centre of Salelologa in Savaii.

At present there are no regulations specifying the licensing fees, although the general practice is to charge a fee of 500 tala (\$200) per company for a company license renewal. The fee for sole traders is less – 220 tala (\$90).<sup>35</sup> Fees appear to depend to some extent on the availability of information, requisitions, complexity, and any special circumstances. Identity photos and copies of corporate documents (if the business is a company) are required. Appeals relating to licenses are to the Minister for Revenue.

There is a register of licenses in which is recorded: (i) name of licensee, (ii) name of owner or owners, (iii) address of location of the place or places of business, (iv) date of issue, (v) the type of business or economic activity, and (vi) such further or other particulars that may be prescribed.

Business licenses must be renewed annually on the 31st December each year, although it appears this provision may not be being fully enforced because only a few of the business women interviewed during the mission knew of, and were in compliance with, this requirement. In practice, the Ministry of Revenue allows until 31st January of the following year for business licenses to be renewed.

Once a business license has been obtained VAGST registration may be undertaken. However, VAGST registration is not compulsory until a business has an annual turnover of more than 75,000 tala (\$30,000). VAGST has recently increased from 12.5 to 15 percent.

It is important to note that, whereas the legislation states that a business license is required for any business or economic activity without any further elaboration, the Ministry of Revenue has interpreted this provision to mean that each separate activity a business operates requires a separate license fee. In other words, if a company owns and operates a grocery store as well as a DVD store, that company will be charged two business license fees of 500 tala (\$200) each, and the two separate activities will be listed on the one business license. This is in fact unlawful, as regulations to support the levying of fees have not been passed.

The process of obtaining multiple licenses is described in Box 4.9 below.

#### **Box 4.9. Case study: obtaining multiple licenses can be burdensome**

Leilani and her friend Karen successfully registered a Café Beer Garden and Community Centre in May 2008 but the process was far from straightforward.

The friends were required to take out two business licenses at a cost of 220 tala (\$90) per annum each, one for the Café and one for the Community Centre. In addition, they were required to obtain a liquor license for the Café at a cost of 1,000 tala (\$415) per annum. However, as they discovered through numerous inquiries to the government authorities, in order to proceed with applying for a liquor license they were first required to get approval from the Department of Lands and Titles. In order for the Café and Community Centre to be granted approval from the Department of Lands and Titles they were required to obtain fifteen signatures of approval from local chiefs.

After approaching a number of local chiefs they finally obtained their fifteen signatures and were able to submit their application to the Department of Lands and Titles for approval and finally apply for a liquor license with the Samoan Liquor Board.

Businesses interviewed during the mission described the business licensing process as efficient and speedy, and noted that inspections are hardly ever undertaken. But concern was voiced that a lack of specificity regarding fees and standard leaves room for corruption and creates unnecessary uncertainty.

<sup>35</sup> The mission was informed that sometimes sales people or agents, who are not familiar with the licensing law, are charged a business license fee of 500 tala (\$200) per visit to Samoa, even though the license lasts for a year.

**Box 4.10. Case study: Sheree Stehlin, Salon Sheree**

Sheree learned her trade at a New Zealand hairdressing college in 1978 as there was nowhere in Samoa that offered this training. After less than two years in New Zealand she decided she wanted to return home to Samoa and start her own business.

Like in many Pacific nations, Samoa faces difficulty in training sufficient numbers of skilled employees for the workforce. Businesses find that they often provide on the job training and then find it difficult to retain their staff. They work to build standards in the industry, but monies paid in registration or licensing of their businesses are not then channeled to compliance checks across the industry.

As President of Women in Business in Samoa from 2004–2008, Sheree Stehlin has been advocating for more women's participation in business for some years. In her sector there is a lot of competition but poor standards. There is no training in the sector in Samoa and Sheree sometimes needs to recruit from other Pacific Island Countries.

Recent start-up hair salons need to fill in an application form, be inspected by the Health Department and pay 220 tala (\$90) for a hairdressing license (if a sole trader), or 550 tala (\$225) for a license if registering a company. The whole process to register and receive the license takes about two days. They are not asked if they have any qualifications though, which when dealing with harsh chemicals, dyes, and hot wax, Sheree thinks is irresponsible. Sheree believes the Government should ask for, and check on, qualifications before granting a license for this sector.

*The licensing regime contains biases against women*

Samoa's business licensing regime is administered by the Ministry of Revenue and is concerned with revenue generation rather than with any regulatory purpose. Over 4,000 businesses are currently licensed (see Table 4.3 below).

**Table 4.3. Business Licenses by Type and Year**

Business type	2008	2007
Sole trader	3,173	3,111
Company	894	877
Partnership	83	78
Commercial traveler	15	17
Non-profit organization	11	14
Temporary license	4	8

Interviewees reported that the business license fee for sole traders (220 tala or \$90) was too high for many microbusinesses. It was suggested that the system discriminates against women because it is mostly men in the rural areas who are engaged in agricultural and fishing activities,<sup>36</sup> and therefore have the advantage of being exempt from the requirement to obtain a license. Women's businesses – for example flower arranging, sewing, handicrafts, and cleaning – all require a license. However, in practice, many women involved in such businesses do not obtain a license or pay tax and operate informally. The formalities required to obtain a business license (including the need to complete forms, pay the fee, and submit information to government about the business ownership and location), as well as the linkage with the taxation system, is clearly a disincentive to register. The time and cost involved in traveling from remote areas to Apia or the urban centre of Salelologa in Savaii to apply for and renew the license is an added disincentive. As argued above in relation to registration, it is likely that these factors will pose a more significant barrier on women than men: women tend to be time poor, less exposed to officialdom, bureaucracy and business matters, and have less information on business processes than their male counterparts.

In its 2008–2012 Development Strategy<sup>37</sup>, Government has committed to exploring business licensing and registration via the internet. This would be a positive development. However, it may not have much impact in rural areas where internet connectivity and penetration is very low. Even in urban areas internet registration poses difficulties with payment of registration fees and low internet penetration rates.

<sup>36</sup> although they are also involved in carving and printing.

<sup>37</sup> See Ministry of Finance, 2008. Strategy for the Development of Samoa, 2008-2012, Ensuring Sustainable Economic and Social Progress. Apia, Samoa. Promoting Investment has been vigorously pursued. Examples include exploring business licensing and registration via the internet, the reviewing of tax and tariffs, rationalizing of port fees and other charges, as well as simplifying documentation for exports and imports. MCIL has developed two related, user-friendly databases – the foreign investment register and the business database – that should be available to all stakeholders in FY2008.

## *Recommended reforms*

### **Implementation of the new Companies Act**

It is recommended that the Ministry of Commerce, Industry and Labor should consider the following measures:

#### **Legal reforms:**

- Ensure the tax regime does not undermine potential gains from the new Companies Act.

#### **Institutional reforms:**

- Ensure the new Companies Registry's operations fully take on board the needs of women. Opening hours and facilities should be designed with the needs of women in mind. Registration should be made accessible to rural women (for example by using existing NGO networks for outreach and support with the registration process for instance distributing and assisting with the completion of registration forms). Staff in the registry should be aware of the special needs of female applicants (lower literacy levels, may need to bring children to the registry with them)
- Improve the front office of the Registry and signing
- Complete computerization of the Registry and enable hybrid registrations (on line, in person, and by post). Work with internet cafes to encourage them to provide advisory/brokerage services to entrepreneurs wishing to register online. Monitor the extent to which women are accessing these services
- Work with the Ministry of Revenue to streamline the companies registration and business licensing registration systems. Developing online company registration and a more decentralized system is an opportunity to streamline the registration processes with business licensing / VAGST registration
- Decentralize the registry and open more registration centers.

#### **Outreach:**

- Undertake extensive outreach including to women's groups on the benefits of the new Companies Act
- Develop a simple handbook, aimed at women, on how to start a business, including a company. Accompany this with innovative methods of dissemination, for example drama, storytelling, radio soaps, TV dramas
- Update the Ministry of Commerce, Industry and Labor's website to reflect the reformed system
- Ensure all registration forms are available on the website
- In partnership with civil society and business organizations, develop a standard and simple Partnership agreement for businesses in which more than one person is involved, but which do not wish to register as companies.

#### **Cooperatives**

It is recommended that MCIL should:

- Review the current Cooperatives Societies Ordinance, 1952 in line with modern international best practice. The regulatory regime for cooperatives should be no more burdensome than that for companies under the new companies' regime. The review should be carried out in consultation with women as well as men.

#### **Business Licensing**

The Ministry of Revenue should:

- Review the regulatory purpose of the business licensing regime. To the extent it is intended to deal with health and safety issues (for example businesses dealing with food), institute a proper inspection regime. In business sectors where the license has no regulatory purpose, consider removing the requirement to have a license (that is, increase the scope of exempted sectors)
- Progress with work on online business licensing, and ensure this process is linked to online company incorporation (as above)
- Introduce regulations governing fees and set fees at a realistic level



- Collect sex-disaggregated data at the point of application on business ownership.

**Table 4.4. Business forms in Samoa**

	<b>Sole Trader</b>	<b>Partnership</b>	<b>Company</b>
Start Up Process	Obtain business license from Ministry of Revenue <sup>39</sup>	Agreement (written or oral) between partners	Incorporate company under Companies Act 2001 with Companies Registry, MCIL
	No other formalities before starting trading	Obtain business license from Ministry of Revenue )  Ministry of Revenue generally requires a copy of written partnership agreement for business license approval	Obtain business license from Ministry of Revenue
Participants	One	Two or more	One or more
Business name <sup>40</sup>	Own choice of business name – no government approval required	Own choice of business name – no government approval required	Register name under Companies Act 2001
			Cannot be too similar to existing company name or trademark
			Must use Limited at end of company name
Source of capital	Contributed by sole trader (equity or debt financing)	Contributed by partners (equity or debt financing)	Contributed by shareholder/s (equity or debt financing)
Ownership of assets	Owned by sole trader	Owned jointly by partners	Owned by company
Constitution/ rules of operation	Not applicable. Sole trader makes own rules for business operation	As provided in partnership agreement and/or Partnership Act 1975	Contained in company Rules (can use model Rules in Companies Act 2001)
Management	By sole trader	As provided in partnership agreement, otherwise equal management by all partners	By company directors and any employed management staff
Accounts	Not required to be published or audited	Not required to be published or audited unless partnership agreement requires it	Not required to be published or audited for private companies
			Annual return must be filed with MCIL
Who bears risk	Sole trader liable to full extent of her personal assets	Each partner liable to full extent of her personal assets	Company liable for debts to full extent of company's assets
			Shareholders liable only to the extent of their shares
			Directors can be liable for company debts in some circumstances
Termination/ dissolution	When business stops operating or on personal bankruptcy of sole trader	On death of a partner, termination by agreement or by operation of law	Winding up or liquidation under Companies Act 2001
Gender issues	Well suited to woman starting a micro or small business as it is simple to establish and there is no requirement to involve husband/male relatives as business partners	Partnership with husband or male relative could see woman taking full personal liability for her male partner's failings (for instance, business fails then creditors seek payment from the woman partner because the male partner has disappeared or has no assets).	Sole person company (introduced in July 2001) enables women to go into business by themselves.
	A down side is the exposure of a woman's personal assets to liability for business debts	In event of marriage breakdown rules for dissolution of partnership apply which take a more equal approach than matrimonial property law	Higher costs for establishment and maintenance than other business forms which make it less attractive for micro or small businesses run by women.  Recent reforms have made it simpler, faster, and cheaper to establish a company

<sup>38</sup> Business may need to register for Value Added Goods & Services Tax (VAGST) with Ministry of Revenue, however, this is only required once annual turnover exceeds 75,000 tala ( \$29,407).

