



# REFORM RENEWED

## A PRIVATE SECTOR ASSESSMENT FOR SAMOA

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Printed in the Philippines.

ISBN 978-92-9257-036-1 (Print), 978-92-9257-037-8 (e-ISBN)  
Publication Stock No. RPT157513-2

Cataloging-In-Publication Data

Asian Development Bank.  
Reform renewed: A private sector assessment for Samoa.  
Mandaluyong City, Philippines: Asian Development Bank, 2015.

1. Private sector. 2. Samoa. I. Asian Development Bank.

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This Pacific Private Sector Development Initiative (PSDI) publication was written under the supervision of the ADB Pacific Liaison and Coordination Office in Sydney, Australia, with input from ADB's Pacific Subregional Office and Pacific Department Urban, Social Development, and Public Management Division. PSDI is a regional technical assistance facility cofinanced by ADB, the Government of Australia, and the New Zealand Government. This publication does not necessarily reflect the views and policies of either government.

# CONTENTS

Tables, Figures, and Boxes	v
Abbreviations	vi
Foreword	vii
Summary Diagrams	viii
<b>1 Introduction</b>	<b>1</b>
<b>2 Key Reform Areas and Recommendations</b>	<b>3</b>
Key Reforms	3
Reforms Recommended in Individual Chapters	4
<b>3 The Economy’s Growth and Structure</b>	<b>6</b>
Growth Performance	6
Size of the Economy	6
Output by Sector	7
<b>4 Competition</b>	<b>9</b>
Competition Policy and Competition Law	9
Role of Competition in Productivity and Growth	10
Competition Policy in Samoa’s Economy	10
National Competition Policy and Competition Law Reform	11
Next Steps	12
<b>5 Financing Economic Activity and Growth</b>	<b>14</b>
Reforming Samoa’s Legal Framework for Lending	15
Impact of the Unit Trust of Samoa on the Financial System	17
<b>6 Business Law Reform</b>	<b>21</b>
Overview	21
Principles to Identify and Prioritize Reform Options	22
Business Law Reform Promoting Formalization	22
Companies Act and Registry Reform	22
Reform Recommendations	24
Prioritizing Reforms	28
Implementation	28

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<b>7</b>	<b>State-Owned Enterprise Reform</b>	<b>29</b>
	Overview	29
	Privatizations and Public-Private Partnerships	33
	Connecting Samoa with the Global Economy	35
<b>8</b>	<b>Labor and Employment</b>	<b>38</b>
	Primary Issues Impacting Labor and Employment in Samoa	38
	Business Environment Reform Important for Job Creation	41
<b>9</b>	<b>Women's Economic Empowerment</b>	<b>42</b>
	Legal Constraints to Gender Equality in Samoa	42
	Reforms Addressing Gender Equality	43
	Women and Employment	43
	Samoa's Company Law Reforms Benefit Women	45
<b>10</b>	<b>Land Reform</b>	<b>46</b>
<b>11</b>	<b>Moving Ahead</b>	<b>49</b>
	References	50

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## TABLES, FIGURES, AND BOXES

### Tables

1	Key Reforms	3
2	Recommended Reforms	4
3	State-Owned Enterprises Profitability Indicators, FY2002–FY2012	30

### Figures

1	Samoa Real Growth Rate, 1995–2014 (%)	6
2	Gross Domestic Product by Sector, 2011 (%)	8
3	Excess Commercial Bank Reserves Held by the Central Bank of Samoa, March 2010–November 2014 (ST million)	18
4	Number of New Incorporations, 2008–2014	23
5	Samoa Starting a Business Rankings in Doing Business, 2009–2015	24
6	Samoa Company Directors and Shareholders by Gender, February 2013–December 2014	45

### Boxes

1	Privatizing the Samoa Broadcasting Corporation	31
2	State-Owned Enterprise Governance Reform	32
3	Ministry of Works, Transport and Infrastructure	33

## ABBREVIATIONS

ADB	Asian Development Bank
ANZ	Australia and New Zealand Banking Group Limited
CSO	community service obligation
DBS	Development Bank of Samoa
FY	financial year
GDP	gross domestic product
ISC	Independent Selection Committee
LTA	Land Transport Authority
MWTI	Ministry of Works, Transport and Infrastructure
NBS	National Bank of Samoa
PAIL	Polynesian Airlines Investments Limited
PFL	Pacific Forum Line
PPP	public–private partnership
PPSA	Personal Property Securities Act
PSA	private sector assessment
PSDI	Pacific Private Sector Development Initiative
SBC	Samoa Broadcasting Corporation
SCCC	Samoa Competition and Consumer Commission
SNPF	Samoa National Provident Fund
SOE	state-owned enterprise
UNCITRAL	United Nations Commission on International Trade Law
UTOS	Unit Trust of Samoa
WTO	World Trade Organization

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## FOREWORD

In June 2008, the Asian Development Bank (ADB) published a private sector assessment (PSA) for Samoa, titled *Samoa: Consolidating Reform for Faster Economic Growth*, which concluded that the far-reaching reforms undertaken by the Government of Samoa in the 1990s had resulted in impressive growth during the decade leading up to 2006. Samoa was recognized as a leading policy reformer in the Pacific region. From 2007, however, the pace of reform slowed sharply. Partly as a result of this—and compounded by the global financial crisis, two significant natural disasters, and increases in fuel and food prices—economic growth decreased markedly, lasting until 2011.

Jobs were scarce and poorly paid, and Samoa’s emigration rates were rising; this indicated that employment opportunities were limited for both Samoa’s youth and better educated citizens. Strong remittance inflows have resulted from emigration of Samoans seeking work in other countries; mainly Australia, New Zealand, and the United States. This partly offsets the negative effects on the economy, and potentially provides business opportunities from the outmigration.

This PSA update reiterates the need to continue to improve the business environment, while recent reforms will significantly benefit the long-term prosperity of the country. The PSA discusses the most important constraints to investment and entrepreneurship, and suggests further reforms that will benefit the private sector by improving productivity. This will lead to higher growth and prosperity.

Through the Pacific Private Sector Development Initiative and the Pacific Subregional Office, ADB has been working closely with the Government of Samoa on several reform initiatives. These include reforms in secured transactions; company law; design, procurement, and implementation of electronic registries; competition and consumer protection frameworks; customary land framework; and state-owned enterprises (SOEs). ADB has also been working closely with the government on corporatizing and privatizing SOEs; reforming the public sector; undertaking infrastructure, port expansion, and education projects; and implementing power sector and renewable energy programs. Improvements in all these areas will make Samoa an increasingly attractive place in which to invest and do business.

I trust that the analysis, insights, and recommendations will be useful for the Government of Samoa, the private sector, and representative organizations. Working jointly to achieve the measures recommended in this PSA will increase the country’s prosperity and improve the lives of Samoans. I would like to thank our counterparts in government. Having seen what can be achieved, and what has already been achieved, I am hopeful that our collaboration will continue to benefit Samoa on its path to long-term economic prosperity.

**Xianbin Yao**

Director General  
Pacific Department  
Asian Development Bank



## SUMMARY DIAGRAMS

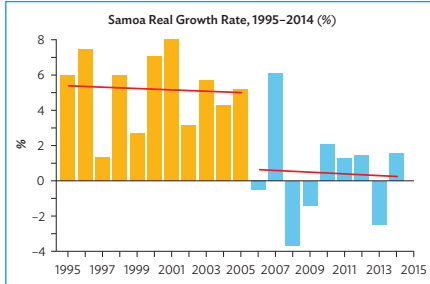
### Key Recommendations Diagram



MPE = Ministry of Public Enterprises, PPP = public-private partnership, SOE = state-owned enterprise, UTOS = Unit Trust of Samoa.

Source: Pacific Private Sector Development Initiative.

## Summary Diagram



Source: Government of Samoa, Samoa Bureau of Statistics. Economic and Financial Reports. <http://www.sbs.gov.ws/index.php/economic-statistics/economic-and-financial>

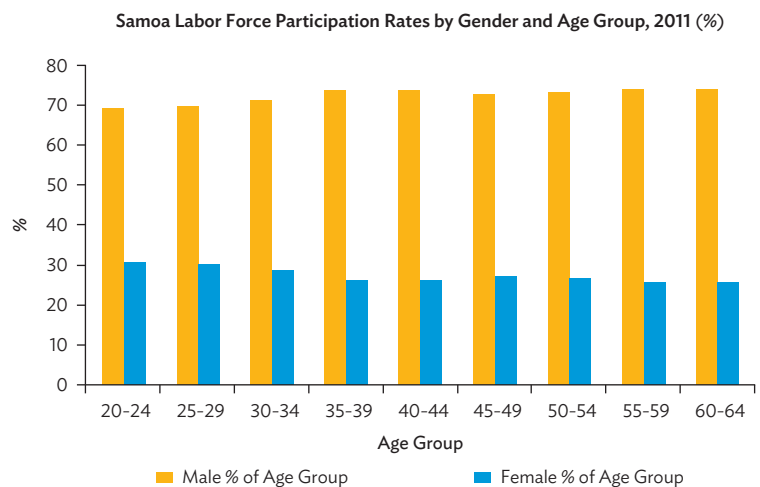
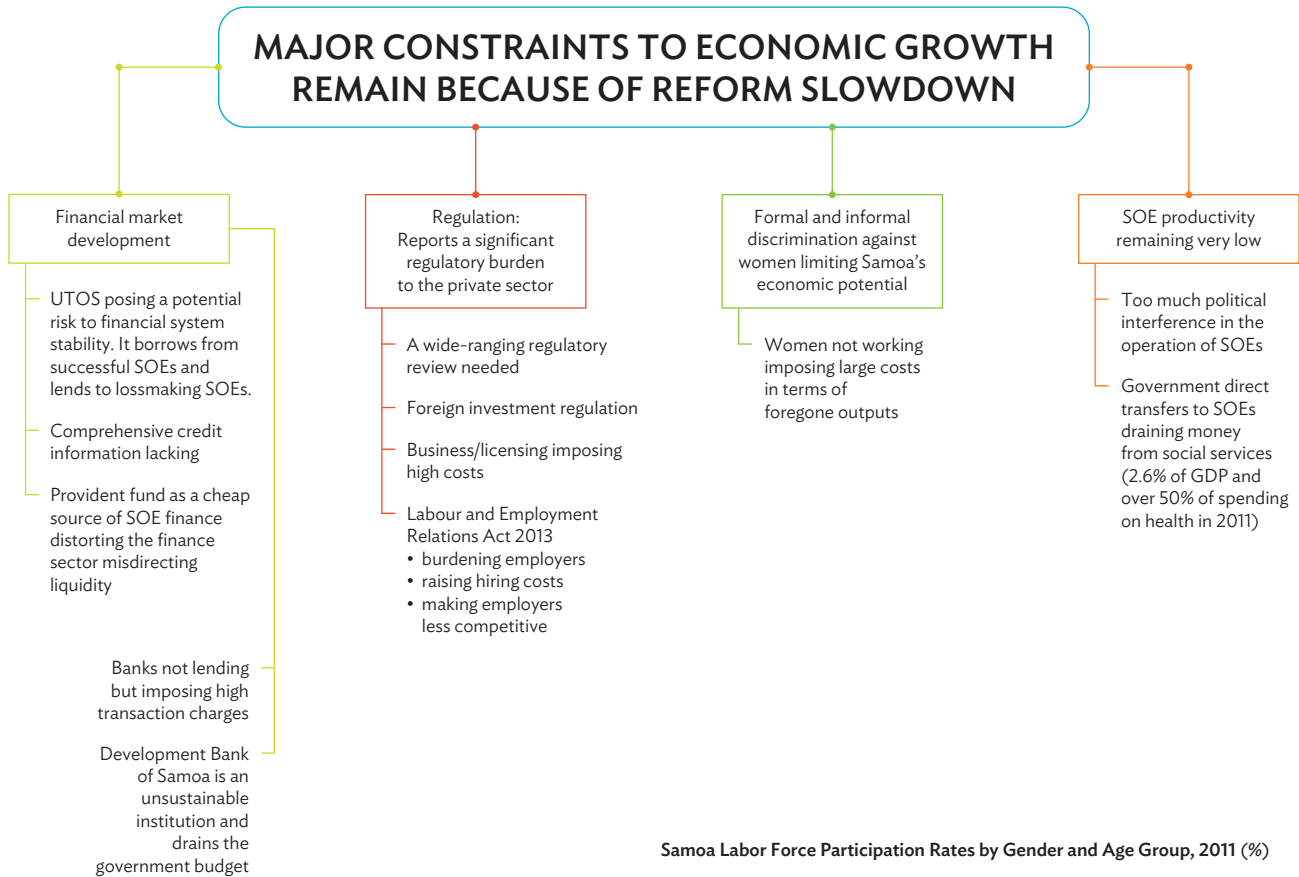


**Exemplary reform processes = consultation + excellence + careful review**

LTA = Land Transport Authority, PPSA = Personal Property Securities Act, SOE = state-owned enterprise.

Sources: Government of Samoa, Samoa Bureau of Statistics. Economic and Financial Reports. <http://www.sbs.gov.ws/index.php/economic-statistics/economic-and-financial>; and Pacific Private Sector Development Initiative.