<sup>39</sup> Business names cannot be a breach of the Fair Trading Act 1998, constitute passing off or be too similar to an existing registered trademark.

**Table 4.5. A comparative review of Samoa's new Companies Act against gender equality and good practice principles**

A comparative review of Samoa's new Companies Act against gender equality and good practice principles							
Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
Law	Companies Act 1993	Law No 4/2004 on Commercial Companies	Companies Act 1986	Companies Act 2009	Companies (Amendment) Bill 2009	Companies Act 2001	Companies Act 1997
Simplicity of law: basic principles and core provisions of the Act can be easily understood by all business people and investors. Can include plain English drafting, transparent structure and availability in local language	Yes	Yes (is available in English and Portuguese)	Yes	Yes	Yes  Tongan language version available	Yes  Samoan language version available	Yes
Streamlined legislation: companies legislation should only contain core company law and should not include insolvency law or securities law	Yes. Separate legislation for securities and receiverships	No	Yes	Yes. Some securities law included. Separate legislation for insolvency, receiverships, and secured transactions	Yes	Yes. Separate legislation for securities and receiverships	Yes
Ease of incorporation: incorporation can take place on a single, simple form that can be completed without a lawyer	Yes. Additional forms must be lodged showing directors consent and other details	Needs assistance of lawyer or agent	Needs assistance of a lawyer or company formation agent	Yes	Yes	Simple forms used, however additional form must be lodged for directors consent	Yes. Advisors assist with forms and forms are available online
Constitution: no requirement to file a copy of Memorandum and Articles of Association	Yes. Standard constitution in legislation	Yes – needs to file a Memorandum and Articles	Yes have to file documents. Standard rules provided in the legislation	Yes. Model Rules provided in legislation	Yes. Standard constitution in legislation	Yes. Model Rules provided in Act	Yes. Standard rules provided in Act
Focus on small private companies: Act should be drafted to facilitate business for small private companies with no blanket requirements to hold formal meetings, file formal reports, and no mandatory use of lawyers	Yes, but also provides for larger companies given economic context in NZ	Yes – to a limited extent	Yes private companies are exempt from these requirements	Yes	Yes	Yes	Yes
Minimum capital requirement for incorporation:	No	Yes		No	No	No	No
Share capital: abolition of complex requirements of par value shares and nominal capital. Replace with a straightforward solvency test before payments (for instance dividends) can be made to shareholders	Yes	No – there are requirements on par value and share capital	No – the requirements of par value, issue share capital, and nominal capital remain	Yes	Yes	Yes	Yes
Company secretary: role of company secretary is optional	Yes	Mandatory for companies with over ten shareholders	No – every company has to have a company secretary	Yes	Yes	Yes	Yes

A comparative review of Samoa's new Companies Act against gender equality and good practice principles							
Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
Civil penalties: civil penalties (fine, late filing fee), not criminal sanctions, are imposed on company office bearers for relatively minor matters (for example failure to file annual return)	No. Criminal penalties apply.	Yes	Yes	Yes	Yes	No. Criminal penalties apply for minor matters, for example failure to file annual return	Yes
Shareholder remedies: include remedies that make it easy for shareholders to take directors to court if their rights are being abused	Yes	Yes – but must be a minimum number of members	Yes	Yes	Yes	Yes	Yes
Directors' duties: clearly state directors' duties including duties of care and good faith	Yes	Yes	Yes deals with some duties, particularly conflict of interest and loans, but does not clearly deal with care and good faith	Yes	Yes	Yes	Yes
Related party transactions <sup>41</sup> and minority shareholders: permit shareholders with 10 percent or less of a company's shares to sue the company for related-party transactions	Yes	No	Yes	Yes	Yes	Yes	Yes
Disclosure of related party transactions: require disclosure of related party transactions to the board of directors and in annual reports	Yes – disclosure to Board and in interests register	No specific procedure prescribed	Yes – disclosure to Board and in interests register	Yes – disclosure to Board, interests register, and in annual report	Yes – disclosure to Board and in interests register only	Yes – disclosure to Board, interests register, and in annual report	Yes – disclosure to Board
Approval of related party transactions: require third-party approval for all related-party transactions	No	No specific procedure prescribed	No	No	No	No	No
Approval of related party transactions: appointment of a government inspector to investigate related-party transactions	No	No	No	No	No	No	No
Transparency of records: allow company records and documents to be open to shareholder inspection without need to instigate court proceedings	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Permission: do women need permission from a male relative / husband in order to be a company director or shareholder? If yes, do men require reciprocal permission?	No	No	No	No	No	No	No

<sup>41</sup> Note that the Acts all deal with director's self interest as the related party, not a related company.

**A comparative review of Samoa's new Companies Act against gender equality and good practice principles**

Best practice indicator	New Zealand	Timor Leste	Vanuatu	Solomon Islands	Tonga	Samoa	Papua New Guinea
Sole person companies: is there provision in the Act for registration of sole director/shareholder companies?	Yes	Yes	No	Yes	Yes	Yes	Yes
Method of registration: are women permitted to undertake the registration process without involving a man (for instance to accompany them to the registration office)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Registration process: Is the company registration process the same for a woman (including married women) promoter as for a man? For instance, do women have to file additional documents, answer additional questions, go to a different place, or go through additional procedures? Is it different in any way for widowed, divorced or separated women?	Yes. The procedure is the same for all people regardless of gender, marital status, age	Yes	Yes	Yes	Yes	Yes. The procedure is the same for all people regardless of gender, marital status, age	Yes
Place of registration: Is it necessary/usual to travel (for instance to a town) in order to register a company? If yes, are there any travel restrictions on women?	No. Companies can be registered online	Yes	Yes. There are no travel restrictions on women	New hybrid registration process will enable personal registration, registration by post, or online	Currently yes, however, new Bill contemplates electronic filing.	Yes. There are no travel restrictions on women	Yes. It is possible to submit by post but then have to travel to Bank of South Pacific to deposit the registration. No official travel restrictions on women

## Chapter 5. Access to justice and alternative dispute resolution

### *Summary*

Traditional justice is important in rural Samoa. In urban areas most urban disputes go to Court, a process that can be both time consuming and expensive. There is widespread recognition that women face particular difficulties in accessing the Court system which is dominated by male judges, Magistrates, and lawyers. This chapter evaluates the dispute resolution process that currently operates in Samoa. It makes a number of recommendations on how these processes can be improved to make them more efficient and friendly to women.

### *Justice in the rural areas is often dispensed through traditional means*

Village Councils are the most important source of dispute resolution for most Samoans. Together with the church they are recognized by the Government of Samoa as being core institutions in maintaining good order at village level (see Box 5.1 below). Customary law (as exercised by the ali'i & faipule) regulates a range of anti-social behavior that violates village rules, ranging from the keeping of pigs to minor assault, drunkenness, and theft. The ali'i & faipule have power to mete out penalties for such behavior, ranging from fines to banishment from the village. More serious criminal offences (such as serious assaults, rape, and murder) are usually referred to the formal criminal justice system. The ali'i & faipule also oversee traditional apologies (ifoga) that are often made by the families of transgressors.

The Village Fono Act 1990 reduces the potential for conflict between Village Councils and the formal legal system by providing that the Village Council punishments can be taken into account in mitigation in formal courts of law.

#### **Box 5.1. Role of village courts and the church in governance**

The Government of Samoa's Strategy for the Development of Samoa, 2008–2012 states:

Community development... is underpinned by promoting good governance in local communities, strengthening community economic development and enhancing social development and service provision. To achieve this improvement, the government will coordinate closely with the Village Fono (village councils) in light of the recommendations of the Cabinet-appointed commission that has reviewed the Village Fono Act. In areas where there is no Village Council, churches will be requested to intensify their involvement in the community. Particular emphasis in both cases will be placed on promoting Samoan culture, strengthening the family unit as the core of village society, and addressing tensions between customary law and traditional authority structures on the one hand, and modern law and the court system on the other.<sup>40</sup>

### *Going to Court to enforce small-scale contracts is problematic*

While traditional justice is important in rural Samoa, most urban disputes go to Court, a process that can be both time consuming and expensive. There is widespread recognition that women face particular difficulties in accessing the Court system which is dominated by male judges, Magistrates, and lawyers.

Samoa scores relatively well in the World Bank Doing Business indicators for contract enforcement, although considerably worse than best scoring country in the region, New Zealand (see Table 5.1 below). It requires less days and lower cost to enforce contracts in Samoa than the regional average.

<sup>40</sup> Ministry of Finance, 2008. Ensuring Sustainable Economic and Social Progress. Apia, Samoa, May.

**Table 5.1. Enforcing a contract – benchmarking in the Doing Business index**

Indicator	Samoa	New Zealand	East Asia and Pacific	OECD
Procedures (number)	42	30	37.2	30.6
Duration (days)	591	216	538.1	462.4
Cost (%of claim)	110.3	22.4	48.5	19.2

The Doing Business indicator relates to proceedings in the Supreme Court (which deals with claims of over 10,000 tala or \$4,150). Matters below 10,000 tala are heard by a judge of the District Court and do not require legal representation.<sup>41</sup>

There is also a Small Claims Court called Fa’amasino Fesoasoani which has the jurisdiction to hear all civil disputes not exceed 1,000 tala (\$410).<sup>42</sup> However due to the formal procedures involved, this Court is not frequently used. Women reported that where the claims are small, it was too much trouble to go to Court. Many of the women we spoke with were not aware of the Small Claims Court and others were overwhelmed by the formality of the process.<sup>43</sup> These difficulties have been recognized and it has been the practice for some time for the Registrar to exercise discretion in giving judgments involving disputes of up to 5,000 tala (\$2,000).

Many people avoid paying debts by leaving the country for a short period of time. It is possible to obtain a Departure Prohibition Order which is a Court order to prevent people leaving the country. However this is only available for debts of more than 7,000 tala (\$3,000) and it is generally accepted that debts below this amount are bad debts and cannot be enforced.

There is wide support among the Court staff and lawyers for the introduction of a small claims process which is run on an informal basis and is cheaper and faster than the current options. There is widespread recognition that women face particular difficulties in accessing the Court system and there is support for any such process to target women. Such a system has the potential to assist women significantly.

### *Alternate Dispute Resolution procedures may be more ‘female friendly’*

Mediation has been incorporated into the design of the Fair Trading Act 1998 as well as the Land and Titles Act 1981. However, in both these instances, very few cases have gone to mediation. The mediation processes are new and few mediators have been trained. However there has been greater recognition of the benefits mediation can bring leading to the training of a number of mediators of whom six are women.

There has also been greater success with court-ordered mediation in civil claims. Judges have supported mediation and it has been undertaken by the Registrar and Ombudsman who have been working in teams. Judges have stated that they would like to see people from different professions trained as mediators as they are likely to be sensitive to the needs of the different parties to the dispute. The Alternative Dispute Resolution Act 2007 provides for three different routes to settling disputes. These are mediation, arbitration, and reconciliation as described in Box 5.2 below.

#### **Box 5.2. Alternatives to litigation recognized in legislation**

Mediation:

- Court may refer any civil matter to mediation prior to hearing (Section 7)
- Mediators have the same protection and immunity as a judge of the Supreme Court (Section 10)
- Mediators must act in good faith in exercising his or her functions (Section 10)
- Court may order parties to sign an agreement on the cost to be incurred in the mediation process (Section 12)
- Parties may apply to the Court to formalize any agreement made during the mediation process (Section 13).

<sup>41</sup> Section 23 of the District Court Act 1969.

<sup>42</sup> Section 33 of the District Court Act 1969.

<sup>43</sup> Business Women’s Forum held in Apia on 16 February 2009.

**Arbitration:**

- The Arbitration Act will apply (section 14) and it provides:
- Where the parties to the dispute agree and the Court approves, the matter could go to arbitration (Section 7 Arbitration Act)
- Where the parties cannot agree, the Court can appoint an arbitrator (Section 8)
- The Arbitrator is entitled to reasonable remuneration (Section 12)
- In cases of misconduct, the Court has the power to remove the arbitrator (Section 13).

**Reconciliation:**

- Where the complainant agrees, the Court could encourage reconciliation, conciliation, or settlement (Section 15)
- The Court could approve the payment of compensation or apology, promise, or undertaking (Section 15(2))
- The Court could include the involvement of community leaders in the determination of appropriate sentences (Section 15(6)).

These processes are still new and have the potential of delivering a cheap and fast way of resolving disputes for women. However it will be important for these processes to be promoted by judges and supported by the legal profession. Further, it is important that these processes do not become over formalized, ensuring that women with disputes are able to access them.

## *Recommended Reforms*

### **Legal Reform**

The Government should:

- Introduce a Small Claims Process for disputes of less than 500 tala (\$200) which can be presided over by trained mediators
- Amend legislation as required to provide for a gender balance at Magistrate Court level. A starting point could be the Beijing Platform's initial target of decision-making bodies comprising 30 percent of women
- Introduce personal property securities legislation with a central registry to enable greater reliance on contract law as a method for enforcing legal rights and increase secured lending to women.

### **Institutional reform**

It is recommended that the judiciary and the legal profession should:

- Actively promote the appointment of suitably qualified women to the Magistrates Court
- Undertake training (in partnership with civil society organizations) at Magistrate Court level in gender issues
- Make training available for judges and lawyers on alternate dispute resolution in order to increase acceptance among the legal profession
- Promote the availability of mediation as a first step in civil disputes.

It is recommended that the government should:

- Establish a Help Desk for business women at either the Community Legal Centre or the Ministry of Justice that can be the first port of call for advice on legal disputes.

### Outreach

- Undertake an awareness campaign on the Fa'amasino Fesoasoani which currently has the jurisdiction to hear all civil disputes which do not exceed 1,000 tala (\$410)
- Promote the availability of alternate dispute resolution mechanisms under the Alternative Disputes Legislation 2007 through the distribution of pamphlets and information brochures.



## Chapter 6. Access to and enforcement of rights over registered land

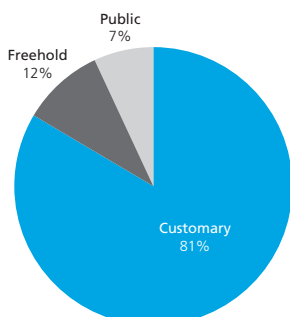
### Summary

The vast majority of land in Samoa is customarily owned – a system that almost totally excludes women from ownership. There is no legal bar to women owning freehold land (available mainly in urban centers), or being allocated Government land. But in practice women face disadvantages when seeking to do so.

### *Land is fundamental to the Samoan way of life*

Land is an important economic resource, and is fundamental to the Samoan way of life. Land is vital for identity, culture, subsistence agriculture, income generation, and housing. Most land is held under customary tenure but secure ownership of freehold land in urban areas is becoming increasingly important because of internal migration and urbanization. There are three types of land tenure in Samoa as defined by the Samoan Constitution: customary land, freehold land, and public (or government owned) land. Over 80 percent of land in Samoa is held under customary tenure (see Figure 6.1 below).<sup>44</sup>

**Figure 6.1. Distribution of land tenure by type in Samoa**



Samoa's land ownership has its origins in its colonial past. When the western Samoan islands were formally annexed by Germany in 1899, Germany recognized the claims of many European settlers who had acquired land from indigenous Samoans. After New Zealand assumed the mandate for governing Samoa following World War I, German-owned land was appropriated by the government and was able to become freehold land. By the time of Samoa's independence in 1962, some 19 percent of Samoan land had been alienated from customary ownership and had become freehold or Government-owned land.<sup>45</sup>

### *Women have very limited access to customary land*

All Samoans traditionally have an entitlement to customary land. In Samoan custom, women and men are both seen as heirs to the land with entitlements for access. This right is exercised through the matai title holders, who have pule (authority) over the land. Matai titles are the basis for ownership of customary land and for the leasing and licensing of customary land for agriculture. The right to land is derivative and based on the matai title holder: it is the matai title holder who determines distribution of the land within the family group.

The overwhelming number of matai title holders (the 2006 census suggests about 80 percent) are men. This is partly because most villages do not permit women to hold matai titles, and partly due to deeply entrenched attitudes that the men in a family should be given the first option to take a title. However, there are some prominent matai who are women including three Cabinet Ministers (one of whom holds one of the four paramount or princely titles in Samoa), a number of heads of Government departments, and prominent women in the local business community.

As a consequence of limited numbers of women matai, women have more limited access to customary land than men. Customary land comprises approximately 81 percent of land in Samoa. This has implications for access to land for housing, agriculture, and business (such as a village shop or beach tourism operation). Limited access to customary land also results in limited access to land for lending security purposes. However, as customary land is unable by law to be sold or mortgaged, this limitation applies equally to men and women who hold customary land.

<sup>44</sup> Chris Grant, 2008. Accessing Land for Public Purposes in Samoa. In *Making Land Work: Volume Two: Case Studies on Customary Land and Development in the Pacific*. AusAID, Canberra. Other studies report freehold land to be four percent and public land 15 percent. See AusAID, 2008. *Making Land Work: Volume One Reconciling Customary Land and Development in the Pacific*. AusAID, Canberra. The discrepancies could be accounted for by recent sales of public land, converting it to freehold.

<sup>45</sup> AusAID, 2008. *Making Land Work: Volume One: Reconciling Customary Land and Development in the Pacific*. Canberra.

## *Women are largely excluded from dealings in customary land*

Customary land dealings in the event of marriage, divorce, or death are governed by customary rules and not statute. Customary land allocated to a family cannot be transferred to the woman (or the man) on marriage, divorce, or death of his or her spouse. The land remains with the matai holder. If a woman living on or using her husband's family's customary land is widowed, she usually has the option of either remaining on the land (particularly if they have children) or returning to her own family's land.

Customary land may not be sold or mortgaged (such limitations being enshrined in the Constitution). The only permitted dealings in customary land are leasing (under the Alienation of Customary Land Act 1965), or acquisition by the Government for public purposes (under the Taking of Lands Act 1964). Under the Alienation of Customary Land Act, the Ministry for Natural Resources and Environment has a prominent role in the process of the leasing of customary land (see Table 6.1 at the end of this chapter for a summary of the steps involved). The process is cumbersome and can take up to 12 months.<sup>46</sup>

Delays in getting customary land leases finalized is partly because the legislation mandates a lengthy consultation process with statutory timeframes, but also because generally there are very significant numbers of people that have an interest in the land through the extended family, and fair and proper consultative mechanisms in this situation tend to take time. Another issue could be the speed with which the Ministry conducts its role in the process and publishes public notices.

Delays may also be due to the Savali (Government Gazette) not being published sufficiently regularly. There are two versions of the Savali – one general government paper (which is published once a week) and another that deals with matai titles and land (which comes out less frequently). One option might be to have notices published in both versions of the Savali, as well as commercial newspaper with national circulation.<sup>47</sup>

Customary land leases are limited in duration to 30 years (plus a further 30 year renewal period) for a hotel or industrial purposes, or 20 years (plus a further 20 year renewal period) for other purposes. But there is very limited economic use of customary land because proprietary right cannot be mortgaged; the status of leases as collateral for securing loans is unclear; and security of tenure may not be guaranteed even when leasehold title is obtained.<sup>48</sup>

Where customary land is leased, rent payments are collected by the matai listed as landlord and paid to the Ministry of Finance as trustee. Rents are then collected by the matais from the Ministry, less the Government's five percent administration charge. In practice, matais frequently authorize another family member to collect rent payments on their behalf, and in practice many rent payments are collected by their wives or children.<sup>49</sup>

## *The Land and Titles Court decides on disputes concerning customary land*

Disputes that cannot be resolved privately are usually litigated in the Lands and Titles Court (which includes an appellate jurisdiction). The Court also encourages the parties to engage in mediation before proceeding to a court hearing. The Supreme Court has limited jurisdiction to review decisions of the Lands and Titles Court. In some circumstances, the village council (fono) has jurisdiction to hear disputes where the customary land is uncultivated or the use of the land is for the betterment of the village.

The Government is currently considering proposed reforms to the Lands and Titles Act 1981 to place renewed emphasis on traditional notions of respect and reconciliation in the customary land dispute system. The reforms would see the introduction of compulsory mediation between parties before the filing of court proceedings in a customary land dispute. This would be accompanied by court-annexed mediation during the litigation process.

Many land disputes involve women, particularly older women in families in a position of authority (not necessarily matais) who feel that a title has been bestowed incorrectly, or who have an interest in a dispute about land. The only requirement to instigate a dispute in the Lands and Titles Court is to be 'an interested Samoan' – it is not necessary to be a matai.