## Constraints Diagram



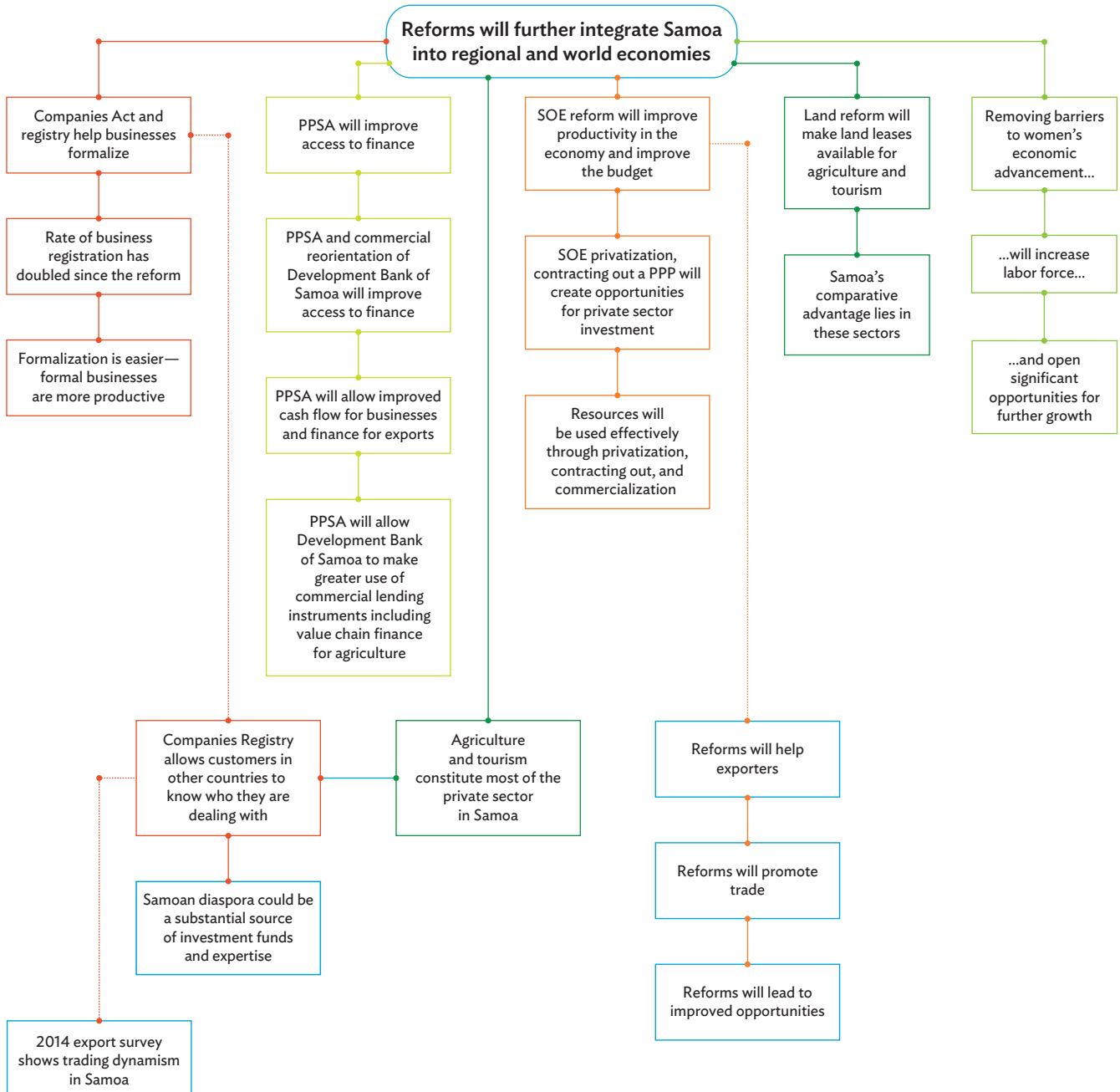
Source: Government of Samoa, Samoa Bureau of Statistics. 2011. *Population and Housing Census 2011: Analytical Report*. Apia. <http://www.sbs.gov.ws/index.php/new-document-library?view=download&fileId=1388>

GDP = gross domestic product, SOE = state-owned enterprise, UTOS = Unit Trust of Samoa.

Sources: Government of Samoa, Samoa Bureau of Statistics. 2011. *Population and Housing Census 2011: Analytical Report*. Apia. <http://www.sbs.gov.ws/index.php/new-document-library?view=download&fileId=1388>; and Pacific Private Sector Development Initiative.

## Reform Benefits Diagram

### REFORM BENEFITS TO SAMOA'S ECONOMY



PPSA = Personal Property Securities Act, SOE = state-owned enterprise.

Source: Pacific Private Sector Development Initiative.

# 1 INTRODUCTION

This private sector assessment (PSA) describes how Samoa can further improve its competitiveness through reforms supporting private sector growth. While not a comprehensive description of all issues facing the Samoan economy, the PSA analyzes reforms that will most significantly benefit the private sector and growth, and focuses on primary constraints to investment and entrepreneurship. Several important issues, including macroeconomic, debt management, and monetary and fiscal policies, are addressed extensively in other publications.<sup>1</sup>

During 1996–2006, Samoa was a leading policy reformer in the Pacific region. Its policies transformed the economy from incurring high budget deficits and state-dominated import substitution to achieving macroeconomic stability, free trade, and a reduced role for the state. This resulted in the region's highest sustained rate of economic growth in the decade between 1996 and 2006, and a sharp improvement in Samoa's human development indicators. From 2007, however, the pace of reform slowed sharply. Partly as a result of this, compounded by the global financial crisis, natural disasters, and increases in fuel and food prices, there was a marked decrease in economic growth rates that lasted until 2011.

Reflecting the progress made in the decade to 2006, reform priorities have changed significantly. In the mid-1990s, the inflation rate exceeded 20% at times, the trade regime was distorted, and the fiscal deficit was high.<sup>2</sup> The macroeconomy was

a major constraint to growth; and this, together with the trade regime, was a central focus of policy reforms.

By contrast, in 2014 when macroeconomic stability had been restored, the binding constraints to growth were primarily microeconomic; and many were due the overreaching presence of the state that raised the costs of doing business and reduced overall productivity. Several constraints to entrepreneurship, productivity, and growth remained in 2014. These include

- inefficiency and low productivity of state-owned enterprises (SOEs) that utilized a significant portion of Samoa's stock of physical assets, and adversely impacted economic growth rate;
- underdeveloped financial markets, with a number of distortions caused by directed credit;
- gaps in the commercial legal framework, including a business names act;
- regulatory burdens and an outdated business license regime;
- barriers to agriculture sector development;
- women's low workforce participation;
- problematic aspects of a new labor law that impinged on employment creation;
- lack of an effectively implemented competition framework; and
- opaque and difficult foreign investment regime.

<sup>1</sup> For example, see Asian Development Bank (ADB). 2015. *Asian Development Outlook 2015: Financing Asia's Future Growth*. Manila; and International Monetary Fund (IMF). 2007, 2010, and 2012. Samoa staff reports for the Article IV Consultation. *IMF Country Report Nos. 07/185, 10/214, and 12/250*. Washington, DC.

<sup>2</sup> IMF. 1999. IMF Concludes Article IV Consultation with Samoa. *Public Information Notice No. 99/23*. Washington, DC.

However, work on these issues has progressed in a number of these areas. Some are cutting edge—Samoa’s electronic Companies Registry is among the best in the world. At end-2014, a significant number of additional reforms were underway in competition policy, SOE management, and financial sector. Improved formal dialogue between the public and private sectors is encouraging; and, in 2015, both sectors have a clearer and greater understanding of each other’s issues than in the past.

In the longer run, reforms outlined in this PSA will make the Samoan economy considerably more competitive if fully implemented. Historically, Samoa’s economic policies and policy interventions show what can be achieved through reforms affecting capital efficiency, and investment and entrepreneurship incentives.

Conversely, ignoring opportunities to improve productivity and output imposes substantial losses through lower potential economic growth. Samoa’s key development challenge remains continued business environment reform to promote productivity and growth through private sector development.

---

## 2 KEY REFORM AREAS AND RECOMMENDATIONS

### KEY REFORMS

This private sector assessment (PSA) identifies six policy areas on which the government should focus

its reform efforts. Table 1 describes the priorities and recommended actions.

**Table 1: Key Reforms**

Priority Reforms	Actions Needed
<b>1. Fully implement the secured transactions reform</b>	<ul style="list-style-type: none"> <li>Establish the electronic registry,</li> <li>Undertake intensive awareness-raising on the benefits of secured transactions reform, and</li> <li>Initiate training of potential lenders and beneficiaries of the reform.</li> </ul>
<b>2. Fully modernize the competition framework</b>	<ul style="list-style-type: none"> <li>Complete the passage of a new competition and consumer act, following intensive consultations.</li> </ul>
<b>3. Privatize state-owned enterprises targeted for divestiture as quickly as possible</b>	<ul style="list-style-type: none"> <li>During the 2015 calendar year, privatize the               <ol style="list-style-type: none"> <li>Agricultural Stores Corporation,</li> <li>Polynesia Airlines,</li> <li>Public Trust Office,</li> <li>Samoa Housing Corporation, and</li> <li>Samoa Post Limited.</li> </ol> </li> </ul>
<b>4. Return the Unit Trust of Samoa to its original mandate</b>	<ul style="list-style-type: none"> <li>Stop lending to state-owned enterprises at subsidized rates, and</li> <li>Assist in facilitating upcoming privatizations.</li> </ul>
<b>5. Reduce the regulatory burden</b>	<ul style="list-style-type: none"> <li>Review               <ol style="list-style-type: none"> <li>the foreign investment regime,</li> <li>business licensing and bring it into the Companies Registry, and</li> <li>the Labour and Employment Relations Act 2013.</li> </ol> </li> </ul>
<b>6. Contracting out and public-private partnerships</b>	<ul style="list-style-type: none"> <li>Identify key activities for contracting out to the private sector, and undertake public-private partnerships.</li> </ul>

## REFORMS RECOMMENDED IN INDIVIDUAL CHAPTERS

The succeeding chapters in this PSA also contain detailed reform recommendations based on the analyses of, and interviews and consultations with, government and the private sector (Table 2). These recommendations represent an important,

long-term road map for improving the business environment in Samoa and require consultation and review by both government and private sector. More detailed priorities and actions will emerge from this review.

**Table 2: Recommended Reforms**

Chapter and Policy Area	Actions Needed
<b>Chapter 4: Competition policy</b>	<ul style="list-style-type: none"> <li>• Implement the National Competition Policy 2013, including competitive neutrality for state-owned enterprises (SOEs);</li> <li>• Enact the draft competition and consumer bill; and</li> <li>• Establish the Samoa Competition and Consumer Commission, and begin the process of competition advocacy to build competition culture.</li> </ul>
<b>Chapter 5: Financing economic activity and growth</b>	<ul style="list-style-type: none"> <li>• Fully implement the enacted Personal Property Securities Act (passed into law in March 2013) and its amendments (passed in January 2015),</li> <li>• Promote competition between the second-tier financial institutions and commercial banks,</li> <li>• Continue developing an electronic payments system for government-business transactions,</li> <li>• Establish a credit bureau that provides both “positive” and “negative” information,</li> <li>• Eliminate directed subsidized credit provided by the Development Bank of Samoa and strengthen its capacity to avoid nonperforming loans,</li> <li>• Strengthen the role of the Samoa National Provident Fund as a long-term savings institution and improve its financial intermediation capacity,</li> <li>• Eliminate financial markets distortion caused by the Unit Trust of Samoa and revert to its original mandate, and</li> <li>• Cease providing SOEs with subsidized credit.</li> </ul>

*continued on next page*



Table 2 *continued*

Chapter and Policy Area	Actions Needed
<b>Chapter 6: Business law reform</b>	<ul style="list-style-type: none"> <li>• Reduce the regulatory burden on the private sector that raises costs and reduces competitiveness;</li> <li>• Review the business licensing framework to encourage licensing for policy rather than for revenue-oriented purposes;</li> <li>• Reduce barriers to foreign investors;</li> <li>• Continue modernizing the business law framework for business licensing;</li> <li>• Reduce business licensing red tape;</li> <li>• Review the recently enacted labor legislation;</li> <li>• Analyze company tax regime implications;</li> <li>• Commence the Personal Property Securities Act 2013 and implement the electronic Personal Property Securities registry;</li> <li>• Update the Arbitration Act 1976 to reflect the United Nations Commission on International Trade Law model law, and allow for enforcement of foreign arbitral awards;</li> <li>• Review regulations relating to mobile money and other e-payment facilities;</li> <li>• Reform the Bankruptcy Act 1908 to simplify bankruptcy processes; and</li> <li>• Reform the contracting framework and related laws, including the Electronic Transactions Act 2008, Bills of Exchange Act 1976, and Mercantile Law Act 1975, to give greater clarity and access to contract regulation; and acknowledge the role of technology in contracting.</li> </ul>
<b>Chapter 7: SOE reform</b>	<ul style="list-style-type: none"> <li>• Improve SOE productivity through commercialization,</li> <li>• Increase contracting out and public-private partnerships,</li> <li>• Continue to privatize SOEs,</li> <li>• Force SOEs to operate under a strict budget constraint, and</li> <li>• Competitively tender unprofitable shipping services as a community service obligation.</li> </ul>
<b>Chapter 8: Labor and employment</b>	<ul style="list-style-type: none"> <li>• Set a company size threshold for detailed employment record keeping;</li> <li>• Review the Labour and Employment Relations Act 2013, particularly the provisions relating to part-time employee benefits; and</li> <li>• Pass necessary amendments to the Act following consultations with employers and employees.</li> </ul>
<b>Chapter 9: Women's economic empowerment</b>	<ul style="list-style-type: none"> <li>• Incorporate awareness training on the benefits of formalization to informal sector, particularly to women;</li> <li>• Encourage women's participation in agribusinesses;</li> <li>• Engage women's groups in policy dialogue on private sector to increase awareness and commitment; and</li> <li>• Support the collation of gender-disaggregated data to assess the impact of initiatives and strategies.</li> </ul>
<b>Chapter 10: Land reform</b>	<ul style="list-style-type: none"> <li>• Make more land available to the private sector;</li> <li>• Make leasing through the Samoa Land Corporation and the Samoa Trust Estates Corporation more transparent, and contract out the management of the leasing operation; and</li> <li>• Use low-cost technology solution to identify land rights.</li> </ul>

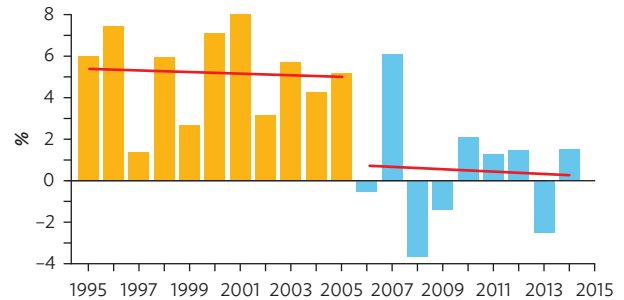
### 3 THE ECONOMY'S GROWTH AND STRUCTURE

#### GROWTH PERFORMANCE

Samoa registered strong growth performance in the decade leading up to 2006, with real gross domestic product growth averaging more than 5% annually.<sup>3</sup> The high growth rate can be attributed to the extensive economic reforms that began in the mid-1990s. Policies turned away from the import substitution philosophy that had dominated the 1980s and early 1990s. The reform program was extensive: the trade regime was liberalized; the role of the state was reduced; 12 companies, either wholly or partially government-owned, were privatized; and institutional reform commenced. The following decade saw the highest sustained growth rate in the Pacific region and a sharp improvement in human development indicators.

However, reform appetite slowed down in the mid-2000s. Samoa was hit by a tsunami and several cyclones from 2009 onward, which severely impacted growth. The natural disasters, the global financial crisis, and the slowdown in reform—particularly microeconomic reforms—resulted in a sharp decline in economic growth. The Samoan economy registered some of the lowest growth performance in the Pacific region over 2006–2013 (Figure 1). The impact of exchange rate movements on the economy is less clear. Although the real exchange rate of the Samoa tala began to improve, the sharp appreciation of the United States (US) dollar between the third quarter of 2014 and the end of the first quarter of 2015 has complicated the analysis of exchange rate trends. The tala declined

Figure 1: Samoa Real Growth Rate, 1995–2014 (%)



Source: Government of Samoa, Samoa Bureau of Statistics. Economic and Financial Reports. <http://www.sbs.gov.ws/index.php/economic-statistics/economic-and-financial>

against the US dollar by about 10% over this period. However, against the Australian dollar, the US dollar appreciated by over 10%, and by 4% against the New Zealand dollar.

Since 2011, reform has recommenced in a number of areas, including a modernized business law framework, and competition policy and law structure. Additional ongoing reforms are directed at improving state-owned enterprise (SOE) management and enhancing access to finance for businesses. If these microeconomic reforms are completed, momentum will strengthen and should dramatically improve Samoa's potential growth.

#### SIZE OF THE ECONOMY

The small size of the Samoan economy precludes some economic activity—economies of scale are

<sup>3</sup> Government of Samoa, Samoa Bureau of Statistics. Economic and Financial Reports. <http://www.sbs.gov.ws/index.php/economic-statistics/economic-and-financial>

not possible in, for example, most manufacturing. Lack of scale implies that Samoa should take every opportunity to integrate with world markets, by lowering trade barriers and ensuring that its cost of doing business is low.

It is also relatively expensive to supply public goods. Public goods are those that are not efficiently supplied by the private sector or markets. To develop the private sector, it is essential to reform business law, contract resolution, institutions supporting financial markets, competition policy, and infrastructure. In small Pacific island countries, provision of public goods is costly because many government institutions have high fixed costs. Generally, the smaller the country, the higher the per capita cost of providing services.

Because of these factors, the tax base in many Pacific island countries (including Samoa) is severely strained by the relatively high cost of providing public goods and social services. It is therefore important that these are provided as efficiently as possible, and that capital assets utilized by the public sector are productive.

Further, the quality of civil servants (and the working population as a whole) is undermined by the “brain drain” of skilled workers seeking better opportunities abroad. Samoa has as many citizens living offshore as there are in Samoa; this means a substantial loss in human capital—although, this is partly compensated by repatriation of remittances. In the longer run, however, the Samoa diaspora has the potential to participate in the supply chain of Samoa exports, generating business opportunities for the country.

The relatively few highly competent public sector officials are overtaxed by the demands of their jobs. The shortage of well-qualified public sector officials also argues for contracting out as many activities to the private sector as possible, where past experience points to the ability of private firms to improve productivity.

Data on the capital stock are not available, but it is certain that a significant portion is tied up in SOE assets. Given the poor performance of SOEs, it follows that the growth performance of the economy is being severely constrained by their low productivity. This reduces Samoa's long run potential growth rate.

In the private sector, firms are small. As a result, they cannot realize economies of scale. Further, family ownership makes them less attractive business partners; and their ability to allocate resources for market intelligence, and access funding for investment in new skills and technologies, is limited.

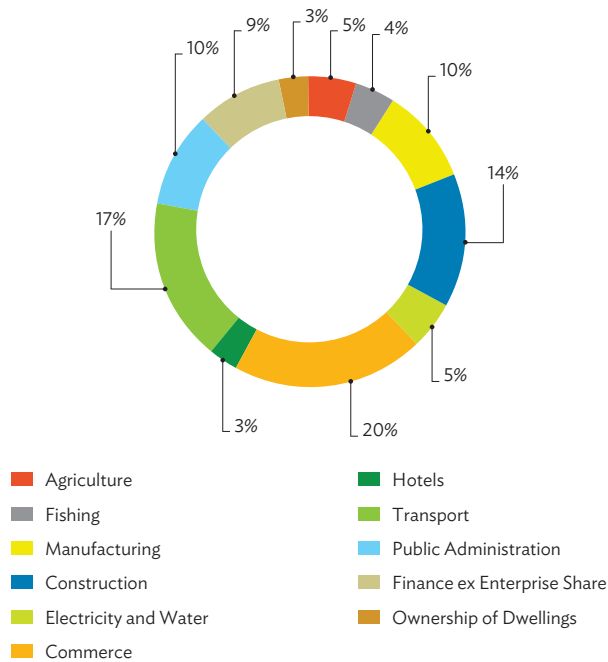
Samoa's infrastructure is generally adequate to support its level of economic activity. However, as most infrastructure is provided through monopoly SOEs, service standards are generally low, and costs are high. This issue is discussed in more detail in Chapter 7.

## OUTPUT BY SECTOR

An analysis of the private sector's structure is limited by lack of data.<sup>4</sup> Tourism, agriculture and fisheries, services, and the public sector dominate Samoa's sectoral output (Figure 2). Exact data are difficult to construct because statistics do not allow for an accurate accounting of output from

<sup>4</sup> Samoa's national accounts are derived using the output or product approach, where the value added of each industry or activity is summed to obtain total output. Since expenditure data are not available, it is not possible to estimate the value of investments.

**Figure 2: Gross Domestic Product by Sector, 2011 (%)**



Source: International Monetary Fund. 2012. Samoa Staff Report for the 2012 Article IV Consultation. *IMF Country Report No. 12/250*. Washington, DC.

each sector. Tourism, which accounts for about 20% of output, is contained within value added statistics for hotels, commerce, and transport and communications. Agriculture and fishing is the other main private sector economic activity, accounting for about 14% of total output.

With agriculture forming an important part of the economy, effective agricultural extension services could boost output substantially. Unfortunately, private agriculture sector producers who were

interviewed regarded government-provided extension services as ineffective and frequently counterproductive. These services, therefore, provide an excellent opportunity for contracting out to the private sector.<sup>5</sup>

The economy's base is small and dominated by tourism and agricultural products, which constitute the bulk of exports. Nevertheless, activity in these sectors appears to be expanding. A 2014 survey found a great deal of optimism and dynamism among the Samoan exporters in the sample.<sup>6</sup> The growth of exports is a potentially important source of productivity improvement. A significant amount of research has confirmed that exporting firms grow faster than non-exporters and employ more workers; and that exporting is associated with the reallocation of resources from less efficient to more efficient firms.<sup>7</sup> Companies that exported are larger than non-exporting companies.

Samoan exporters' largest markets are Australia, New Zealand, and North America. Over 60% of surveyed exporters anticipated either maintaining or increasing export orders in 2015. Their optimism is especially significant, given the problems associated with the substantial appreciation of the real exchange rate. Still, exporters identified problems with the business environment as constraining growth. Lack of access to finance to support export activity (51%), capacity constraints (40%), and labor issues (29%) were among the most important barriers to further expansion. These concerns illustrate the importance of continuing focus on business environment reform.

<sup>5</sup> An ADB grant of \$5.0 million is assisting to improve the agriculture sector's economic performance, through providing business support services and financing for agricultural businesses in Samoa. The focus of the businesses is on agro-industrial production. The project will also work with commercial banks to provide financing services. Source: ADB. 2014b. *Report and Recommendation of the President to the Board of Directors: Proposed Grant to the Independent State of Samoa for the Samoa AgriBusiness Support Project*. Manila.

<sup>6</sup> The sample included 30 Samoan exporters. Source: Pacific Islands Trade and Invest. 2014. *Pacific Export Survey*. Sydney.

<sup>7</sup> For example, see A.B. Bernard and J.B. Jensen. 1999. Exporting and Productivity. *National Bureau of Economic Research (NBER) Working Paper No. 7135*. Boston, MA: NBER; and J. De Loecker. 2007. Do Exports Generate Higher Productivity? Evidence from Slovenia. *Journal of International Economics*. Vol. 73 (1). pp. 69–98. New York: Elsevier.

## 4 COMPETITION

### Recommendations:

- Implement the National Competition Policy 2013, including competitive neutrality for state-owned enterprises
- Enact the draft competition and consumer bill
- Establish the Samoa Competition and Consumer Commission and begin the process of competition advocacy to build competition culture

### COMPETITION POLICY AND COMPETITION LAW

Samoa has adopted a national competition policy; and is developing a new competition and consumer protection law, which this private sector assessment strongly endorses.

A competition policy encompasses the range of policies, laws, regulations, decisions, and government actions that promote competitive behavior between business undertakings. It also addresses any circumstances in which competition may be inefficient or in conflict with other important social objectives.

Competition policy is an important part of a country's national economic policy; and it may advance a variety of objectives, such as

- ensuring market efficiency,
- encouraging entrepreneurship and innovation,
- supporting good governance by restricting opportunities for rent-seeking behavior,

- supporting equal access to economic opportunities,
- enhancing the investment climate, and
- promoting sustainable and inclusive economic development.

A competition law is fundamental to a competition policy, and is binding on all individuals and entities engaged in business. It also prohibits business behaviors that could prevent and harm competition in markets. Most competition laws around the world provide for exemptions where offsetting benefits justify the conduct.

For developing economies in the Pacific, competition policy can deliver tangible economic benefits. These include facilitating the entry of businesses to markets, promoting efficiency in the production and distribution of goods and services, and ensuring that even suppliers in less-competitive markets are held to high operating standards and reasonable pricing behavior.

## ROLE OF COMPETITION IN PRODUCTIVITY AND GROWTH

Competition has been defined as “a process of rivalry between firms seeking to win customers’ business over time by offering them a better deal.”<sup>8</sup>

Rivalry generates several economic benefits:

- **Better resource allocation.** In competitive markets, producers respond to price signals, so consumers can buy the goods and services they need at the price they are willing to pay. Producers do not restrict output.
- **More efficient production.** Competition pressure forces suppliers to produce their goods or services at the lowest cost possible. To maximize profits, suppliers must find the most efficient ways to produce their goods or services.
- **Innovation.** Competitive conditions encourage producers to innovate, and develop new products and supply methods.

The benefits of competition for the public are apparent when a competitive market is contrasted with a monopoly market or with a market of few (colluding) suppliers: lesser quantities of goods and services are likely to be available, and of inferior quality. These are likely also to be expensively produced, with consumers charged higher prices than in a competitive market.

Competition policy is especially important for small island economies. Large enterprises, particularly state-owned enterprises (SOEs), can exercise market power to the detriment

of consumers and potential competitors. Yet, the application of competition policy is not straightforward because economies of scale considerations have to be balanced with ensuring competitive behavior. When it is optimal to have a single supplier only, the market should still be open to competitive entry; and procompetitive regulation should control the risk of any abuse of market power.

Although Samoa’s economy is smaller than those of its major trading partners, market competitiveness in Samoa, and businesses’ ability to compete regionally and internationally, are vital to its future economic development and living standards.

Any reform in the Pacific region needs to incorporate the special characteristics of each Pacific island country, and the uniqueness of their economy. Samoa’s small economy means that some sectors cannot support many competitors and still function efficiently—one or two suppliers could efficiently supply the domestic market.

## COMPETITION POLICY IN SAMOA’S ECONOMY

Since the late 1980s, the Government of Samoa has adopted policies and enacted laws to foster competition in Samoa’s markets (particularly in the telecommunications sector) and protect the interests of Samoan consumers. Examples include the

- Fair Trading Act 1998;
- Telecommunications Act 2005;

<sup>8</sup> Competition Commission and Office of Fair Trading. 2010. *Merger Assessment Guidelines: CC2 (Revised)/OFT1254*. London: Crown. (In April 2014, the Competition Commission was closed, and its activities were assumed by the Competition and Markets Authority [CMA]. The Office of Fair Trading was also closed, with its responsibilities transferred to CMA, the Financial Conduct Authority, and other agencies.)

- Consumer Information Act 1989;
- 2003 Policy Discussion Paper on State-Owned Enterprise Ownership, Performance and Divestment;<sup>9</sup> and
- Samoa National Energy Policy 2007.

Under Samoa's Fair Trading Act 1998, some anticompetitive practices are prohibited. These include refusing to sell goods, exclusive dealing, price discrimination, and market monopoly. Yet, the Act does not comprehensively prohibit harmful forms of conduct. Anticompetitive collusion between competitors is not banned; and the creation of dominant market power through mergers or acquisitions is not subject to review.

The government's Trade, Commerce and Manufacturing Sector Plan 2012–2016 highlights a specific sector policy objective to “[e]nhance the effectiveness of market mechanisms and the growth of commercial activities and create a level playing field for all in the domestic market.”<sup>10</sup> There is a recommended policy action to develop and implement competition law and policy; and relate this to SOEs' professional services, price controls, and consumer protection.

In 2012, the government determined that initial successes in promoting competition warranted the introduction of an explicit competition policy for Samoa. At government request, the Pacific Private Sector Development Initiative (PSDI) prepared a consultation paper in 2012 to further discuss competition issues and assist in developing a competition policy. The consultation paper

examined Samoa's need for a competition policy that

- targets anticompetitive behaviors most harmful to Samoa's economy;
- does not impose excessive compliance costs on local businesses;
- complements, and is supported by, appropriate consumer protection law; and
- is practically enforceable.

Following consultations, the cabinet announced early in 2013 that it had adopted a national competition policy for Samoa.

## NATIONAL COMPETITION POLICY AND COMPETITION LAW REFORM

The National Competition Policy (adopted in 2013) aims to promote economic welfare in Samoa, by allowing the competitive process to operate to the fullest extent possible in Samoa's markets for goods and services. The key features of the policy include the following:

- Establishment of the new Samoa Competition and Consumer Commission (SCCC) to administer competition safeguards and consumer protection laws and advise the government;
- Updated and harmonized consumer protection laws, with a wider range of (noncriminal) sanctions for infringements;

<sup>9</sup> Government of Samoa. 2003. *Policy Discussion Paper on State-Owned Enterprise Ownership, Performance and Divestment*. Apia. (This policy was originally supported by ADB. Source: ADB. 2001. *Technical Assistance to the Independent State of Samoa for the Implementation of State-Owned Enterprise Reforms*. Manila.)

<sup>10</sup> Government of Samoa and United Nations Development Programme. 2012. *Trade, Commerce and Manufacturing Sector Plan 2012–2016. Volume I: Background Information and Situation Analysis*. Apia.