## *Women have equal rights to hold freehold land...*

Freehold land is largely found around the Apia urban area. Government has recently taken measures to increase the availability of freehold land, which is in short supply due to migration to the urban area. The new regime is contained in the

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<sup>46</sup> Samoa Development Strategy 2008-12.

<sup>47</sup> This approach has been adopted in more recent legislation that requires public notices e.g. Telecommunications Act 2005.

<sup>48</sup> Samoa Development Strategy 2008-12.

<sup>49</sup> Ministry for Natural Resources and Environment.

Land Titles Registration Act 2008.<sup>50</sup> The Act introduces a new registration system based on the Torrens system, and replaces the old deeds registration system. Women have the same rights as men to own and register freehold land.<sup>51</sup>

Dealings in freehold land (including transfers, leases longer than 3 years, and mortgages) must be registered with the Registrar of Lands. There is scope for improvement in the efficiency of the registration system with Samoa ranking 81st out of 183 economies under the registering property indicator in the World Bank's 2010 Doing Business Report. This was a marked decline from its 2008 ranking, of 66/181.<sup>52</sup>

### *...but in practice may not protect their interest through registration*

Women in Samoa may own land jointly with their husbands, but at the same time not have their names recorded on the title, possibly because of a limited understanding of the legal procedures that are required to become a joint owner of land with their spouse.<sup>53</sup> Not being registered as joint owner means that a woman has limited property rights on divorce or widowhood.<sup>54</sup> But in cases where the husband is not working and it is the wife's income that is repaying the loan for the purchase, the wife is more likely to be included on the title.

Where land is inherited by a husband it is more likely than not that the land will be transferred only into the husband's name (and not into the joint names of the man and his wife) due to cultural values about family land needing to be kept in the family. The wife is then not recorded as a formal owner of the land, even though it may be the matrimonial home.

### *The new registration system has the potential to enhance married women's property rights*

Under the new land title registration system implemented in March 2009, the purchaser as well as the vendor of land is required to sign the transfer form. Previously only the vendor was required to sign the document. The requirement for the purchaser to sign could provide an opportunity for consideration of joint ownership in the case of matrimonial land. However, this is also dependent on women being provided with information on the law and procedures, and being aware of their rights. In addition, lawyers preparing the forms can only act on the instructions provided to them and are not required to question whether land purchased by married couples should be purchased in joint names.

The new land titles registration system will also be progressively fine-tuned over the next year. The Ministry of Natural Resources and Environment has indicated that the new forms and procedures under the new system will be reviewed within the next twelve months.

### *Women can own public land, but may face discrimination in allocation practices*

Public land (land owned by Government) is found throughout Upolu and Savaii and is administered by the Land Board under the Lands, Surveys and Environment Act 1989. The Act prescribes the method for lease and sale of government land. In most cases, the Land Board must conduct a public tender process seeking applications from those interested in leasing or buying government land. In some very limited circumstances (such as necessity for access to other land), the Government may sell or lease government land without conducting a public competitive process. The procedural requirements of the Act are frequently not followed in practice, which raises questions about the validity of many government land leases. The Act limits the duration of leases to a period of 20 years with the option of one or more renewal periods of a further 20 years. Rent is reviewed at a minimum of every five years and is set at five percent per annum of the value of the land, as determined by the Land Board. All government land leases are registered in the Land Register.

There are no direct gender barriers to women accessing public land for leasing purposes. Women may face some indirect discrimination in dealing with government officials, particularly if a woman applicant is not a matai title holder.

<sup>50</sup> The Act commenced operation on March 1, 2009.

<sup>51</sup> There are restrictions on the transfer of land to foreigners. The Alienation of Freehold Land Act 1972 contains restrictions on the sale or transfer of freehold land to foreign companies, non-citizens and non-resident citizens of Samoa. The Act mandates an approval process and the Head of State's consent is required before such transfers may be completed. Companies with more than 25 percent foreign shareholding must also obtain this consent if they are seeking to purchase freehold land.

<sup>52</sup> A number of donor funded projects have been operational in Samoa's land sector. This includes the World Bank's Second Infrastructure and Asset Management Project, Component 5 – Sustainable Land Administration & Survey and the Asian Development Bank – Technical Assistance for Promoting Economic Use of Customary Land. AusAID have also been conducting a regional project about customary land and development which has included Samoa.

<sup>53</sup> Discussions with business women and with the Ministry for Natural Resources and the Environment.

<sup>54</sup> Samoa Umbrella Non Government Organization, 2004.

## Recommended reforms

### Customary land

- Where land is being transferred to a married person in his/her name only, lawyers should be required to satisfy themselves that land is indeed intended by both spouses to be transferred to that person in his/her sole name
- Undertake process mapping of the lease process to identify where improvements could be made to speed up the process. Improving the speed at which leases of customary land are progressed, thereby ensuring a faster flow of financial benefits (through the matai) to landowners, could be particularly beneficial to women, given anecdotal evidence that women in Samoa largely control the family purse strings.

### Freehold land

The Ministry of Natural Resources and Environment should:

- Ensure that the new transfer form for transfer of freehold land contains space for both husband and wife to be entered as joint purchasers as land. Consider amending the form to contain a note on the benefits of joint ownership or requiring lawyers to inform purchasers of the benefits of joint ownership
- Mount an information campaign to inform women of the advantages of joint ownership of matrimonial property (in partnership with NGOs)
- Ensure campaign to encourage spouses to make proper provision for the surviving spouse (in partnership with NGOs)
- Expedite proposed changes to matrimonial property law to recognize non-financial contributions to the marriage in property division in the event of divorce
- Assess the operations of the Land Registry to ensure its operations do not contain gender bias. Act on any issues that result.
- Public land
- Review the extent to which men on the one hand and women on the other are being granted public land, and consider the reasons for any inequality
- Assess the operations of the Land Board to ensure its operations do not contain gender bias. Act on any issues that result.

**Table 6.1. Steps involved in formally leasing customary land**

Steps	Comments/Observations
Identification of a potential property which is capable of being leased	There is no central source of information where landholders can advertise their land available for lease. Identification of customary land for the conduct of potential business activities is a matter for the potential lessee.
Informal consultations and lodgement of Application	The leasing process commences with informal consultations between prospective lessees and the customary land owners. The formal process commences with an application to the Ministry for Natural Resources and Environment (MNRE) which is usually lodged by the customary land owners.
Negotiation of lease terms and conditions	The Government plays an important role in the negotiation of customary land leases, with the Minister for Natural Resources and Environment acting as trustee on behalf of the customary land owners. MNRE engages in informal price setting for customary land rents.
Application assessment	MNRE considers the application and drafts a Deed of Lease.
Notice and Lodgement of Objections	Notice of the prospective lease is advertised for a three month period and any person with a beneficial interest in the subject land may lodge an objection to a prospective lease. The class of persons with a beneficial interest is widely defined to include those who are not matais. Any objections are filed with the Lands and Titles Court.
Finalisation of Lease if no objections, and signing	If there are no objections (or once any objections are settled) the lease is finalised.

Steps	Comments/Observations
Preparation of Deed of Lease and map of property	<p>Most customary land in Samoa has not been formally surveyed or registered. Land descriptions in leases are often informal and may be accompanied by a sketch plan of the property based on MNRE records. Where land has been surveyed, the survey plan and any legal description are included in the lease.</p> <p>Where only a portion of an allotment holder's land is being leased, unlike in Tonga where a survey is required to formally define the boundaries of the area to be leased, in Samoa the informal description is still used but modified to show that a smaller land area is being leased.</p> <p>MNRE's legal staff usually prepare the Deed of Lease (although it may be prepared by the lessee's lawyer). MNRE contact the lessee or their lawyer once the Deed of Lease is completed and it is then signed by the Minister of Natural Resources and Environment and the lessee. The lessee is required to pay stamp duty and a registration fee for the lease.</p> <p>The Deed of Lease usually requires the lessee to submit a letter to the Minister of Natural Resources and Environment seeking permission to make any changes to the stated purpose, period, or rate. Written permission must also be obtained from MNRE for any buildings or structures constructed on the property.</p>
Deed of Lease is issued and registered	The lease is registered with the Registrar of Land after payment of stamp duty. The lease usually includes an upfront rent payment which must be paid to MNRE.
Payment of rental	MNRE administers the payment of rent and is also empowered to review rents. The lessees pay the rent to the Government to then distribute to the landowners, less a 5 percent commission paid to Government for its role in the leasing process.

# Chapter 7. Access to finance

## *Summary*

With customary land unavailable for collateral, obtaining credit is a problem for everyone. But the situation is worse for women who are even less likely than men to have land title. Women have benefited from micro-credit and stand to gain from a planned new regime to strengthen asset-based lending in Samoa.

## *Limited access to finance is the most critical constraint for business women*

The fact that customary land cannot be used as security for loans significantly limits access to credit by both men and women in Samoa. The four commercial banks and the National Provident Fund (NPF)<sup>55</sup> (which operates a loan scheme for its members) offer loans secured by land as collateral (freehold land or a lease over freehold land), at the interest rate of around 13–15 percent per year. If a borrower does not have land to offer as collateral, interest rates charged are much higher and guarantees from family members are usually required. It seems possible to get an unsecured loan of about 3,000 tala (\$1,250) from each of the banks in this way, but one needs to open an account with each of them, which attracts paperwork and fees. One of the longer-term difficulties of NPF loans that are not repaid prior to the date of retirement, is that members then only receive a portion – frequently only half – of their pension or cash entitlement at age 55, to see them through their retirement.

Access to finance is cited by business women as the key problem they face<sup>56</sup>, especially for women in rural areas. At the Women in Business Forum, facilitated by IFC in Apia, Samoa in February 2009, there was general acceptance that financial literacy is greatly needed for women in both the urban and rural areas to educate women on the various loan schemes and interest rates and fees. This would provide women with a clear understanding of their obligations prior to obtaining loans. Although access to credit is problematic for both men and women, the situation may be worse for women – because they are less likely than men to have access to land.

## *Microfinance is an option, but can be problematic*

Various sources of microfinance are open to business women (see Box 7.1 below)

### **Box 7.1. Sources of microfinance in Samoa**

- Women in Business Development Inc runs a microfinance program for rural farmers and artisan members seeking access to markets.
- For women not in these sectors the Small Business Enterprise Center (SBEC) offers loan guarantees of up to 50,000 tala (\$20,000) on commercial interest rates. SBEC also provides business training, advisory, and support services for small businesses.
- The South Pacific Business Development Bank runs a Grameen-bank style lending system to groups of rural women, with a compulsory fee of 10 tala (\$4) a week and interest rate of 27 percent per annum, and two percent insurance.
- Finally, the Development Bank was previously offering microfinance through the Women Ministry's income-generation activity, but it is not clear when this facility will be resumed.