- Procompetitive administration of government, including in government's procurement of goods and services;
- Existing sector-specific regulation (broadcasting, electricity, telecommunications, and postal services), which are generally to be unaffected; and
- New competition law to protect the competitive process, that will
  - be binding on SOEs, as well as privately owned businesses;
  - apply outside of Samoa, if the conduct or agreement adversely affects markets in Samoa;
  - include a collusive conduct rule (prohibiting anticompetitive collusion and cartel agreements between businesses in competition with one another);
  - include a restrictive conduct rule (prohibiting a business that is “dominant,” or has substantial market power, from misusing that dominance or market power to prevent or limit others from entering the market or competing with that business);
  - include a market aggregations rule (requiring SCCC approval for any merger or acquisition that would substantially lessen competition in a market);
  - include case-by-case exemptions from the competition rules; and
  - provide for diverse remedies, in cases of infringement.

The government envisages a level playing field for Samoa's businesses. Generally, no business (or class of business) should enjoy any special protection or advantage, relative to its competitors.

The government has previously resolved that businesses should be privately owned and operated

unless compelling reasons for public ownership or public operation exist. The government considers it essential that, where the government is involved in business, its affairs and conduct must be carried on in a competitive manner. Accordingly, the government proposes that the competition law should apply to government, SOEs, and statutory bodies, where any is in business.

A draft competition and consumer bill, which aims to implement the main objectives of the National Competition Policy, was prepared during 2014, with support from ADB's PSDI. It is highly desirable that this legislation should be introduced to Parliament, debated, and enacted at the earliest stage possible.

## NEXT STEPS

The government is to be commended for recognizing the vital importance of competition for Samoa's economic development, and for taking action to adopt the National Competition Policy. The challenge ahead is to implement the policy successfully, to bring about material benefits for businesses and consumers in Samoa.

Implementing most of the key elements of the policy depends on Parliament enacting the appropriate legislation. Until the draft competition and consumer bill has been passed by Parliament, and the new SCCC established, only preparatory work can be undertaken.

The proposed bill to update and harmonize consumer protection laws is an important part of the procompetitive legal framework, as the competitive process is motivated by well-informed consumers able to effectively exercise their choices as consumers.



The main objective of competition and consumer laws is to deter undertakings from engaging in harmful conduct. This requires that businesses and consumers fully understand the laws and the reasons for them, and their rights and potential liability; and know where to go to raise a complaint or ask a question. Therefore, the new SCCC must undertake a campaign as soon as the laws have been enacted to promote awareness of the laws in the business community and among members of the public.

The government acknowledges that procompetitive laws must be properly enforced to benefit consumers and businesses. It will be essential for SCCC to build its capacity to investigate alleged infringements of the competition and consumer laws; and take appropriate action, up to and including enforcement action.

## 5 FINANCING ECONOMIC ACTIVITY AND GROWTH

### Recommendations:

- Fully implement the enacted Personal Property Securities Act (passed into law in March 2013) and its amendments (passed in January 2015)
- Promote competition between second-tier financial institutions and the commercial banks
- Continue developing an electronic payments system for government–business transactions
- Establish a credit bureau that provides both “positive” and “negative” information
- Eliminate directed subsidized credit provided by the Development Bank of Samoa and strengthen its capacity to avoid nonperforming loans
- Strengthen the role of the Samoa National Provident Fund as a long-term savings institution and improve its financial intermediation capacity
- Eliminate financial markets distortion caused by the Unit Trust of Samoa and revert to its original mandate
- Cease providing state-owned enterprises with subsidized credit

Substantial analysis has documented the link between financial market development and growth.<sup>11</sup> Without access to finance, investment is limited and growth potential is wasted. Credit is vital for many business transactions and consumer purchases; and, when people need to borrow money for business purposes, they find that lenders want security as a loan condition. Lenders demand collateral, usually consisting of either land (real estate) or personal property.

There are four commercial banks in Samoa—Australia and New Zealand Banking Group; National Bank of Samoa; Samoa Commercial Bank;

and, until early 2015, Westpac Banking Corporation (Westpac). In late January 2015, Westpac announced that, in the Pacific, it was retaining a presence in Fiji and Papua New Guinea; and its other subsidiaries and branches had been sold to Bank South Pacific, which is based in Papua New Guinea.<sup>12</sup> This will change the lending landscape but, as of mid-2015, it is too early to determine its impact on access to finance in Samoa.

Between 2004 and 2013, credit to the private sector by banks in Samoa remained constant at just below 40% of gross domestic product (GDP). This is low, compared with other lower middle-income

<sup>11</sup> For example, see P. Holden and V. Prokopenko. 2002. *Financial Development and Poverty Alleviation: Issues and Policy Implications for Developing and Transition Economies*. IMF Working Paper WP/01/160. Washington, DC: IMF.

<sup>12</sup> On 29 January 2015, Westpac announced that it had sold its banking operations in five Pacific island countries (including Samoa) to Bank South Pacific. The sale is scheduled to be completed in mid-2015. Source: Westpac Group. 2015. Media Release: Westpac to sell its operations in five Pacific Island Nations. 29 January. <http://www.asx.com.au/asxpdf/20150129/pdf/42w734jdrqm1xr.pdf>

countries: World Development Indicators show that the average ratio of private sector credit to GDP for this group of countries is 84%. In Vanuatu, its ratio averaged just over 55% for the same period, peaking at 70% in 2012.<sup>13</sup> These data confirm the feedback from business owners in Samoa that obtaining credit is difficult.

## REFORMING SAMOA'S LEGAL FRAMEWORK FOR LENDING

Problems with the legal framework for lending partly explain limited access to finance in developing countries. Deficiencies in the legal framework for lending and enforcing repossession in the event of default seriously impede the use of collateral as security for credit. This particularly applies to movable assets and results in reduced access to credit, except for large companies or wealthy landowners. Smaller borrowers are essentially excluded from the system, although microloan borrowers are serviced by the South Pacific Business Development network, and Women in Business Samoa provides some loan guarantees.

An inadequate framework also means that the credit chain is shortened. In underdeveloped financial markets, few businesses offer customers credit, borrowing against inventories or warehouse receipts is rare, equipment hire–purchase is unusual, and specialized financial institutions do not exist. The resulting underinvestment in capital

equipment—and less than ideal inventory levels—imposes high costs in remote countries where resupply is difficult due to distances from suppliers. Businesses need to hold higher inventories than in countries where nearby suppliers are many. As inventories need financing, access to reasonably priced credit is especially important for productivity improvements and growth.

Countries with modernized secured transactions laws have experienced significant increases in private sector credit access. Nearly all countries where access to credit is available for businesses (especially small and medium-sized enterprises) have modern, secured lending systems. Experience in the Pacific region confirms the importance of a well-functioning framework and its power for pledging movable assets as loan collateral.<sup>14</sup> The Pacific region has undergone one of the most extensive reforms of secured transactions legislation worldwide.<sup>15</sup> Results of initial reforms indicate more borrowing, on better terms, than under the previous systems. These reforms have especially benefited smaller businesses, similar to those typical of Samoan economy.

Samoa has made significant progress in modernizing its secured transactions framework. The Personal Properties Securities Act (PPSA) was passed in March 2013. Once fully implemented (or “activated”), the new legislation should improve access to credit for both Samoan businesses and individuals—removing a significant barrier to private sector growth. Many entrepreneurs

<sup>13</sup> IMF. 2014. *International Financial Statistics—Yearbook 2014*. Washington, DC; Government of Samoa, Samoa Bureau of Statistics. Gross Domestic Product March 2014 Quarter. 30 June. Apia; and World Bank. World Development Indicators. <http://databank.worldbank.org/data/views/reports/chart.aspx#> (accessed 29 January 2015).

<sup>14</sup> Movable property includes machinery, tools, inventory, crops, accounts receivable, future earnings, land rents, royalties, vehicles, vessels, and airplanes. See ADB. 2014c. *Unlocking Finance for Growth: Secured Transactions Reform in Pacific Island Economies*. Manila.

<sup>15</sup> Legislation is usually named Personal Property Security Act.

interviewed for this private sector assessment, including successful exporters, reported difficulties in obtaining credit to finance economic activity.

Other Pacific island countries have undertaken similar reforms; and their experiences have shown that, without intensive activation, realizing the reform's full potential will take a long time. Also, commercial bank lenders in these countries have been overly cautious and slow to provide credit using the new system.<sup>16</sup>

Still, clear lessons emerge from their experiences; and additional secured transactions reforms activation is needed to ensure that lending increases substantially. Activities should include the following:

- **Publicizing the new framework's advantages to businesses.** Many are unaware of its full uses. Chambers of commerce are natural partners, although they first need significant internal training.
- **Working with lenders.** They need help to use the framework, develop new financial products, and use accounts receivable more extensively.<sup>17</sup>
- **Developing supply chain financing in agriculture and other sectors.** Agricultural finance could greatly increase if lenders, larger growers, wholesalers, and distributors are incorporated in a financing chain, particularly once the secured transactions framework is fully implemented.<sup>18</sup>
- **Using government accounts receivable to secure credit.** A large, untapped source

of lending and financing to businesses that supply goods and services to government is credit secured by government accounts receivable.

- **Reducing drain on government budgets by state-owned enterprises.** Instead, state-owned enterprises (SOEs) should use their accounts receivable to secure bank financing.

While these options will deepen the reforms and widen access to credit, other important systemic problems remain. These include the need for comprehensive credit information, using both positive and negative data. As in most other Pacific island economies, Samoa does not have well-functioning credit information that provides reliable information on potential borrowers.<sup>19</sup> Secured transactions reform and positive credit information complement financial market development.

While Samoa has four commercial banks, two foreign-owned financial institutions dominate the financial system. The Development Bank of Samoa (DBS) is also important because it lends to sectors (such as agriculture) that are largely ignored by the commercial banks. DBS will particularly benefit from the PPSA's introduction.

However, DBS itself distorts the financial market. In 2014, it eliminated significant arrears (over 25% of its portfolio) by refinancing a proportion of its loans at lower interest rates. In addition, directed credit provided by DBS risks crowding out commercial bank lending.

<sup>16</sup> Yet, finance companies have enthusiastically embraced the reform framework.

<sup>17</sup> In Solomon Islands, Credit Corporation has been the main adopter of the reform, and has increased its lending sevenfold.

<sup>18</sup> Under the Samoa AgriBusiness Support Project supported by ADB, financing for commercial farmers may be obtained through commercial banks using a bank guarantee supplied by the project.

<sup>19</sup> Effective credit bureaus supply both positive and negative credit information.

In 2013, a ST39 million credit facility was established to assist businesses affected by Cyclone Evan.<sup>20</sup> In 2014, a further ST30 million was allocated to the tourism sector to expand capacity for the Small Island Development States Conference in 2014 and the Commonwealth Youth Games in 2015. Interest rates applied to these facilities ranged from 3% to 5%, with a 12-month interest moratorium and a 12-month grace period on any payments of principal and interest. The Central Bank of Samoa financed both credit lines. Since there is an implicit government guarantee of the credit lines, incentives to process loans carefully are reduced.

These facilities, and the refinancing of the DBS loan portfolio, have the potential to cause financial market distortions. The refinancing of loans causes moral hazard because, in the future, borrowers will hope for similar refinancing and reduced interest rates. This could lead them to not make loan repayments on time, and still expect further refinancing. Further, the concessional loans risk crowding out commercial bank lending at the time the new PPSA framework is being introduced, which will limit the framework's effectiveness. Nevertheless, the reform of the PPSA and its implementation provide an excellent opportunity for DBS to better secure its lending. As long as it is resolute in foreclosing on nonperforming loans (NPLs), it has the potential to reduce bad debts in the future.

DBS reinforcing its capacity to avoid NPLs in the future would significantly augment its role in the financial system. The Samoa National Provident Fund (SNPF) is a further potential source of financial intermediation. Strengthening its role in

financial intermediation, in conjunction with the DBS, would enhance the financial system's capacity to fund productivity activities.

Unlike other financial institutions in the Pacific region, Samoa's commercial banks complain of liquidity constraints. The Central Bank of Samoa data confirms that bank liquidity declined sharply during 2010–2013. Excess commercial bank reserves declined from ST160 million at end-September 2010 to around ST40 million at end-December 2012 (Figure 3).

While reserve levels stabilized in 2013, then recovered and stayed fairly high throughout 2014—at just over ST120 million—they have not yet reached the highest level achieved in 2010 (Figure 3). A prime reason is that SOE liquid assets have been withdrawn from the commercial banks and deposited with the Unit Trust of Samoa (UTOS). However, this move could further misallocate credit.

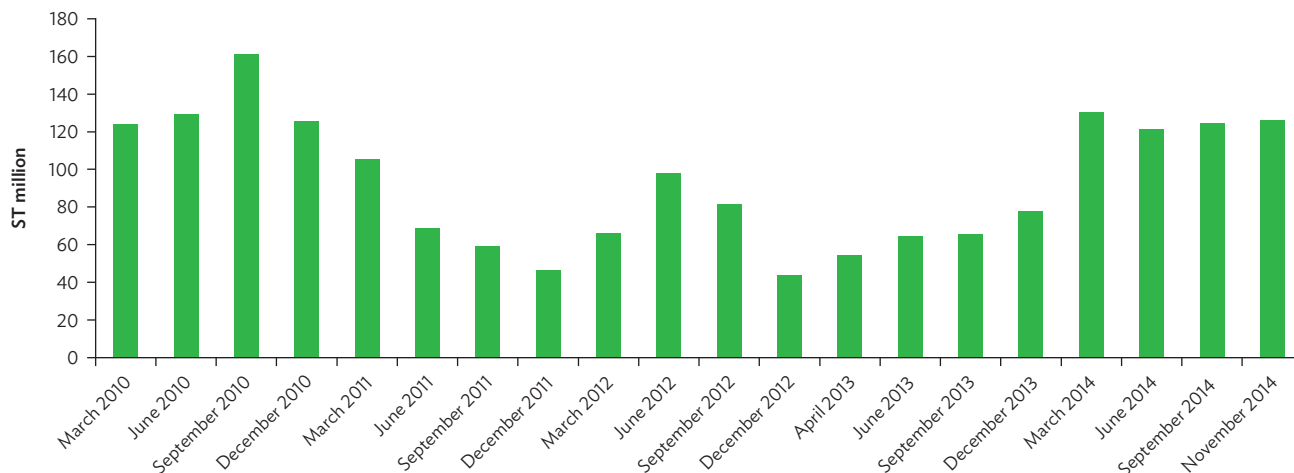
## IMPACT OF THE UNIT TRUST OF SAMOA ON THE FINANCIAL SYSTEM

Established under the Unit Trusts Act 2008, UTOS was formed in July 2010. The UTOS 2012 Prospectus stated:

The specific aim of the Trust is to give small investors in Samoa an opportunity to own shares and other investments while at the same time spreading their risks and leaving the management of their investments in the hands of experts. It is also to assist the

<sup>20</sup> Government of Samoa, Development Bank of Samoa. 2014. *Annual Report 2014*. Apia.