<sup>55</sup> A compulsory pension scheme funded by employers and employees that has 23,000 active members, and offers loans to members secured against their own contributions at an interest rate of 9.5 percent. Loans are also made to businesses at between 11–13 percent, however, strictly on the basis that security is taken over land, a debenture is secured over all company assets and personal guarantees are signed by all directors. Due to NPF experiencing a high number of defaults on business loans, it now requires a security to be given over borrowers' homes as well.

<sup>56</sup> During the Business Women's Forum and in interviews with the team.

Female clients benefited from 46 percent of the Small Business Enterprise Center's loan guarantees in 2009 (see Table 1.5 in Chapter 1 for detailed breakdown). However the real figure may be higher as a survey conducted for SBEC suggested that many guarantees loans in men's names are in fact for businesses run by their wives.<sup>57</sup> But funds borrowed are not always used for business purposes. Money borrowed can be diverted to meet personal obligations to the Church and the family.<sup>58</sup> The concern is that this borrowing is undertaken without proper understanding of its implications: small schemes provide easy money – it is easy to take but hard to pay back.

### Box 7.2. Case study: Sina Taule'ale'a, Sina's Bakery

Sina Taule'ale'a grew up watching her father, a baker by trade, bake traditional Samoan fare. After a 28 year career as a schoolteacher at a local government school, Sina decided to open a small shop on her husband's family's land and try her hand at baking the family recipes.

In 2004, realizing the business potential that a bakery could have, Sina withdrew 10,000 tala (\$4,000) from her National Provident Fund account to build a small bake house next to her house. She registered the bakery in her name and began to produce traditional Samoan goods.

She hired three bakers to bake during the day but quickly realized that her demand was greater than her ability to supply. Her bakery's location, next to a school, meant that she was able to sell her goods over the fence to school children at lunch time as well as supplying the school canteen and her shop. Business was thriving.

In 2005, Sina decided that it was time to grow the business. With help from the Small Business Enterprise Centre (SBEC), she applied for, and was granted a 10,000 tala (\$4,000) loan with ANZ bank to expand the bake house and to purchase new ovens and equipment. With this new injection of capital she was able to begin selling her products to retail shops, other villages, and businesses around Samoa. As a result her business grew steadily from 2004–2007.

From mid 2008 Sina has observed a significant increase in the price of her inputs, namely flour, sugar and oil which she sources from a Samoan wholesaler. Meanwhile, the value of her products has been decreasing and a large number of copycat bakeries have entered the market. Sina believes that when Samoans see a business that is doing well, everyone tries to copy it and as a result she has had to become more competitive. In the beginning I would get over 2,000 tala (\$800) clear a week, now I won't even get 1,000 tala (\$400) clear.

Sina believes that there has also been an increase in the cost of living in Samoa over the last few years which has impacted her business. She admits that, like most businesses in Samoa, she does not keep her business and family expenses separate and if school fees or house improvements are required she draws on business funds. Sina also explained that in Samoa there is a strong cultural obligation to provide goods and funds at celebrations, usually weddings or funerals in the form of fa'alavelaves. She admits that she spends over 500 tala (\$200) per month on fa'alavelaves in addition to church donations which, being a member of the Pentecostal church, requires her to donate 10 percent of all income, including her business profits.

This increase in input costs and decrease in product value, in addition to social obligation, has meant that Sina has had to apply for two additional loans through SBEC to keep her business going. She admits that without the help of SBEC she would probably not still be in business.

Sina admits that she and her bakery have come a long way in 5 years. When I started my husband was not happy, he looked at me and said I was working too hard spending all my time on the business [not the family] but now he is depending on most of my business. Everything in my family like a telephone bill or an electric bill comes from the business. Now my husband is very happy and likes the business money.

### *Poor re-payment is a problem...*

In Samoa, as internationally, female MFI clients achieve high re-payment rates. But the mission was informed by many interviewees that Samoans tend to carry a huge amount of debt – small loans never get paid back, just recycled. Women gave the example of husbands who go overseas to work leaving their wives to pay their debts, and yet these women are not in a position to do so.

<sup>57</sup> SEBC 2008 Impact Study.

<sup>58</sup> Source: women interviewed and the Small Business Development Program, Women in Business Development Inc. and the Small Business Enterprise Centre.

### Box 7.3. Personal insight: the indebtedness mindset

Indebtedness is high – we have an indebtedness mindset, and failure to pay and delays in payments are very common. People often borrow quite substantial sums often to meet social and customary obligations. Most businesses are borrowing beyond their means. People can, and frequently do, borrow the maximum allowable amount from the National Provident Fund (up to 50 percent of the total value of contributions made) for social purposes.

Interview with CEC, National Provident Fund

### *Strengthening asset-based lending could be a way forward...*

The practice of demanding freehold land as collateral for loans is a problem in Samoa since such a small percentage of available land is freehold land, it is not geographically dispersed and it is unattainable for most Samoans due to its high cost. The problem is compounded for women who may not have their interests in land registered on land titles because of the strong tradition of patriarchy. Even when a family does hold freehold title to property it is often not available to be used as security for a business loan by the family offspring because title will remain in the names of the older generation until their death, and potentially for years afterwards until the estate administration is complete.

In many countries non-land assets are commonly used as collateral for loans (termed asset-based lending). Non-land (or personal assets) which could be used as collateral come in many different forms. They include stock, machinery, tools of the trade, and less tangible assets such as patents. In an environment where there is limited access to land to use as security for loans, the potential to use other types of assets is particularly significant.<sup>59</sup> Personal property is already recognized as a form of security in Samoa, including buildings on customary land (see Box 7.4 below).

<sup>59</sup> The Peruvian economist Hernando de Soto in *The Mystery of Capital* argues that the poor do have assets, but they are unable to realize their value – for example by using them as collateral for loans, because of the inappropriateness of a legal system which provides no mechanism for these transactions to be recognized.



**Box 7.4. Recognition of personal property as collateral for loans**

<b>Recognition by common law</b>	The Samoan Supreme Court has held that the common law of fixtures does not apply to customary land so that buildings on customary lands can be used as security for loans.
<b>Recognition by legislation</b>	The Chattels Transfer Act 1975 recognizes that personal property including machinery, stock, crops, and book debts can be used as security for loans.

But lenders in Samoa are reluctant to make loans on the basis of personal property because such property is difficult to monitor, and taking action in a court for default is inefficient and expensive. Larger commercial lenders tend to restrict asset-based lending to motor vehicles securing relatively small loans (less than the value of the vehicle), or loans to purchase the vehicle itself (see Box 7.5 below).<sup>60</sup> Some smaller lenders may accept security over other smaller moveable items, but the practice is not widespread.

**Box 7.5. Limited use of asset-based lending**

Currently only the ANZ and Westpac banks offer asset-based financing to certain customers for the purchase of motor vehicles and some office equipment and plant (such as generators). These banks also demand additional collateral when offering asset financing because (i) there are no street addresses, so it is easy for a lessee to hide assets in Samoa if s/he gets behind in payments, thereby depriving a bank of the ability to repossess, and (ii) there is a 'poor maintenance culture' in Samoa which means that any repossessed assets would be likely to have a very low resale value – an amount which is likely to be insufficient to realize the security.

*...but the unsatisfactory legal framework needs to be fixed...*

Samoa's current legal framework for asset-based lending (using assets other than land as security for loans) is outdated, and makes it difficult for lenders to verify priority interests in assets which could ordinarily be pledged as collateral (see Box 7.6 below).

**Box 7.6. Problems relating to the use of non land assets as collateral for loans**

To be fully protected in law, a security interest must be registered in one of two registers, (i) for use by companies and administered by the Ministry of Commerce, Industry and Labor, and (ii) for non-companies and administered by the Supreme Court Registry in the Ministry of Justice and Courts Administration. In theory, the system should foster confidence among lenders by providing a mechanism for protecting their security interest and for obtaining useful credit information. However the chattels security system for non-companies, which is based on the existing Chattels Transfer Act, does not work for a number of reasons:

- Procedures and forms for registration are outmoded
- It is difficult to search the register because there is no alphabetical indexing by reference to the surname of the grantor. Securities are instead indexed only in the order in which they are registered. This is a considerable defect because a key purpose of registration is to provide information to third parties, particularly financiers who are contemplating the provision of credit to a borrower
- Manual registration systems impose delays in registration which means that the provision of finance is delayed, and manual registration affords considerable scope for human error
- Technical legal documents (including sworn affidavits) are required to enable registration (and therefore protection) of security interests. It is costly and time-consuming to get such documents drawn up, executed, and registered
- Proposed linkages between the chattels registry and the registry of motor vehicles have not been completed, creating difficulties searching the title of motor vehicles which are the main form of non-land assets used for security
- The current administration system in the registry leads to unreliable and poor quality information being available to lenders and investors who wish to check on the status of the item that is being bought or offered for security, that is, as to whether it is free of existing encumbrances.

<sup>60</sup> Government's recent decision to change the side of the road on which vehicles drive, (so that from September 2009 all cars must drive on the left hand side of the road) has led to commercial lenders not accepting security over right-land drive vehicles which are the vast majority of the some 18,000 vehicles currently in Samoa.

The Government of Samoa has plans to address these issues by way of a new Personal Property Act proposed as part of the Asian Development Bank funded Law and Justice Plan (see Box 7.7 below for details).

### Box 7.7 Status of proposed Personal Property Act

ADB's Regional Private Sector Development Initiative has funded the drafting of the new law, which is based on New Zealand's personal properties securities regime.<sup>61</sup>

The passage of the law awaits decisions regarding the Companies Registry (as at June 2008).<sup>62</sup> For the past twelve months the Companies Registry has prioritized the implementation of the Companies Act 2001, which commenced legal effect in July 2008. Now that the new companies regime has been in effect for some time, it would appear to be timely now to turn to personal properties securities reform.<sup>63</sup>

### *...backed up by a system of registration*

The intention is that the new Act will be implemented through a new electronic registry which will amalgamate the current motor vehicles registry and the chattels registry. The draft law envisages that the Chattels Registry will be moved from the Ministry of Justice to be co-located with the Companies Registry at the Ministry of Commerce, Industry and Labor. A single, comprehensive, computerized registration system for movable asset financing will provide: (i) protection to secured financiers, (ii) information to third parties, particularly financiers who are contemplating providing credit to a borrower, and (iii) a system of priorities between secured creditors who have security interests in the same property and other people who might obtain an interest in secured property (such as a purchaser of such property). The new law will clarify the rights of creditors and the priorities of the competing claims, and will make enforcement of rights, without resorting to the Courts, much more straightforward. The intention is that the new system will increase confidence in the process and a change in lending practices.

### *Women can benefit from access to reliable credit information*

An important pillar of the formal credit market is the ability of banks to access information about the credit-worthiness of a borrower in order to determine the risk attached to any loan. Preferably, information should be able to be obtained from a public registry which serves as a repository for performance by borrowers on a wide range of credit obligations over their lifetime and is considerably cheaper and much more informative than private information.

As Table 7.1 below shows, Samoa does not perform well in terms of ease of obtaining information on the credit-worthiness of borrowers, especially in comparison with best performing country in the region, New Zealand. And yet international experience shows that the presence of a well functioning credit registry is strongly associated with the performance of the formal credit market. The microfinance experience has demonstrated that, when women borrow money, the likelihood of their repaying it is higher than for their male counterparts. Unfortunately, whereas this should stand them in good stead to borrow money, a lack of reliable credit information which evidences this high repayment record means that they cannot benefit from their good record.

**Table 7.1. Getting credit - benchmarking in the Doing Business index<sup>67</sup>**

Indicator	Samoa	New Zealand	East Asia and Pacific	OECD
Strength of legal rights index (0–10)	6	9	5.7	6.8
Credit information index (0–6)	0	5	1.9	4.9
Public registry coverage (% adults)	0	0	7.2	8.8
Private bureau coverage (% adults)	0	100	14.4	59.6

<sup>61</sup> TA 3549-SAM: Capacity Building of Financial Business Advisory Intermediaries, attached to Loan 1785-SAM.

<sup>62</sup> Asian Development Bank, June 2008. Private Sector Assessment: Samoa: Consolidating Reform for Faster Economic Growth.

<sup>63</sup> In 1999 Romania undertook best practice secured transactions reform. The number of borrowers increased threefold and volume of credit by 50 percent. In Slovakia a similar reform resulted in more than 70 percent of new business credit being secured by non land secured transactions.

The Asian Development Bank has supported the launching of a credit reference bureau in Samoa, with key functions now being offered by a private sector provider.<sup>64</sup> If women are to benefit from this initiative it will be important to ensure both that they can (i) establish a separate credit history from their husband, and (ii) that their excellent repayment records under microfinance schemes can be recognized by the bureau.

### *Recommended reforms*

- Enact the planned Personal Property Act and introduce an electronic registry for personal property security interests
- Develop the new credit reference bureau, ensuring that: (i) women can establish their independent credit rating (separate from their husbands'); and (ii) that they can benefit from repayment histories established under microfinance schemes
- Strengthen the delivery of financial planning and financial literacy education for women, focusing on rural areas
- Investigate the use of remittances for loan repayments whereby the remittance goes directly to the bank to finance borrowings, instead of to the family member who might chose to use it instead for societal obligations.

<sup>64</sup> The ADB reports that the embryonic credit bureau and the debt collection company are progressing, and could provide an additional building block for financial market development. ADB, Country Partnership Strategy: Samoa 2008–2012, September 2008.

## Chapter 8. Access to, and enforcement of, rights over intellectual property

### *Summary*

Although there is a straightforward system in Samoa for the protection of intellectual property rights there is little awareness of the regime and processes involved among women. This chapter considers the need for a strengthened system of intellectual property registration in Samoa to give women better protection for their businesses' intangible assets.

### *Women own much intellectual property – but often fail to protect it*

Intellectual property (IP) refers to a business' intangible assets – such as its brands, designs, artistic creations, inventive processes, and methods. It includes traditional knowledge such as traditional medicine, handicrafts, environmental knowledge, music, and art. All of these have enormous cultural, social, and potentially economic value. Proper management of these resources is important to both preserve them and maximize their value for all Samoans.

This type of property is particularly relevant for women in business. Women need to protect the intellectual property in products created in the handicraft and textile sectors, such as hand printed fabric designs, woven fine mats, jewelry, and hair ornaments. The Samoan market is small and crowded and so protection of business names and brands is also important to protect a business from others free-riding off its successes.

#### **Box 8.1. Case study: Jackie Loheni, MENA Designs**

When it comes to expanding her fashion business, Samoan businesswoman Jackie Loheni is making the most of every opportunity, and even leading the way in improving conditions for women workers. As the founder and partial owner of the highly regarded fashion design company, MENA Designs in Samoa, Jackie has come a long way since the days of sitting on her aunt's veranda sewing the brightly colored eleis.

MENA designs are unmistakable in their Pacific flavor, fresh colors, stylized designs, and range for both men and women. These include the elei designs that are so significant in Samoa, printed in a range of bright colors, fabrics, and styles of clothing from the more traditional Samoan puletasi to more fashionable, and now highly sought after, wedding wear.

As a fashion designer with an international market, Jackie has had to deal with the challenges associated with protecting her intellectual property. Intellectual property in handicrafts and designs or patterns – across the Pacific – is a difficult issue. In Samoa, 'ownership' of particular elei prints or designs is keenly debated. Without a clear set of standards to follow, with cheap foreign imports that imitate the design and limited public awareness of Intellectual Property, businesses flounder. Business women, like Jackie, are left guessing as to how to proceed.

### *Protection is generally effected by registration – but many women don't know how to access the system*

Intellectual property can generally be protected in Samoa through registration with the Ministry of Commerce, Industry and Labor (MCIL). But registration has its limits. Generally the protection offered by registration only extends to Samoa.<sup>65</sup> If a person wishes to protect their intellectual property in export markets they must register it in each separate country where they seek protection.

The regime is not straightforward. There are different types of registration depending on the nature of the property it is desired to protect. Copyright does not require registration (see Table 8.1 below). Further detail on the legislative framework

<sup>65</sup> With the exception of copyrights – see below.

and protection procedures is to be found in Table 8.2 at the end of this chapter<sup>66</sup>.

**Table 8.1. Outline of the intellectual property regime**

Example of intellectual property type property	Type of protection	Procedure
Visual appearance of a product	Designs	Registration with MCIL
Logos, brands, and business names	Trademarks	Registration with MCIL
Inventions	Patents	Registration with MCIL
Original literary, dramatic, and artistic works. Includes traditional knowledge	Copyright	Granted automatically both in Samoa and overseas through Samoa's membership of the Berne Convention for the Protection of Literary and Artistic Works.

Despite the complexities of the regime, the administrative process of registration is straightforward. Designs and trademarks have standard application forms that are available, which MCIL staff may assist applicants to complete. There is no requirement that the forms must be completed by a lawyer. There are some capacity constraints in the Ministry of Commerce, Industry and Labor (see Box 8.2 below) but generally the system appears to be working well.

**Box 8.2. MCIL capacity constraints in relation to intellectual property registration**

Some capacity constraints were observed in the examination of design and patent applications. It is generally faster and simpler to have a foreign registered design or patent reregistered in Samoa than it is to lodge a new application, at first instance, that has not already been examined by a foreign IP office. This is due to capacity constraints at MCIL in relation to examination of new applications. Patent and design examination is usually considered to involve considerable skill, particularly as there is a requirement for the examiner to evaluate and compare the application with the 'prior art base' or existing technology. This issue is being addressed through a regional assistance project being conducted under the Pacific Islands Forum Secretariat to outsource such examinations to an IP office in a regional country (such as in Australia or New Zealand).

A similar capacity constraint was not observed for trademark applications, where the examination process is less onerous and the examiner only need compare the application with existing marks in Samoa. The trademark application process usually takes some 12–18 months to complete, however, once registered, protection of the trademark dates back to the date of filing of the application.

During the mission there was consensus amongst both business people and Government that the main constraint preventing better protection of intellectual property rights was lack of information about how the system worked.

The Intellectual Property Registry in MCIL has for several years been conducting annual Intellectual Property awareness workshops, often on World Intellectual Property Day and in association with the World Intellectual Property Organization. These sessions are usually targeted at various sectors of the community and recent sessions have focused on handicraft producers. However, discussions with workshop participants and interviewees showed a low level of awareness about how to access and best utilize the existing intellectual property systems, particularly in the areas of designs and copyright. The Ministry of Women, Community and Social Development had also observed, through the course of their work, that there is a lack of awareness and understanding about the existing IP system. Similarly, some participants felt that specific legislation needed to be enacted to protect traditional designs used in Samoan handicrafts and textiles. However, adequate protection is already offered under the current law.

<sup>66</sup> There are forms of intellectual property rights recognized in other jurisdictions that are not specifically recognized in Samoan legislation. These include: plant breeders' rights (which protect new plant varieties); geographical indications (which identify goods originating in a particular region or place where a characteristic of the good, such as its quality or reputation, is attributable to its geographical origin eg. Champagne, Tequila); and integrated circuit rights (which protect the layout-designs of computer integrated circuits). Other forms of intellectual property (such as trade secrets) are protected under Samoan common law.

## *The cost of registration may also be a problem*

A secondary issue raised by business women that is limiting their ability to protect their intellectual property is the cost<sup>67</sup>. Intellectual property protection was seen as costly and something that was not needed, until the business experienced a problem with 'copy cats' (at which time it was sometimes too late to register the intellectual property in question). In particular, producers of hand-printed material with traditional designs (elei) had difficulties with cheap copies of their prints being mass produced in Asia and imported into Samoa. However, a registered design for Samoan elei would need to be re-registered then enforced in the relevant Asian markets which would be costly. Copyright protection, on the other hand, does not require any registration (either local or overseas) but is still reliant on enforcement either overseas, at point of import into Samoa, or in local Courts.

## *Recommended reforms*

The key intellectual property issues for Samoan business women are:

- low levels of awareness and understanding of how the existing systems work and can be used effectively to protect and commercialize intellectual property, and
- Difficulties with using the current system for design registration and copyright, including uncertainty about whether protection will be provided (for example issue of threshold requirements for novelty or originality), cost of registration, and cost of enforcement (local and overseas).

## *Recommendations to address these issues are:*

### **Threshold for originality**

With regard to designs and copyright, the issue is one of interpretation of the law and what constitutes sufficient novelty or originality for a work to be eligible for protection under design law or copyright law.

In other countries the law has adopted a relatively low threshold so that quite subtle distinguishing features can be sufficient to constitute originality when compared with works that have gone before. This is particularly the case when the articles on which the design has been applied are quite common and it would be difficult to conceive of a wholly new design.<sup>68</sup> Works such as maps and examination papers based on the common stock of knowledge have been found in other countries to be sufficiently original to qualify for copyright protection.<sup>69</sup>

- A similar approach – with a low threshold for originality – should be adopted in Samoan law and practice to enable greater utilization of registered designs.

### **Public awareness**

- The existing public awareness initiatives implemented by MCIL could be supplemented by information that is available in brochure form in Samoan and English from the Intellectual Property Office and on the MCIL website. Such a brochure could also be distributed by MCIL to key stakeholder groups and be available as reference material in the Small Business Enterprise Centre, Samoan Chamber of Commerce and Industry, South Pacific Business Development, Women in Business, and various other industry groups and associations
- Relevant information for a public awareness brochure could be an overview of the various IP rights and their practical application, the application process and costs, and managing and enforcing your intellectual property rights
- Future public awareness workshops could also be conducted as outreach sessions to rural communities in Upolu and Savaii to target rural producers and those for whom it is difficult to attend workshop sessions in Apia.