**Figure 3: Excess Commercial Bank Reserves Held by the Central Bank of Samoa, March 2010–November 2014 (ST million)**



Source: Central Bank of Samoa. Monetary Survey Reports. <http://www.cbs.gov.ws/index.php/media/publications/monetary-survey-report/archive/>

Government policy of partially privatizing some of the state-owned enterprises and promoting wider participation by residents in the future development of Samoa.<sup>21</sup>

The UTOS trustee is the Samoa Company Trust;<sup>22</sup> while its management company is Unit Trust of Samoa, an SOE.

### The Unit Trust of Samoa is structured as an open-ended, private unit trust

Investors purchase units at the going price, and the management company then invests the proceeds. The 2012 Prospectus stated that UTOS will invest in “cash, shares, term deposits, capital notes, bonds and other property.” Investors (called “Unitholders”)

can withdraw funds at any time by reselling units to the manager. There is a 3% sale transaction fee.

UTOS’ first major investment was the purchase of ST7.9 million of shares in the privatized SamoaTel, now called Bluesky Samoa, which represented a 25% shareholding in the company.<sup>23</sup> Since there were no further privatization opportunities and to generate investment income, the government encouraged SOEs to borrow from UTOS through the so-called “Capital Notes” SOE-targeted financing facility. Using these capital notes—loans made to SOEs and government—SOEs repaid their commercial bank loans (secured on normal commercial terms and conditions). UTOS funds the capital notes with soft loans from government-controlled entities.

<sup>21</sup> Unit Trust of Samoa. 2012. *Prospectus: 1 July 2012*. Apia.

<sup>22</sup> The trustees of Samoa Company Trust are the directors of Betham&co, a certified accounting firm that has operated in various professional partnerships in Samoa for over 30 years.

<sup>23</sup> Bluesky Samoa became a subsidiary company of Bluesky Communications and began operating the former SamoaTel in March 2011. While UTOS owns 25% of Bluesky Samoa, the remaining 75% of shares are owned by Bluesky Communications and other investors.

### By the third quarter of 2013, UTOS had sold approximately 20 million units

UTOS has borrowed ST35 million in 5-year to 10-year convertible notes, primarily from the Accident Compensation Corporation, Samoa International Finance Authority, SNPF, and Samoa Shipping Corporation.<sup>24</sup> UTOS invested approximately ST60 million in 2010–2014; of this total, ST52 million were loans to government companies and SOEs, rather than investments in SOE privatizations.

UTOS appears to be a costly way for Samoans to participate in SOE privatizations and bring competition to the financial system. It significantly distorts fund allocation and subsidizes SOEs, leading to a large contingent liability on the public finances. There is no indication that it has improved financial intermediation. Better instruments are available to achieve the stated goals of UTOS.

### UTOS pays a deposit interest rate of 5.0%–6.5%, and primarily intermediates government and SOE financing

UTOS also borrows short term from SOEs with cash surpluses, and lends longer term at interest rates from 8.0% to 9.5%. In its agreement with the management company, Unitholder dividends are only payable after all management and other costs have been deducted.<sup>25</sup> All UTOS profits are tax-free, including dividends.

Government guarantees feature prominently in the operation of UTOS.<sup>26</sup> The most recent prospectus states the government's agreement to

- (i) provide a general guarantee for UTOS loans to SOEs;<sup>27</sup>
- (ii) guarantee the cash flow of UTOS, including all Unitholders redemptions; and in cases of insufficient liquidity to pay out any large-scale withdrawals, the government to pay the shortfall; and
- (iii) underwrite losses of any privatized SOE shares held by UTOS, which include the Bluesky Samoa investment.

### The government has instructed SNPF to provide UTOS with below-commercial rate loans

UTOS then on-lends to SOEs at below-market rates. It had loaned more than ST70 million by end-2014, constituting both short- and long-term potential liabilities to the government. A worst-case scenario (a sudden large funds withdrawal) would result in a massive liquidity squeeze, threatening the entire financial system's stability.

Further, in the longer term, lowering rates of return on SNPF assets compromises its ability to pay pension payments to retirees. An operating principle of institutions that incur pension liabilities is the need to ensure that rates of return on investment are sufficient to meet pension obligations. UTOS receives SNPF funding at below-commercial rates, compromising the ability of SNPF to ensure its obligations to future retirees are met.

<sup>24</sup> UTOS data are only available after a significant delay.

<sup>25</sup> A management fee of 4% is payable annually. For FY2014, this totaled ST1,054,390.

<sup>26</sup> The guarantee fee that the government normally charges is 3% of the total amount guaranteed at the signing of a guarantee agreement and an annual fee of 1%.

<sup>27</sup> UTOS is exempt from paying a guarantee fee, but anticipates that the exemption will be phased out at end-2015.

### Liquidity risks are compounded because the assets and liabilities term structure of UTOS is mismatched

Convertible notes sold to SOEs to raise capital are normally issued for 5-year to 10-year terms, while capital notes are for up to 180 days. Liquidity mismatches between liabilities and assets are an overriding factor in all major worldwide financial crises. If capital note demand is reduced significantly, or interest rates decline, UTOS risks high-cost, long-term debt without an income stream to support borrowings.

Its government guarantee benefit means that UTOS is, effectively, disintermediating in the local financial market and competing against domestic commercial banks. Commercial bank lending to SOEs is not government-guaranteed; and, if an SOE needs a government guarantee to conduct normal business, it has to pay the government a fee while UTOS does not.<sup>28</sup>

### Commercial banks are disadvantaged

The commercial banks cannot compete with UTOS, which lends at below-market rates and does not carry loan portfolio risks. Funds are withdrawn from the banking sector and applied to loans that would be unviable under standard commercial criteria. A positive step in 2013 was to bring UTOS under the supervision of the Central Bank, which is strongly endorsed in this private sector assessment.

While the original intent of UTOS has merit—allowing Samoans to participate in SOE privatizations—its operations are not consistent with its original mandate. UTOS has become a channel for providing subsidized funding to SOEs. If the government would like Samoans to participate in privatizations, reserving a proportion of offered shares for small investors could be a better approach, with UTOS then taking a significant minority stake in the remaining shares.

Samoa Breweries provides a simpler, less distortionary example of how to achieve broader shareholding. It has 243 registered shareholders—the second largest number of shareholders in Samoa (only UTOS has more)—and an informal, company-managed arrangement provides for the trading of shares.

### The role of UTOS needs to revert to its original intent

If the government intends to proceed with a privatization program, the original intent of UTOS is an ideal way to bring financial benefits to Samoan citizens. To achieve this goal, the government must unwind the role of UTOS as an intermediary of subsidized SOE financing.

<sup>28</sup> The 2013 UTOS Annual Report stated: “Unitholders should appreciate the fact that without these borrowed funds, the stated net profit and 17.3% return on shareholders’ investment could not be achieved. The Management expresses its gratitude toward these SOEs for supporting the Trust with its initiatives.” Source: Unit Trust of Samoa. 2013. *Annual Report for the Year ended 30 June 2013*. Apia.



## 6 BUSINESS LAW REFORM

### Recommendations:

- Reduce the regulatory burden on the private sector that raises costs and reduces competitiveness
- Review the business licensing framework to encourage licensing for policy rather than for revenue-oriented purposes
- Reduce barriers to foreign investors
- Continue modernizing the business law framework for business licensing
- Reduce business licensing red tape
- Review the recently enacted labor legislation
- Analyze company tax regime implications
- Commence the Personal Property Securities Act 2013 and implement the electronic Personal Property Securities registry
- Update the Arbitration Act 1976 to reflect the United Nations Commission on International Trade Law model law and allow for enforcement of foreign arbitral awards
- Review regulations relating to mobile money and other e-payment facilities
- Reform the Bankruptcy Act 1908 to simplify bankruptcy processes
- Reform the contracting framework and related laws, including the Electronic Transactions Act 2008, Bills of Exchange Act 1976, and Mercantile Law Act 1975, to give greater clarity and access to contract regulation; and acknowledge the role of technology in contracting

### OVERVIEW

Since the previous private sector assessment (PSA) was published in June 2008, Samoa has made significant progress in reforming the business law framework. Company law reform initiatives have been modernized; and intellectual property law reform has been introduced. These are key achievements, and will have a beneficial impact on doing business in the country. The Samoa Companies Registry is one of the world's most advanced.<sup>29</sup>

Since business laws impact almost all private sector activities, their reforms are improving the foundation for private sector development in Samoa. They positively impact the way businesses

- are established,
- trade with other businesses and consumers,
- access finance,
- resolve disputes,
- interact with government,
- are closed, and
- deal with both fixed and personal property.

<sup>29</sup> Samoa Companies Registry, <http://www.companies.gov.ws/>

These reforms also affect the legal system's definition of the business rights and obligations of traders and consumers. New reform areas have also emerged within a rapidly evolving landscape in Samoa, particularly due to changes in technology.

## PRINCIPLES TO IDENTIFY AND PRIORITIZE REFORM OPTIONS

The principles for this PSA's prioritized recommendations are drawn from those established in past reviews of Samoa's regulatory environment and the government's Strategy for the Development of Samoa 2008–2012,<sup>30</sup> along with reviews of existing laws and developments in law reforms in the Pacific region.

Reform recommendations are useful where they

- facilitate private sector activity,
- remove barriers to doing business,
- reduce unnecessary doing business costs, and
- promote business formalization.

In deciding whether to pursue a particular reform, the government should consider if it would succeed in creating the desired enabling environment for business in a cost-effective manner. Simply modernizing laws will not achieve the goal of improving the business environment. Further, reforms must address the particular features and needs of the Samoan business environment.

## BUSINESS LAW REFORM PROMOTING FORMALIZATION

An overriding consideration in business law reform is expanding the size of the formal sector in Samoa's economy. Informal economic activity is usually characterized by low productivity—trading within small communities limits gains from trade. Informal businesses have difficulty transacting with the formal sector, and have no access to formal finance apart from government- or donor-funded schemes. It is also virtually impossible for informal businesses to export.

Since productivity gains determine the rate at which economies grow, the larger the informal activity, the lower the long-term potential growth rate. Effective law reforms that are simple, clear, low cost, and accessible promote the formalization of businesses, as well as formality and productivity gains.

## COMPANIES ACT AND REGISTRY REFORM

Samoa's company laws were updated in 2006 to reflect modern business practices.<sup>31</sup> Following the introduction of enabling regulations under the Companies Amendment Act 2006, the electronic Samoa Companies Registry was installed and commissioned in February 2013. The new registry's benefits include (i) more rapid and efficient company incorporation and maintenance; (ii) improved company and director searching; (iii) improved data collection and analysis, assisting government policy; and (iv) a move toward paperless processes.

<sup>30</sup> Government of Samoa. 2008b. *Strategy for the Development of Samoa, 2008–2012: Ensuring Sustainable Economic and Social Progress*. Apia.

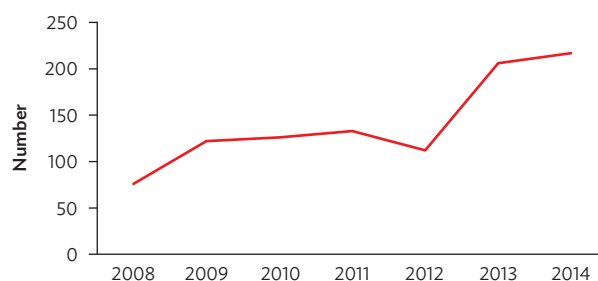
<sup>31</sup> Government of Samoa. 2006. *Companies Amendment Act 2006, No. 18*. Apia.

After the electronic registry went live, the number of registrations doubled compared with the paper-based registry (Figure 4). Other benefits include:

- **Cost.** There have been dramatic cost reductions.
- **Ease.** Registering and maintaining companies are significantly easier and, in most cases, can be done in a day.
- **Savings.** Searching company information online saves large amounts of time and money.
- **Access.** Better access to information has lowered company administration, accounting, and auditing costs.<sup>32</sup>
- **Searchability.** The ability to search the registry from anywhere in the world provides reliable information to potential exporters and importers about shareholders and directors of the companies that they might be dealing with. This enhances the ability of the parties to enter into contracts.
- **Financial market development.** In the longer run, the reform will also enhance financial market development because lenders rarely provide business loans to individuals. Reducing the costs of registration, within the context of the new Personal Properties Securities Act (PPSA), benefits entrepreneurs and investors.
- **Online payments.** A planned electronic payments system will allow online payment for registration and other charges.

These are substantial improvements over the previous system. Still, it is important to acknowledge that, for the individual business owner, formalizing must lead to benefits. Once a business enters the formal sector, it is subject to taxation and regulation,

**Figure 4: Number of New Incorporations, 2008–2014**



Source: Samoa Companies Registry. <http://www.companies.gov.ws/>

which carry costs. The most important aspects of being formal are the expanded ability to trade with other businesses and enter into more reliable contracting through access to the legal system; and improved access to finance.

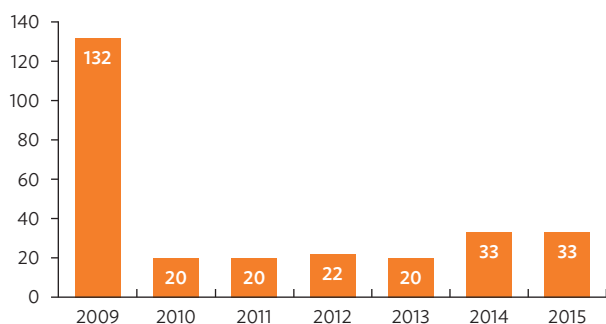
A further step that would promote formalization is to create a hybrid corporate form in which profits “pass through” companies to individual shareholders. Profits would then be taxed as personal income. In the United States, this tax arrangement has been successful in encouraging small businesses to form. This type of business entity could suit Samoa’s needs, and this PSA recommends more in-depth analysis of this option.

### Issues with the Doing Business Indicators

Despite far-reaching and fundamental reform to Samoa’s system of formalizing businesses, there has been scant recognition of the achievement in the World Bank Doing Business indicators. In 2009, Samoa ranked 132nd in the world for starting a business (Figure 5). In 2010, the indicators showed

<sup>32</sup> These results are based on a survey of company administrators and business services providers conducted in early 2014 by PSDI.