<sup>67</sup> Participants at the Business Women's Forum who had used the design registration system reported that it was too costly and reported that they had spent some 500 tala (\$200) on government fees for a single application. However, given that each application costs 56 tala (\$20), the issue may be that in practice, applicants seek to register multiple designs, the cost of which accumulates.

<sup>68</sup> This was the practice in Australia under the Designs Act 1906, which was worded similarly to the Samoan law. See also the Australian case of *D Sebel & Co Ltd v National Art Metal Co Ltd* (1965) 10 FLR 224.

<sup>69</sup> See the Australian case of *Sands & McDougall Pty Ltd v Robinson* (1917) 23 CLR 49 and the UK case of *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 607.

### Certification mark

- Adopt use of certification mark: Some of the difficulties with accessing the existing intellectual property system relate to the very nature of the system as enshrined in common law and international treaties. While some of these issues are dealt with through domestic and international law, reform processes of substantive intellectual property law and the cost of access to justice for enforcement purposes remains a fundamental barrier to effective use of intellectual property rights. It may therefore be appropriate to look for a different solution to the problem of protecting intellectual property and promoting products, particularly in the handicraft, textile, and artwork sectors. One approach (adopted in other countries) is the use of a certification mark (see Box 8.3 below).

#### Box 8.3. Certification Marks

A certification mark is a form of trademark, however, it operates differently to a standard trademark. Trademarks usually are used by their owners to brand and distinguish their own goods or services. Certification marks, on the other hand, indicate that the goods (or services) meet a particular standard. This standard can relate to the product's quality, composition, manufacture, geographic origin, or another characteristic. For example, a certification mark could take the form of Simply Samoa or Handicraft Made in Samoa which certifies that the goods are made in Samoa using traditional handicraft techniques.

Similar marks have been or are used in relation to artworks made by Australian indigenous artists (Label of Authenticity) and Maori artists in New Zealand (the *toi iho* 'Maori made mark').<sup>70</sup>

The Samoan Government recently launched a form of certification (Nu'u Samoa) to be used on Samoan-made goods and services (similar to a Made in New Zealand or Made in Australia mark). However, this mark is not strictly a certification mark in the formal legal sense.

Certification marks are usually owned by an industry body or collective – that also sets rules for the use of the mark and standards for certification. The industry body decides who is eligible to use the certification mark based on whether the person meets the specified standards and rules. The application procedure, costs and administration of certification marks should be made simple and affordable so that they can be effectively used by the members of the association. Effective use of the mark also needs to be accompanied by a consumer marketing campaign so that consumers are aware of the meaning, purpose, and value of the certification mark. This can be as simple as attaching a swing tag with relevant information to the product.

**Table 8.2. The intellectual property regime in Samoa**

Type of protection	What is protected	Legislative framework	Use in practice	Key constraints and gender perspective
Designs/ industrial designs	Protects how something looks, and not how something works, for instance, shape of a product and ornamentation applied to the product (such as patterns, lines, and colors).  Once registered, the owner of the design can prevent other people from copying the design's essential elements in another manufactured product and from dealing in that product (such as importing, selling, and using the product). Limited to acts done for industrial or commercial purposes.	Industrial Designs Act 1972.  Registration for five years with renewals to a total maximum of 15 years.  Fees per application are 56 tala (\$20).	17 industrial designs registered in Samoa as at March 31, 2009.  No applications lodged by local Samoans – all current registrations are designs owned by foreigners.  Enforcement by owner initiating court action. Criminal offence to willfully infringe the rights of the owner of a registered design.  There have to-date been no design enforcement cases (civil or criminal) brought before the Samoan courts.	A constraint reported in relation to the use of existing laws is the requirement for a design to be new or original. This issue was raised both by participants in the consultation workshops and by representatives of the Ministry of Women, Community and Social Development. This poses potential problems for designs that use traditional elements (such as traditional <i>tapa</i> , <i>elei</i> or tattoo designs) or that combine traditional and contemporary designs.

<sup>70</sup> See <http://www.artslaw.com.au/legalinformation/Indigenous/Certificate%20of%20Authenticity.asp> for further information.

Type of protection	What is protected	Legislative framework	Use in practice	Key constraints and gender perspective
Trademarks	<p>Protect a business' logos, brands, and names. Used to indicate origin and to distinguish products from other traders' goods and services, while enhancing the brand's own image.</p> <p>Owner of a registered trademark has the exclusive right to use the trademark on the goods in respect of which it is registered. The owner may also prevent others from using misleading or deceptively similar marks.</p> <p>Enforced by the registered owner initiating legal action in the Supreme Court of Samoa. To-date, there have been no cases of trademark infringement brought before the Supreme Court.</p>	<p>Trademarks Act 1972.</p> <p>Registration for 14 years, with the possibility of further renewals.</p> <p>Currently no protection for service marks, 3-dimensional marks, sound marks or smell marks (unlike other developed country markets).</p>	<p>Over 5,500 trademarks filed in Samoa as at March 31, 2009 (most of which have completed the registration process). Marks owned by both foreign and local traders. Recent increase applications filed by local Samoans.</p> <p>Government fees for filing each application are 263 tala (\$100).</p> <p>Trademark owners may also initiate opposition proceedings against similar trademarks before they are registered. Recent marked increase in trademark oppositions filed by both local and overseas trademark owners may be due to increasing awareness of trademarks and an increasingly competitive marketplace.</p>	<p>Delay in getting trademark registered of 12–18 months after application is filed.</p>
Copyright	<p>Copyright protects original literary, dramatic, musical, and artistic works as well as sound recordings, films, radio and television broadcasts, and published editions of works.</p> <p>Samoa copyright law also protects expressions of folklore.</p> <p>Copyright is designed to prevent the unauthorized copying and other economic uses of original works. It also protects the author's reputation and integrity of the work ('moral rights').</p> <p>Rights are subject to certain exceptions to permit a degree of free copying such as by teachers, libraries, and news organizations.</p>	<p>Copyright Act 1998.</p> <p>Protection lasts for 75 years after the death of the creator.</p> <p>No registration requirements. Legal protection is automatic from the time an original work is made in a material form.</p>	<p>Enforcement by copyright owners through civil actions in the Samoan Supreme Court. At least three such cases have been brought before the Samoan courts, all by local musicians/composers and authors.</p> <p>Criminal sanctions also flow from willful breach of copyright owners' economic rights. At least one prosecution has been recorded as a reported judgment for music CD piracy.</p>	<p>Originality: a key constraint reported is the requirement for a work to be original before it qualifies for copyright protection. Particularly important for works that include traditional motifs. Issue is one of legal interpretation, and can be addressed by adopting a low threshold for originality. In other countries works such as maps and examination papers based on the common stock of knowledge have been found to be sufficiently original to qualify for copyright protection.<sup>75</sup></p> <p>Protection of traditional knowledge or expressions of folklore (including traditional stories, songs, music, dances, handicrafts, textiles, carvings, and jewelry) depends on establishment of a government administering authority. Until the administering authority is designated or established, the protection system cannot operate.</p>
Patents	<p>Patents protect inventions such as improved products or devices, substances, and methods or industrial processes.</p> <p>Invention must be a 'manner of manufacture', new, not obvious (has an 'inventive step') and must be useful (for example, has an industrial application).</p> <p>Patent owner has the exclusive rights to make, use, and sell the patented invention.</p>	<p>Patent Act 1972.</p> <p>Duration of registered patent is 16 years.</p>	<p>92 patents registered in Samoa as at March 31, 2009. Vast majority of registered patents are owned by foreigners. One locally owned patent.</p> <p>Government fees for application and registration of each application total 1,069 tala (\$450).</p> <p>Enforcement of patent rights by patent owner as a civil action in the Samoan Supreme Court. No such cases have been brought before the courts in Samoa to date.</p>	<p>The novelty threshold under patent law can be a barrier to obtaining patent protection for a small-scale innovation, particularly in less developed economies. Other countries use a 'petty patent' or 'utility model' to address this. Such models have a lower inventiveness threshold, shorter protection period, and are quicker and cheaper to obtain.</p>

<sup>75</sup> See the Australian case of *Sands & McDougall Pty Ltd v Robinson* (1917) 23 CLR 49 and the UK case of *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 607.



## Annex A: People met

Aumua Ming Leung Wai, Attorney General, Office of the Attorney General

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Judge Vaepule Alo Vaemoa Va'ai, Senior Judge, District Court of Samoa

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Masinalupe Tusipa Masinalupe, CEO, Ministry of Justice and Courts Administration

---

Ms Filisita Heather, Principal Land Registry Officer, Ministry of Natural Resources and the Environment

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Sala Josephine Stowers-Fiu, Assistant CEO/Legal Consultant, Ministry of Natural Resources and the Environment

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Mr Peter Johnson, Managing Director, ANZ Bank (Samoa) Ltd

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Mr Daryl Clarke, Partner, Latu Ey & Clarke Lawyers



## Annex B: Notes from Business Women's Forum

### *Summary of key findings:*

- a) Improve participation of women in the institutions involved with, and the dialogue around, the investment climate reform. If there is to be a public private dialogue (PPD) process in Samoa, it will be important to recognize the economic importance of women and ensure institutional opportunities for gender inclusion, and for proactive outreach to women-in-business in policy making. Observations from the Business Women's Forum suggest that there is scope for improvement in the mechanisms of dialogue between the government and the business sector.
- b) There continues to be the perception that women do not receive adequate attention when advocating for policy or legislative changes or when they are seeking support from Government agencies. The struggles that WIBDI had in terms of accessing cooperation and support from Government ministries – in one example of such case until the Prime Minister took the lead in the development work that the organization was doing. Some women had indicated that because they did not have any 'chief titles' they were not taken seriously.
- c) Women engaged in the garments industry face new issues such as 'intellectual property' on their designs and patterns. More education and training is warranted in this area to protect and support this industry.
- d) There is general acceptance that 'financial literacy' is greatly needed for women in both the urban and rural areas to educate women on the various loan schemes and interest rates and fees. This would provide women with a clear understanding of their obligations prior to obtaining loans thus limiting the burden on increasing debts in the future.
- e) There has been fairly limited knowledge of women on the judiciary system especially the role of the 'small claims court' accessible to women. This would enable women to access dispute resolution mechanisms, and also to minimize the time burdens placed on them in resolving disputes.
- f) Access to economic opportunities continues to be a challenge and there is a need for greater collaboration amongst Government, the education institutions, the private sector, and NGOs to facilitate knowledge and skills development to allow for more opportunities for women.

## *IFC/AusAID Pacific Gender Mainstreaming Program*

**SAMOA  
BUSINESS WOMEN'S FORUM**

**MONDAY, FEBRUARY 16, 2009**

**9am–12pm; then 2pm–5pm,**

**Small Business Enterprise Centre (SBEC) room, Apia**

### *Agenda*

**Team:** Mark Blackden (team spokesperson); Keirsten Pedersen (IFC rep); Fiona MacCulloch; Vijaya Nagarajan; Tamara Haig; Margaret Malua; Fiona Ey.

#### **1. Intros (5–10 mins): PLENARY**

- MM: Opening prayer
- MB: Open, Brief welcome
- KP: IFC generally
- Business women: Introductions
- VN: Pacific Gender Mainstreaming, examples in Vanuatu, Tonga, Samoa and other; Possibility of Pacific women network
- CM: Business women in Africa
- TH: Pacific women – celebrating success and case studies

#### **2. Successes and challenges (15-20mins): GROUP WORK**

#### **3. Key successes, issues (15-20mins): PLENARY reporting**

#### **MORNING/AFTERNOON TEA BREAK –**

#### **4. Addressing issues raised (20-30mins): GROUPS**

- Discuss, priorities, recommendations

#### **5. Wrap-up & Next Steps: PLENARY**

## *Women in Business in Samoa: Opportunities and Challenges Workshop*

Monday, February 16, 2009

### *Two sessions were organized*

Session 1: 9am–12pm, Session 2: 2pm–5pm

### *Agenda*

1. Background and introductions – IFC and AusAID team led by Mark Blackburn
2. Group Sessions – to discuss challenges faced by Women in the business environment in Samoa
3. Group Presentations and Discussions
4. Refreshments and networking

#### **Session 1:**

Session 1 group discussions involved women in the manufacturing sector and in tourism services. The women were divided into three groups based on their industry. The following are some of the challenges raised and the opportunities discussed.

#### **Challenges**

- Government Policies – government sometimes acts arbitrarily, and does not consult sufficiently with stakeholders on critical policy changes. A case in point is the proposal to switch to a left-hand drive system on the roads, consistent with practice in Australia and New Zealand
- Women engaged in the garments industry face new issues such as ‘intellectual property’ on their designs and patterns
- Access to economic opportunities continues to be a challenge and there is a need for greater collaboration amongst Government, the education institutions, the private sector, and NGOs to facilitate knowledge and skills development to allow for more opportunities for women.
- Women without chief titles found it difficult to get full Government attention on policy issues
- Access to finance continues to be a challenge
- Accessing support from Government Ministries is a challenge

#### **Opportunities**

- Women in business to network and to coordinate work together to address the challenges
- Use women already successful in business as role models to promote women in business

#### **Session 2:**

Session 2 had women from service industries – wholesale and retail, banking, microfinance, hairdressing, and law and order. The following were some of the discussions that came out of this session.

#### **Challenges**

- There are many challenges faced by women especially fulfilling their motherly duties and running a business at the same time. (The case of Lyn Netzler)
- Women found it hard to be accepted by Government and big companies when they represented their businesses
- There is general acceptance that ‘financial literacy’ is greatly needed for women in both the urban and rural areas to educate women on the various loan schemes and interest rates and fees. This would provide women with a clear understanding of their obligations prior to obtaining loans thus limiting the burden on increasing debts in the future

- There has been fairly limited knowledge of women on the judiciary system, especially the role of the 'small claims court' accessible to women. This would enable women to access dispute resolution mechanisms but also to minimise the time burdens placed on them in resolving disputes.

### Opportunities

- The need to raise more awareness and programs on financial literacy to educate women on interest rates and their loan obligations
- Using Lynn Netzler's case study, which was presented at the workshop, as a motivator for women in business to engage in business and manage their families at the same time.

Some of the women who attended the workshop were also selected for interviews as potential case studies.

Name	Organisation	Industry
Beverly Barlow	Aggie Greys	Tourism
Christa Szegedi	Treasure Box Jewellerys	Manufacturing
Fiona Ey	Latu Ey Lawyers	Legal
Jacinta Teofilo	Tagilima Handicrafts Assoc	Manufacturing
Jackie Loheni	MENA	Manufacturing
Tanuli Tinai Chan	Computer Services Ltd	Services
Iasinita Galumalemana	Toni's Original	Manufacturing
Leilani Curry	ZODIAC bar/café & Community Centre	Tourism/Restaurants
Leuluaialii Agnes Passi	Crystal Le Diva (part of Samoa Mamanu Association)	Manufacturing
Luapene Lefau	South Pacific Business Development (SPBD)	Microfinance
Lynn Netzler	T & L Netzler	Retailing
Lyvia Hansell Black	Sails Restaurant	Restaurant/Tourism
Michelle McDonald	Samoa Breweries (Marketing Manager)	Manufacturing
Penina Banse-Tuiavii	Gardenia Hinano Boutique (part of Samoa Mamanu Association)	Manufacturing
Salma Hazelman	Hazelman, Barrister & Solicitor	Legal
Saute Misipati	Small Business Enterprise Centre (SBEC)	Business Services
Sheree Stehlin	Salon Sheree (also Women in Business Development)	Services - Hairdressing
Silverina Chan Mow	Chan Mow & Co Ltd	Wholesaling/retailing
Susana Ah Wong	Susana o Samoa (part of Samoa Mamanu Assoc)	Manufacturing
Susana Lauulu	Samoa Society of Accountants / Development Bank of Samoa	Financial Services
Theresa Rivers	ANZ Bank	Financial Services
Vaalele Tofa	Domestic Violence Unit, Ministry of Police & Prisons	Legal
Valu Saroa	Westpac Bank	Financial Services

## Brief Notes

### *Successes (as noted by businesswomen)*

- Women in charge of household decisions and budgets
- Respect – customer relationships
- Equality of education opportunities
- Relatively easy for women to start business
- People willing to help and support new business
- NGOs very supportive
- Exporting overseas
- Work space / office
- Exhibiting opportunities and availability of overseas markets
- Training opportunities, such as hospitality via APTC
- SBEC – availability of funding coordination / training opportunities
- Renewing business licenses has been simplified
- Proactive chamber of commerce for advocating, lobbying
- Increase family's quality of life
- Accessing finance / saving money
- Reaching a sustainable level of business (micro-business)
- Paying off loans
- Expanding business
- Diligence
- Personalized service
- Perseverance
- Confidence to excel
- International exposure
- Family support and to children
- Education

### *Constraints (as noted by businesswomen)*

- Staff retention
- Access to Finance (high interest rates, lack of financial knowledge, lack of security)
- Lack of business knowledge (patents, trademarks)
- Infrastructure, Capital outlay

- Delays in government payments
- Regulated environment (including price controls)
- Lack of consultation (trade policy)
- Invisible gender/status
- Social issues/obligations (business and family)
- Debt recovery (legal system)
- Copycats
- Reliability of workers
- Lack of information from government
- Laws re. marriage, divorce, inheritance, and maintenance
- Difficulty for women in sport and getting funding and support
- Women still have to run the family
- Customs/clearance quarantine processes and handicrafts
- Access to finance (and availability of land)
- Co-ordination of proposals for funding/criteria
- Human resources – reliable, ‘trained’ HR base for hospitality
- Intellectual Property Protection – non-existent yet (elei/mamanu) \$500/design – costs
- Difficulty of proposals to PSSF – who you know and not know is a hindrance
- Rural business women - language
- Business women network – local – our attitude to business networks
- Loans are used for personal uses (family/husband)
- Lack of product knowledge (business skills)
- Employing people (lack of skills)
- Business mentality (no idea of how to run a business)
- No savings discipline
- Access to capital (needs security)
- Cultural attitudes
- Who you know
- Family troubles – with extended family (fa’alavelave ‘hassles’)
- Collateral issues (banks reluctant to accept mobile assets, such as fridge) (land – customary)
- Competition
- Limited access to markets
- Delayed payments. CF constraints.

## *How to address issues – priority areas as noted by businesswomen*

- Legislative issues:
  - Ministries to enforce 'maintenance' payments to women
  - 'Divorce law' – rights of women – financial support
  - Rights of mothers/wives – 'no will' inheritance
- Information – to setting up and expanding, marketing businesses
- Accountability of government systems
- Informal women in business network – to discuss issues, investment decisions, lobby the bank together. To provide and exchange more information about the business environment and opportunities

## *Other areas for regulatory simplification*

- Start-up/licensing (one stop shop for information?)
- ADR/contracts – mediators? Small claims tribunal (talk to Tonga)
- IPP/Investment Policy and Promotion – Intellectual Property (PPD – consultative)
- Credit bureaus / secured transactions – how personal property can work (for instance, movable property is useful for women), A2F – movable property/security, credit bureaus (ADB 2006 fell through), chattels, personal security, financial literacy, inheritance law/wills.

In Samoa, the BWF was conducted in 2 sessions – one in the morning and one in the afternoon.

It was convened by Mark and Margaret – there was a plenary session to start and to finish.

In between, the women were divided into groups and facilitators were allocated to the different groups – to discuss women in business generally (rather than focusing on specific topics as done in PNG or Tonga).

These are my notes from each of the sessions

## *Morning Session - 16th February 2009*

<b>Successes</b>	<b>Constraint</b>
Expanding to exporting of handicrafts	Inadequate intellectual property protection
Obtaining the office space	Getting workspace can be very difficult and prohibitively expensive
Exhibiting handicrafts in the festivals and acquiring the finances to attend them in NZ	Obtaining finance is difficult and security in the form required impossible to provide
Being in charge of the household capital	AusAid/NZAid funding is not available to all women (particularly in the rural areas)
	Applying for grant funding from aid donors can be expensive and requires specialist knowledge
	Legislative and administrative requirements for exporting is complex including clearance, customs, quarantine, and agents fees which is an impediment
	Licensing procedures are being simplified. However the applications are still hard to understand and in the rural areas the language of the documents is a barrier for women
	It is who you know that is important in speeding things up and getting things done



Successes	Constraint
Increase of family's quality of life	Access to Capital
there is better living conditions	Banks need security which women do not have
better education for children	Bank manager's attitude to women is discriminatory
Access to finance is possible after the business has developed and cash flow of business can be used to borrow more money	Cultural attitudes
	Business loans were often used for family needs – no distinction between social/family and business needs/uses
	Bank manager's attitude was not positive to unknown people (many of whom were women)
	Lenders (Banks) had a risk averse attitude and did not understand the private sector
	Assets of the business were often used by the extended family and banks/ lenders did not understand this cultural mindset
Reaching a sustainable level for the business was an enormous success – it allowed for the debt to be repaid and to make a profit	Product copy cat
	people open the same business in the same area which erodes the profits
	Women business skills
	women do not have the degree of business skills
	savings discipline to make the business a success
	Who you know was very important to succeed and this was hard for many women
	Employing women
	women's family responsibilities mean that they have days off to take care of children
	the child care is expensive and usually informally run
	maternity leave – in the private sector has to be negotiated

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