**Figure 5: Samoa Starting a Business Rankings in Doing Business, 2009–2015**



Source: World Bank. Doing Business Indicators. <http://www.doingbusiness.org/Custom-Query/samoa> (accessed 1 June 2015).

a dramatic improvement to 20th in the world; and Samoa maintained this rank until 2013 (a period of 4 years) with only minor changes.

Despite the introduction of an electronic registry, the ranking deteriorated in 2014 and 2015 to 33rd. Yet, businesses in Samoa can be registered in less than a day, and the process is one of the most modern, fastest, and least costly in the world.

The rankings in “Starting a Business” are difficult to understand. It is unclear why Samoa’s 2010 ranking improved by over 100 places, when there were no material improvements in time or costs involved in business start-up at that time. This observation is supported by data on the number of businesses registered in 2010 (Figure 4), which did not show any improvement.

When the electronic registry was introduced in 2013 and the rate of business formation doubled, Samoa’s Doing Business rankings deteriorated.

This implies that Samoa has worsened its framework for registering formal businesses since the reforms were introduced.<sup>33</sup> The conclusion is that, in Samoa’s case, the Doing Business indicators are inaccurate, and do not reflect the far-reaching reforms that have occurred.

## REFORM RECOMMENDATIONS

Despite progress, Samoa’s business law framework has several serious deficiencies. These issues need to be addressed to ensure that the country’s business laws will adequately support modern commerce. Samoa needs to move ahead with the following reform recommendations to strengthen the legal framework for doing business.

### Proceed with electronic registry implementation

Significant progress has been made on a complementary reform to the Companies Registry. The PPSA was passed in March 2013, allowing movable property to be pledged as loan collateral, and will be implemented in 2015 to support this reform. In 2015, the Asian Development Bank will support the law’s implementation, as well as the accompanying registry. Experience elsewhere has demonstrated that intensive implementation is needed to maximize the new law’s potential. Once fully enacted and properly implemented, the new framework for lending should have a deep impact on improving financing for businesses in Samoa.

<sup>33</sup> Because of the *Doing Business* methodology, the 2015 *Doing Business Report* identifies reforms in 2014.

## Review and reform the business licensing framework

A business licensing system ensures that businesses maintain certain standards important to the public interest, including health and safety. The Business Licenses Act 1998 governs the licensing regime for Samoan businesses. Before starting a business, licenses for each of its activities must be obtained from the Inland Revenue Services Division in the Ministry for Revenue.

However, licenses are issued by business activity and not for individual businesses—this is the most serious deficiency in the business licensing process. For example, a business involved in both food preparation and tourism activities must first obtain a certificate from the Ministry of Health and an authority letter from the Samoa Tourism Authority, before applying for a business license from the Ministry for Revenue.<sup>34</sup> This means that a tourism operator with a restaurant and shop needs several approvals to cover all of its activities; and, as several agencies are involved in approvals, this process leads to delays. This seriously outdated perception of licensing purposes has been rejected in most countries in the world.

This system also increases the costs of doing business—a license costs ST500 per activity. If a business has many activities, costs can be substantial. Also, renewals are due at each calendar year-end, raising costs for businesses commencing operation during the year.

Regulations should set detailed environmental, health, and safety standards for businesses. This will eliminate discretion and reduce uncertainties for both licensors and businesses. Licensing by

company, not by activity, would bring Samoa in line with modern practices.<sup>35</sup> Business licenses, permits, and registrations make it clear to licensing authorities that the business is functioning, and that it meets safety, soundness, and tax regulations. This is especially important if the business has employees or sells taxable goods and services.

A license indicates that the business intends to comply with governing laws and regulations, and report to the authorities the required information for the business to operate. License fees should be kept low because high costs to new businesses dissuade them from formalizing. There is a mismatch between Samoa's modern company registration system and the burdens of the existing licensing system.

## Further reform the business law framework, including the Electronic Transactions Act, Bills of Exchange Act, and Mercantile Law Act; and introduce a business names act

The recommended reform will clarify these laws and increase access to contracting, taking into account the role of technology.

Samoan contract law is mostly governed by the common law—decisions made by Samoan courts, using principles established by English courts. Particular elements of contract law are governed by statute, but there is no single, accessible, authoritative statement of the laws, rules, and regulations governing a particular contract. Identifying applicable contract laws is costly and complex, often involving abstract and irrelevant English principles unsuited to the Pacific context.

<sup>34</sup> Government of Samoa, Ministry for Revenue. *Starting a Business: Information for New Businesses Report IR45*. Apia.

<sup>35</sup> In 2014, Tonga reformed its business licensing framework from licensing by activity to licensing businesses.

There is little litigation of Samoan contractual issues, and there are no specific texts on Samoan contract law. These factors are significant limitations to the effectiveness of contract law in facilitating business, both in Samoa and in the Pacific region.

Contract law uncertainty and complexity increase doing business costs, and relies on professional advice to resolve disputes. It has increased risk, and invites informality. Codification—restating the law within a new legal code—can overcome a lack of clarity. A codified law is a written contract law that, in clear terms, states the existing rules of contract derived from common law and equity.

The size and complexity of reforms mean that Samoa should seek significant economies of scale by working with other Pacific island countries facing similar issues. Regional work has already begun, with extensive consultations in Papua New Guinea, Tonga, and Vanuatu. The chief justices of these jurisdictions strongly support a regional contracting framework approach.

**Electronic Transactions Act 2008.** The Samoan Parliament passed the Electronic Transactions Act in 2008. However, its application is restricted to electronic transactions involving the Samoan International Finance Authority, with an option for the Minister to declare its application in other contexts.<sup>36</sup> Essentially, the law was passed to assist the offshore transactions industry. Besides Clause 5(2) limiting the scope of application, the law is based on drafts intended to encourage electronic commerce across Samoa's whole economy.

This category of law is becoming increasingly important. This PSA recommends that government review the existing Act and amend it to enable electronic transactions in the broader economy. Model laws—including the United Nations Commission on International Trade Law (UNCITRAL) model law and other laws passed in the region—can be adapted for Samoa.

**Bills of Exchange Act 1976.** This Act is generally up-to-date when compared with the New Zealand statute on which it is based. Yet, further coordination should determine whether amendments are needed to accept electronic signatures. This should form part of the electronic transactions framework review.

**Mercantile Law Act 1975.** This Act governs elements of trade and commerce, particularly bills of lading and warehoused goods; and is based on New Zealand's Mercantile Law Act 1908. The New Zealand law has since been updated, with the Mercantile Law Amendment Act 1994 as the most recent. The amended law recognizes modern forms of communication, particularly relating to bills of lading; and clarifies the rights of cargo receivers as against cargo carriers.<sup>37</sup> This PSA recommends updating Samoa's Act to reflect modern mercantile practices.

**Business names act.** Business names are not protected by legislation in Samoa. Samoan sole proprietors operate their businesses under a “doing business as” nomenclature, but the names are not legally protected. Introducing a business names act will provide long-term certainty that these names can be used without threat from others using the same name.

<sup>36</sup> Clause 5(2) states: “Notwithstanding subsection (1) and except for electronic transactions involving only the Samoa International Finance Authority, this Act shall not apply to any other electronic transactions unless authorized to that effect by notice issued by the Minister.”  
Source: Government of Samoa. 2008a. *Electronic Transactions Act 2008*. Apia.

<sup>37</sup> Government of New Zealand. 1994. *Mercantile Law Act Amendment Act 1994*, No. 106. Wellington.

## Review regulations to allow innovative payment facilities, including mobile money and e-payments

In 2010, the Pacific Financial Inclusion Taskforce asked the Central Bank of Samoa whether adequate regulations existed to roll out mobile telephone-based banking. In 2009, the National Bank of Samoa (NBS) introduced Samoa's first mobile banking service for checking account balances by mobile telephone. In March 2012, it launched NBS Ezibank, a mobile-based payment system for electricity top-ups. NBS Ezibank plans to expand to other bill payments, deposits, and withdrawals. The Australia and New Zealand Banking Group uses goMoney to effectuate transfers.

While specialized mobile money and e-payment regulation is not immediately important and should be lightly applied while the emerging industry develops, further analysis should confirm the regulators' authority to regulate, if needed. This PSA recommends developing an approach that encourages financial inclusion with a risk-based perspective on regulation.

## Reform the Bankruptcy Act 1908 to simplify bankruptcy processes for individuals

The laws relating to company insolvencies were updated as part of the 2006 company law reforms. This PSA recommends further consultation with practitioners and banks to determine whether the simplified law has led to more efficient outcomes.

The bankruptcy laws of individual Pacific island countries are outdated. Samoa uses New Zealand's

Bankruptcy Act 1908, which has since been updated and superseded at least four times with the latest being the Insolvency Amendment Act 2013. This PSA recommends a consultation process to raise Samoan bankruptcy procedures to best practice.

## Update the Arbitration Act 1976 to reflect the UNCITRAL model law, allowing for best practices in foreign arbitral awards enforcement

Arbitration is often more effective in resolving disputes than the court system or mediation processes. An effective arbitration system would eliminate burdens on Samoa's courts, and avoid delay and cost issues associated with a court-based dispute.

The Arbitration Act 1976 (modeled on the 1976 New Zealand equivalent) is cumbersome and outdated; and it requires extensive court involvement, which is contrary to global arbitration best practice that minimizes court use.<sup>38</sup> For example, the existing law requires the courts to grant leave to enforce an award (the term used for an arbitration decision) as if it were a judgment. This exposes the parties to further costs, delays, and uncertainties.

The law may also deter foreign investment. Unlike most of its trading partners who recognize foreign arbitral awards through the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (or the "1958 New York Convention"), Samoa does not.<sup>39</sup> This could impact foreign investors' risk assessment when determining the predictability of potential dispute resolutions.

<sup>38</sup> The Alternative Dispute Resolution Act 2007 updates mediation procedures. It does not, however, update arbitration procedures, which are referred back to the Arbitration Act 1976. See Government of Samoa. 2007. *Alternative Dispute Resolution Act 2007*, No. 30. Apia.

<sup>39</sup> United Nations Conference on International Commercial Arbitration. 1958. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*. New York: United Nations.

To reform Samoa's arbitration system, the Arbitration Act 1976 should be updated to reflect best international practices, preferably applying the UNCITRAL model law approach. New Zealand adopted this approach in the Arbitration Act 1996 (amended in 2007 to reflect the updated UNCITRAL model law). The proposed new law is simple and clear, and its adoption may ease access to judicial precedents and academic guidance.

As part of the same legislation, Samoa should accede to the 1958 New York Convention. It is one of the most successful international treaties in international commerce, with 155 member state accessions scheduled to have entered into force by July 2015. This would provide greater certainty to foreign investors, and should ensure a simple enforcement mechanism for foreign arbitral awards.

Implementation is crucial to understanding the law and practice, and creating demand. Updating the law is an opportunity to highlight the advantages of an alternative dispute resolution mechanism. The reform program should also include practitioner and (potential) arbitrator training.

While the mediation framework has been advanced, and there are undoubted benefits to mediation processes, agreements are not binding and often result in further recourse to the courts.

## PRIORITIZING REFORMS

Identifying the reform sequence is complex. This PSA recommends a prioritized list that leans toward reforms with the greatest potential impact, and which are realistically achievable without significant demands on government resources. Importantly, while these reforms will have a short-term impact, they may not achieve their full potential for several years.

For example, removing certain business licenses may result in lower government revenue. Yet, the long-term outcome will be increased business activity and, ultimately, higher government revenue through business tax collections.

## IMPLEMENTATION

Successful reform implementation is as important as the reform itself. It consists of

- the responsible government ministry or agency allocating adequate resources;
- extensive awareness-raising through media and seminars, and training activities;
- regular reviews of reform effectiveness; and
- legal practitioners, business advisers, and the judiciary participating in reform to ensure that new laws are properly understood and applied.

Implementation can also be supported by donor agencies, especially given local resource and capacity constraints. However, government must have the primary role in the process to ensure reform ownership.



## 7 STATE-OWNED ENTERPRISE REFORM

### Recommendations:

- Improve state-owned enterprise (SOE) productivity through commercialization
- Increase contracting out and public–private partnerships
- Continue to privatize SOEs
- Force SOEs to operate under a strict budget constraint
- Competitively tender unprofitable shipping services as a community service obligation

### OVERVIEW

The state plays a substantial role in Samoa's economy. It accounts for over 40% of gross domestic product (GDP), and owns a significant number of state-owned enterprises (SOEs) that account for a substantial proportion of the economy's capital stock. However, SOEs only contributed about 4.3% to GDP in 2012 because of their low productivity, which reduces growth.<sup>40</sup> Widespread state ownership is negatively affecting the country's prosperity, impacting the availability of social services and damaging the economy's long run potential.

Samoa's SOE portfolio comprises 15 entities providing infrastructure services, shipping and transport, telecommunications, and general commercial activities.<sup>41</sup> The performance of Samoa's

SOEs, relative to other Pacific island countries and comparators from the Caribbean Sea and Indian Ocean, is poor (Table 3).

Of the Pacific portfolios, Samoa's performance during FY2002–FY2012 exceeded only those of the Marshall Islands and Solomon Islands. It was the only portfolio in the Pacific region to show no real performance improvements. Samoa's SOEs are the third-lowest performers in the Pacific region and substantially below Tonga's return on equity (ROE), which averaged 5.2% in FY2002–FY2012.

In contrast, Solomon Islands—which began a broad-based SOE reform program in 2010—showed an increased average ROE from –12% in FY2002–FY2008, to 6% in FY2009–FY2012, and to 15% in FY2012.<sup>42</sup>

<sup>40</sup> ADB. 2012. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Papua New Guinea*. Manila.

<sup>41</sup> SOEs are defined as those public bodies that operate within a commercial mandate and are majority government-owned. Samoa's SOEs are Agricultural Stores Corporation, Development Bank of Samoa, Electric Power Corporation, Polynesian Airlines, Public Trust Office, Samoa Airport Authority, Samoa Post, Samoa Housing Corporation, Samoa Land Corporation, Samoa Ports Authority, Samoa Shipping Corporation, Samoa Shipping Services, Samoa Trust Estates Corporation, Samoa Water Authority, and Unit Trust of Samoa. Two previous SOEs have been privatized: Samoa Broadcasting Corporation (2008) and SamoaTel (2010).

<sup>42</sup> ADB. 2014a. *Finding Balance 2014: Benchmarking the Performance of State-Owned Enterprises in Island Countries*. Manila.

**Table 3: State-Owned Enterprises Profitability Indicators, FY2002–FY2012**

Country	Average Return on Equity (%)	Average Return on Assets (%)
Cabo Verde (2008–2012)	(17.4)	(3.1)
Fiji	1.0	0.5
Jamaica	(55.6)	(3.7)
Marshall Islands	(12.6)	(5.6)
Mauritius	4.4	1.9
Papua New Guinea	5.8	3.3
Samoa	0.1	0.1
Solomon Islands	(6.1)	(1.3)
Tonga	5.2	3.2

( ) = negative, FY = financial year.

Note: In Solomon Islands, profitability was compromised by poor performance in the mid-2000s. Since then, earnings have been strongly positive.

Source: ADB. 2014a. *Finding Balance 2014: Benchmarking the Performance of State-Owned Enterprises in Island Countries*. Manila.

SOEs impact the economy in several ways:

- **They lower the economy's growth rate as a whole.** This is due to the low productivity of the capital stock tied up in SOEs.
- **They drain valuable resources from the budget.** Injecting funds into badly performing SOEs diverts spending from social services (health and education) and infrastructure.
- **They crowd out the private sector.** By offering services at subsidized, preferential rates, SOEs crowd out private sector investment and reduce opportunities in the economy.
- **They reduce access to finance.** The loan and interest rate subsidies received by SOEs hold back improving access to finance.

Samoa SOEs receive competitive advantages through preferred access to government contracts, and subsidized debt and equity. Their performance would be even worse without these advantages. For example, average cost of debt for the SOEs

in FY2002–FY2012 was just over 4%, compared with an average commercial debt rate of 11.4% (footnote 42). Government equity contributions amounted to more than ST75 million over the same period.

To put this in context, total government transfers to SOEs in FY2002–FY2012 were 60% of government health services expenditure. Further, several SOEs are monopoly providers of essential infrastructure services—power, water, ports, and airports. Because they provide these services inefficiently and/or at high cost, the cost of doing business is increased for the private sector. While the infrastructure SOEs' average ROE of 1.43% for FY2002–FY2009 was slightly higher than the portfolio as a whole, they were the largest recipients of subsidized debt and equity. This implies an even greater inefficiency than the financial results suggest.

Samoa has had a long history of SOE reform, from the restructuring and divestment of 20 loss-making

### Box 1: Privatizing the Samoa Broadcasting Corporation

In 2008, the Government of Samoa completed the privatization of the Samoa Broadcasting Commission (SBC), which operated AM and FM radio, and a television station. SBC had been profitable, but it recorded losses of ST134,000 and ST405,000 in the 2 financial years presale. These losses showed a negative return on shareholder's funds of 4.55% in 2006 and 16.42% in 2007. SBC operated in a competitive market against private sector radio and television services providers.

After a competitive tender, an SBC management-led consortium won the right to acquire the company. Key stakeholders declared the sale successful. Four major shareholders (the presale chief executive officer and external investors) bought 90% of SBC equity, while staff acquired the balance.

SBC's new owners reported business-wide improvements. In the first year post-sale, the company earned sufficient profits to pay a dividend. In the second year, the directors elected to retain the profits in the business and begin a reinvestment program.

Between 2008 and 2014, radio coverage increased from 85% of the population to 98%. Over the same period, television broadcasting hours were extended; program offerings were expanded; SBC invested about ST400,000 into broadcasting infrastructure; and staff morale and commitment were reported by the Board of SBC to have improved.

This sale shows that privatization can bring immediate operating benefits and improved profits, and that even a loss-making SOE has value. Buyers will pay for businesses with profit potential (when run efficiently), even if existing operations are inefficient and loss-making.

Source: ADB. 2014a. *Finding Balance 2014: Benchmarking the Performance of State-Owned Enterprises in Island Countries*. Manila.

SOEs in the 1980s, to the adoption of robust SOE legislation in 2001;<sup>43</sup> and the Policy for SOE Ownership, Performance, and Divestment in 2002, calling for the divestment of all SOEs not considered strategic.<sup>44</sup> In March 2004, the cabinet approved a paper calling for the immediate privatization of seven SOEs, three of which were majority state-owned. The government completed the divestment of three of the four minority holdings over the next 2 years;<sup>45</sup> and restructured Samoa's loss-making airline,

Polynesian Airlines. It successfully privatized Samoa Broadcasting Corporation (SBC) in 2008 (Box 1), and divested a majority interest in SamoaTel in 2010.

The government has struggled to implement the core commercial, governance, and accountability provisions of the Public Bodies (Performance and Accountability) Act, contributing to the consistently poor financial performance of most of the SOEs in the portfolio. Positive developments, such as

<sup>43</sup> Public Bodies (Performance and Accountability) Act 2001.

<sup>44</sup> The SOEs that are considered strategic in this policy document are the Electric Power Corporation, Samoa Airports Authority, Samoa Ports Authority, Samoa Shipping Corporation, and Samoa Water Authority. Yet, in many high- and middle-income countries, entities considered strategic in the Samoa policy document are successfully run by the private sector, often through a public-private partnership arrangement. Once the new competition framework is in place, this option would be available in Samoa.

<sup>45</sup> The entities were Computer Services, National Pacific Insurance, and Samoa Breweries.

### Box 2: State-Owned Enterprise Governance Reform

After attending the first Finding Balance study's launch in February 2010, the Samoan Prime Minister returned home with new zeal to advance much-needed state-owned enterprise (SOE) reform.<sup>a</sup> In mid-2010, he introduced a paper to the cabinet requiring all cabinet ministers to resign as SOE directors, and immediately stepped down as chair of the SOE boards on which he sat. The subsequent formation of the Independent Selection Committee, and the Composition Act's passage into law in March 2012, were closely linked to the Prime Minister's committed support for governance reform.

The Composition Act has led to 180 new SOE directors appointed directly from the private sector. Yet, while these reforms show renewed commitment to improving SOE performance and accountability, Samoa still fails to restructure or close chronically loss-making SOEs, or impose hard budget constraints. And, while ministers may no longer serve on SOE boards, recent behavior implies their continued, significant influence on SOEs' decision making—contrary to the Act's requirements. Many SOEs operate with surplus staff as a form of social welfare policy; this arrangement is both informal and inconsistent with SOEs' obligation to operate as successful businesses. It also contravenes SOEs' community service obligation provisions. In 2012, the Samoa Port Authority considered an internal report which recommended redundancies as an option to reduce costs, given the authority's low income over several years. Following a media announcement from the authority's shadow minister in September 2012 expressing concern at the impending redundancies, the authority promptly clarified that it had conducted an internal review of the report and had rejected the recommendation to retrench staff.<sup>b</sup>

SOEs have been directed on occasion to undertake noncommercial activities, such as transferring land between SOEs with no compensation, and informal and unfunded community service obligations in breach of the Act's clear provision. Unless this changes, Samoan SOEs will continue to hamper economic growth. The government must adhere to its own laws and fully implement the Public Bodies (Performance and Accountability) Act 2001.

<sup>a</sup> The first study in the Finding Balance series benchmarked SOE performance in three countries, including Samoa. See ADB. 2009. *Finding Balance: Making State-Owned Enterprises Work in Fiji, Samoa, and Tonga*. Manila.

<sup>b</sup> Radio New Zealand International. 2012a. *Samoa Ports Authority plans to lay off staff*. 18 September. <http://www.radionz.co.nz/international/pacific-news/207298/samoa-ports-authority-plans-to-lay-off-staff>; and Radio New Zealand International. 2012b. *Samoa Ports Authority will not lay off staff*. 20 September. <http://www.radionz.co.nz/international/pacific-news/207348/samoa-port-authority-says-staff-will-not-be-laid-off>

the appointment of the Independent Selection Committee in April 2010 and legislation passed in 2012 requiring all ministers to resign from SOE boards, are encouraging. Still, evidence of inappropriate ministerial influence over SOE boards remains (Box 2).

Improving compliance with the Act would positively impact SOE performance. Yet, while SOEs remain under state ownership, they are at risk of political pressure to avoid commercial decisions that

may have short-term political costs, or to undertake noncommercial activities. This is an inherent weakness in the SOE model.

Sustainable performance improvement will only be achieved by introducing private sector disciplines and incentives, through contracting out and divestment. Private sector participation can create very powerful performance incentives, as the experiences of SBC and the Ministry of Works, Transport and Infrastructure demonstrate (Box 3).

### Box 3: Ministry of Works, Transport and Infrastructure

One of the most significant infrastructure management reforms in Samoa—providing useful lessons for other Pacific island countries—is the successful privatization of road maintenance, a function previously undertaken by the Ministry of Works, Transport and Infrastructure (MWTI). The MWTI was responsible for Samoa’s 880 kilometers of roads (90% paved), using its own staff and equipment. Due to lack of investment and preventive maintenance, the road network suffered from poor surface quality. In 2003, MWTI implemented an ambitious outsourcing and downsizing program to improve service productivity and quality.

Staff members were presented with the opportunity to form companies to undertake road maintenance and other MWTI functions. Existing MWTI equipment was made available to these companies, and the ministry agreed to contract with them for a minimum of 3 years once formed. The companies would undertake road maintenance and other activities such as plumbing, electrical, and building services. Of MWTI’s 500 employees, 150 formed their own companies under this arrangement.

Outsourcing allowed MWTI to concentrate on its regulatory role and act as the contracting agent. In December 2008, most MWTI activities were transferred to the Land Transport Authority (LTA); it is also responsible for traffic management, car and driver licensing, and vehicle safety inspections.<sup>a</sup> During the road maintenance outsourcing period, the government established a fuel levy to provide funding certainty. In 2014, the fuel levy contributed ST14 million to LTA’s road maintenance operating budget.<sup>b</sup> Donors, or a separate budget appropriation, fund additional major road reconstruction and new capital works.

LTA’s contracting activity has developed and improved since 2008. While the original 3-year guaranteed contract term offered to contractor companies has long expired, the pool of registered and available contractors has grown to those who can undertake major new construction, and 55 ‘Class B’ contractors who undertake maintenance. Samoan contractors outcompete foreign contractors, and actively bid for—and win—contracts in other Pacific island countries.

LTA’s in-house contracting expertise has also become more sophisticated, moving from a simple performance-based contract to a measure- and value-based contract. In the latter, contractors are paid on quality measure and the value they can add to the process through cost and time savings.

<sup>a</sup> Its operations are mandated by the Land Transport Authority Act 2007.

<sup>b</sup> World Bank. 2014a. *Implementation Completion and Results Report on Credits and Grants [...] and a Pacific Region Infrastructure Facility Grant [...] to the Independent State of Samoa for a Second Infrastructure Asset Management Project in Support of the Second Phase of the Infrastructure Asset Management Program—Report No: ICR00003256*. Sydney. [http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2014/12/30/000333037\\_20141230220927/Rendered/INDEX/ICR32560P0755200disclosed0120290140.txt](http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2014/12/30/000333037_20141230220927/Rendered/INDEX/ICR32560P0755200disclosed0120290140.txt)

## PRIVATIZATIONS AND PUBLIC-PRIVATE PARTNERSHIPS

### Privatizations

The privatizations of Agriculture Stores Corporation (ASC) and Polynesian Airlines Investments Limited (PAIL) commenced in 2012–2013, but neither was completed by mid-2015. SBC’s experience shows

real benefits to both seller and purchaser of selling SOEs “as-is,” rather than attempting to restructure presale—the sale of ASC should emulate this strategy. In April 2015, a cabinet decision indicated that PAIL could resume international flights by the end of 2015. However, by May 2015, no further details were available. This private sector assessment (PSA) strongly advises against the resumption of international operations by PAIL.

Despite the lack of progress, there are several positive signs of change. In January 2015, the cabinet approved a new SOE Ownership, Performance, and Divestment Policy. Its implementation will lead to further reform of the SOE portfolio and a structured privatization pipeline.

Three further SOEs have now been identified for privatization within 2015—Public Trust Office, Samoa Housing Corporation, and Samoa Post. The cabinet also reaffirmed its expectation that the sale of ASC will be completed within 2015.

### Public–Private Partnerships

While Samoa does not have public–private partnership (PPP) legislation, it has adequate procurement rules. Yet, without modern contracts legislation and effective dispute resolution mechanisms, private sector contracting is more risky and costly. Samoa needs a modern contract law supported by a strong dispute resolution framework, thereby making formal PPP arrangements more feasible.

The cabinet adopted a new PPP policy in December 2014.<sup>46</sup> The policy establishes guidelines for identifying and implementing PPPs, including within the SOE portfolio. A series of workshops has been held to finalize a preliminary list of possible PPPs. The Tafa'igata Sanitary Landfill Facility, opened in 2013 with support from the Japan International Cooperation Agency and the Secretariat of the Pacific Regional Environmental Programme, has been identified as one immediate PPP candidate, as its operational contract is due for renewal in 2015.

Samoa's successful move from government-supplied services to contracting out road maintenance has resulted in significant efficiency gains. The Land Transport Authority management has estimated the gains to be four times than that achieved with prereform equivalent resources (Box 3).

Given the successes in road maintenance outsourcing, other key infrastructure SOEs (ports, airports, water, and power) should also be encouraged to follow suit. Baggage handling and ground support services have been contracted out at the airport, but PAIL is contracted to provide these services for Air New Zealand and Air Pacific. However, PAIL lost the Virgin Samoa ground support contract to a private sector competitor in January 2011.

To promote PPPs, the government needs to undertake the following:

- Establish clear expectations through statements of corporate objectives and corporate plans. SOEs should always seek to contract out functions and services for which they are responsible, or justify why they do not contract out. For example, if the Electricity Power Authority retained meter reading, it would have to demonstrate this decision's benefits to service delivery and cost.
- Develop a clear policy statement on the contracting out of community service obligations. The government should look for opportunities to make community service obligations (CSOs) contestable by tendering for minimum subsidies.

<sup>46</sup> The policy was developed with World Bank assistance.

- Ensure that the PPP policy is implemented. The government needs to ensure that the policy adopted in December 2014 is implemented so that the potential PPPs identified in the workshops can be fully explored.

## SOE Reform Back on the Agenda

The establishment of the Independent Selection Committee, and the approval of the SOE Ownership, Performance, and Divestment Policy in 2015, indicate that SOEs may have returned to the reform agenda. The announcement in April 2014 of a new minister and ministry responsible for SOEs (the Ministry of Public Enterprises) is also encouraging.<sup>47</sup> Amendments to the Public Bodies (Performance and Accountability) Act 2001 were enacted in January 2015, strengthening SOE accountability. If the new arrangements are properly implemented, a minister and Ministry of Public Enterprises will facilitate improved SOE oversight, leading to improved SOE performance.

## CONNECTING SAMOA WITH THE GLOBAL ECONOMY

Samoa's connections with the outside world are essential to its growth and prosperity. Its three main means of communicating with the outside world are air, sea (through shipping), and telecommunications. The state is heavily invested in the air transport and shipping linkages,

which are struggling financially. In contrast, the telecommunications sector is expanding services and meeting customer demand as a result of privatization and increased competition.

### Air

The key gateway for international visitors to Samoa is Faleolo International Airport, operated by the Samoa Airport Authority, an SOE. This is one of Samoa's poorer-performing SOEs. Although it has been operating since the mid-1980s,<sup>48</sup> financial control has been weak; and it only produced its first set of audited accounts in 2011. The FY2012 accounts disclosed negative returns on equity and assets of 1.0%, even after a capital injection of ST3.1 million from the government. The authority's 2012 Annual Report also showed that total assets had decreased to just under ST61 million in 2011, and fell further to about ST58 million in 2012.<sup>49</sup> The same report also showed accumulated losses of over ST45 million carried forward to end-June 2012.

Airports around the world generate profits—the negative returns in Samoa are a significant waste of potentially productive resources. Contracting out airport services could be the best approach for the Samoa Airport Authority.

In 2014, the World Bank approved a \$25 million grant (the Samoan Aviation Investment Project) to strengthen policy and regulatory capacity, boost airport operations and management capacity,

<sup>47</sup> The Ministry of Finance had previously overseen SOE performance, and its minister was the (i) joint shareholding minister with the sector (or line) minister, and (ii) designated responsible minister for SOEs operating in the economic sector. This resulted in poor supervision due mainly to significant conflicts of interest. The minister and Ministry of Finance have fiscal oversight, conflicting with the government's ownership interest in the SOEs. The sector minister was also responsible for purchases from, and regulation over, the SOEs.

<sup>48</sup> The Samoa Airport Authority was established, and became an SOE, in 1985.

<sup>49</sup> Samoa Airport Authority. 2012. *Annual Report 2012*. Apia.

and support airport upgrades (a loan of around \$50 million from China EximBank will finance the upgrades). The airport SOE is also evaluating proposals for terminal upgrades at Faleolo. Consistent with the Public Bodies (Performance and Accountability) Act requirements, a strict cost-benefit analysis to ensure financial viability, and the use of PPPs, wherever possible, should apply to any proposals to expand the facilities, particularly given the authority's poor historic performance.

The government has commissioned a review of its joint venture agreement with Virgin Australia, which operates Virgin Samoa, to assess the costs and benefits of the current arrangement.

This PSA recommends making SOEs more accountable by government insisting that they achieve returns that meet their capital costs. To do this, SOEs need to find lower cost and more efficient ways to source the inputs needed to provide their goods and/or services. SOE boards and management must be held accountable when they do not meet these objectives, which are fundamental requirements of the Public Bodies (Performance and Accountability) Act.

## Shipping and Port Services

Shipping services were consolidated in 2010, partially due to the global financial crisis. This led to fewer ship visits and the cessation of direct services to Australia's East Coast. Samoan businesses now have increased costs, as they need to carry greater inventory levels. The greater cost and reduced Australian market access have caused Yazaki EDS

Samoa—an automotive parts manufacturer, and Samoa's largest employer, importer, and exporter—to consider closing its local operation. The Australian automobile market's decline has also adversely impacted Yazaki's operations; the company now supplies just one Australian manufacturing plant, down from three. Since the onset of the global financial crisis, the company has laid off 1,000 staff in Samoa.

The government subsequently formed a task force to investigate options to reduce shipping costs, including (i) building their own vessel, chartering a vessel, jointly owning a vessel; and (ii) any other task force recommendation. Yet, competitively tendering expanded shipping services as a CSO was not listed as an option. This PSA recommends that the task force consider a CSO.

On 5 October 2012, the government announced that it had acquired a 100% share capital in Pacific Forum Line (PFL) in late September 2012.<sup>50</sup> Samoa had previously owned 8% of the company, with the balance held by 11 other Pacific island countries and New Zealand. However, PFL subsequently sold a 50% shareholding to Neptune Pacific Line in October 2014.<sup>51</sup> It is not yet clear exactly how the two significant changes in PFL's shareholding ownership will benefit Samoa.

The Samoa Port Authority has benefited from significant restructuring, beginning in June 2014, to improve its management and enhance its port handling capability. Debt was reduced from ST24 million in February 2013 to ST15 million in June 2014. The adoption of a 5-year port change

<sup>50</sup> Government of Samoa, Office of the Deputy Prime Minister. 2012. Press Release: Takeover of Pacific Forum Line (PFL) by Government of Samoa. Apia. 5 October. <http://www.pacificforumline.com/assets/pdfs/Takeover-of-Pacific-Forum-Line-by-Government-of-Samoa.pdf>

<sup>51</sup> Pacific Forum Line. A new chapter. <http://www.pacificforumline.com/about-us/>



restoration program has resulted in the first revenue increases in 5 years and the introduction of cost controls. The authority has approved the leasing of noncore, port-owned assets to a mixture of private sector and public sector bodies. The yacht marina has been leased to private sector interests for development; a slipway has been leased to the ferry SOE; and port warehouse space has been leased to a private sector fisheries firm and freight forwarder. Various port services have also been contracted to the private sector; and a stevedore concession contract is planned for implementation in 2016.

The port is now trading profitably, and its 2016 budget forecasts an operating profit after depreciation and interest payments.

## Telecommunications

Samoa's telecommunications providers are Digicel and Bluesky Samoa. The latter is the privatized SamoaTel, a former SOE that the government sold in 2010.

Both Digicel and Bluesky Samoa provide a full range of mobile services and internet. As throughout the Pacific, heightened competition has lowered costs, and improved the quality and range of services. Samoa is experiencing growing demand for international bandwidth, including government offices, hospitals, and schools connected through

the so-called National Broadband Highway on Upolu and Savaii, which was launched in June 2014. However, because of the high wholesale price of bandwidth, costs remain relatively high. Operators use a mix of fiber optic and satellite solutions for international connectivity.

In 2009, Samoa and American Samoa were connected to a fiber optic submarine cable that runs to Hawaii. The cable is the reused PACRIM East cable laid in the 1990s, originally connecting Australia and New Zealand to Hawaii. When it became insufficient to meet the growing needs of Australia and New Zealand, the cable was recovered and relaid to American Samoa and Samoa. The cable has increased total bandwidth to one gigabit per second, reducing the reliance on high-cost satellite connectivity.

Yet, at times, the cable is incapable of carrying increased traffic. A satellite provider has been used to address bandwidth shortages, but this short-term solution is expensive. A new international submarine cable is planned with the support of the Asian Development Bank, World Bank, the governments of Australia and Samoa, and private investors. The proposed cable will connect Apia, Upolu to the Southern Cross Cable network in Suva, Fiji, with a spur to Tuasivi, Savaii. Several management proposals were under consideration but, by May 2015, no definitive governance structure had been decided upon.

## 8 LABOR AND EMPLOYMENT

### Recommendations:

- Set a company size threshold for detailed employment record keeping
- Review the Labour and Employment Relations Act 2013, particularly the provisions relating to part-time employee benefits
- Pass necessary amendments to the Act following consultation with employers and employees

Employment creation to foster inclusive growth is a primary goal of the Samoan government. However, generating sufficient well-paid jobs is a problem for the economy. Samoa's young and skilled people continue to emigrate; and, although the resulting strong remittance flows benefit those who remain in the country, the emigration rate demonstrates that the economy fails to provide opportunities for many well-educated Samoans. Emigration is the result of both "push" and "pull" factors; and it should be noted that many Samoans hold dual citizenship. Further, the strong cultural ties with New Zealand potentially open opportunities for both importing and exporting in Samoa, which will help promote inclusive development.

### PRIMARY ISSUES IMPACTING LABOR AND EMPLOYMENT IN SAMOA

#### Limited Urbanization

Samoa is the least urbanized economy in the Pacific region. In 2006, only 20% of the population lived in

Apia, the country's only true urban area.<sup>52</sup> While this dispersion can significantly benefit social cohesion, it also reduces potential for employment creation. A higher urban population has greater potential to take advantage of agglomeration economies, including supply chain advantages, economies of scale, and specialization. Urbanization also reduces the costs of supplying infrastructure and health services, and other functions of government.

Detailed data on employment in Samoa are not available.<sup>53</sup> However, census data from both Samoa (footnote 52) and New Zealand<sup>54</sup> confirm the Samoan economy's difficulty in creating jobs, and the external drain of emigrating workers.

#### Low Labor Force Participation

At end-2011, Samoa's working age population was around 97,000, but only 49% of this number (25% of the whole population) was economically active (footnote 52). This is very low by international standards, reflecting both rural communities' ability to be relatively self-sufficient, and problems faced in generating employment

<sup>52</sup> Government of Samoa, Samoa Bureau of Statistics. 2011. *Population and Housing Census 2011: Analytical Report*. Apia. (However, there are some significantly sized villages near Apia which could be considered part of the larger urban area. From this perspective, Samoa could be considered semi-urbanized.)

<sup>53</sup> Labor market policies could be much better targeted if labor statistics were regularly collected.

<sup>54</sup> New Zealand Government, Statistics New Zealand. 2013. *2013 Census Ethnic Group Profiles*. Wellington.

opportunities. Further, nearly 37% of economically active people are engaged in subsistence activities, such as agriculture and fishing.

Between 1991 and 2006, there was no significant deviation in labor force participation rates for men and women broken down by age categories (15–24 years, 25–34 years, and 35–54 years).<sup>55</sup> Unusually, women’s participation rate in the 25–34 age group (generally, the childbearing years) was steady at over 80% for most of the period and only fell to around 79% for a single year in 2003.

Starting in 2004, younger men appear to be employed in greater numbers both in numerical and percentage terms. In 2004–2006, male participation in the 25–34 age group overtook the 35–54 age group for the first time. However, this was not the case for women. Over the same period, female participation in both age groups remained nearly equal in 2004–2006.

The 55 and over age group shows a significant difference for both men and women. Men’s participation rates fall to between 45% and 60%, while women’s rates fall more sharply to 22%–38% during 1991–2006.

### Limited Women’s Employment

Samoa women’s overall labor force participation rate is low. Nearly three times as many men were economically active in 2011 (33,000) compared with women (12,000). Once subsistence work is

excluded, the ratio is more evenly distributed—62% employed in nonsubsistence work were men, while women comprised the remainder.

### Migration Provides Opportunities

Samoans in New Zealand earn close to five times what they do in Samoa (footnote 52). This very large difference in earning ability reflects the inefficiencies of the business environment in Samoa. However, significant remittances from Samoans working in high-income countries are a positive migration outcome—these workers send back the equivalent of approximately 25% of gross domestic product. This inflow sustains consumption, particularly in rural areas. Further, the outmigration provides potential business opportunities between those who are living in other countries and resident Samoans.

### Migrant Worker Program Opportunities

Increased short-term migrant worker programs are also positive, particularly in New Zealand. In FY2013, there were 7,456 seasonal workers in New Zealand on temporary work permits, with 1,137 arriving from Samoa.<sup>56</sup> They work for 20 weeks per year on average, and many return annually. This benefits both workers and temporary employers. Australia has a far more modest seasonal worker program. A 2014 analysis of Pacific employment issues<sup>57</sup> suggests that, if Australia’s program were on the same relative scale as that of New Zealand’s program, substantial benefits would accrue to Pacific island economies.<sup>58</sup>

<sup>55</sup> Quandl. Employment—Samoa. [https://www.quandl.com/UNDATA/GEN\\_EMPL\\_WSM-Employment-Samoa](https://www.quandl.com/UNDATA/GEN_EMPL_WSM-Employment-Samoa) (accessed 11 February 2015).

<sup>56</sup> K. Duggan. 2013. Samoa Ban Won’t Hurt RSE Scheme. *The Marlborough Express*. 26 September. <http://www.stuff.co.nz/marlborough-express/news/9211593/Samoa-ban-won-t-hurt-RSE-scheme>

<sup>57</sup> T. Haque and T. Packard. 2014. *Well-being from Work in the Pacific Island Countries: World Bank East Asia and Pacific Regional Report*. Washington, DC: World Bank Group.

<sup>58</sup> If Australia hosted the same proportion of its population as does New Zealand, it would receive approximately 40,000 migrant workers. Based on plausible assumptions, this could result in remittances equivalent to about 10% of gross domestic product of small Pacific island countries participating in the program. This amount would dwarf aid inflows.

Samoa can benefit even more from existing migrant worker programs. In the short term, promoting opportunities through the existing programs would increase the number of participating Samoans. Further, Samoans' relatively advanced literacy and education already give them a competitive advantage. In the longer term, additional education and training will reinforce this advantage.

## Labor Legislation and Employment

In 2013, Samoa passed the Labour and Employment Relations Act 2013 (No. 7). The goal was to ensure compliance with International Labour Organization requirements; and, as the previous Act dated from 1972, to modernize employment legislation.

While many of the Act's provisions formalize existing labor practices and will not substantially change employment conditions, others greatly strengthen employee rights and introduce conditions that will increase the cost of employing workers. These include notice periods, dismissal or termination payments, overtime provisions and payments, annual and sick leave provisions, and maternity leave provisions. In most cases, these issues should be negotiated between employers and employees, rather than mandated by law. Legislation must not raise the cost of hiring workers considering that Samoa's unemployment rate is high, and employment opportunities are already scarce.

Interviews with the private sector and the results of the 2014 Pacific Export Survey both indicated that the legislation raises the costs of doing business, discouraging both exporting and employment. Some provisions of the Act raise employment administration costs. For example, record-keeping requirements are standard for larger companies, but small firms with few workers

could face a substantial burden. A size threshold for employment records is advisable. Further, the Act seems to require record keeping for domestic household workers, which many employers could find difficult.

A particular concern is that the provisions of the Act apply to all part-time employees. Part-time work allows many to enter the formal workforce, learn valuable skills, and build good employment habits. Employers benefit from being able to increase or reduce their workforce due to changing demand. Requiring employers to provide equivalent, prorated employment benefits for part-time workers will substantially increase hiring costs and adversely affect the demand for them. This may significantly reduce the number of part-time employees.

In addition, providing significant benefits to part-time employees will reduce the demand for this type of worker because it raises the costs of hiring them. This adversely impacts economic inclusion and reduces the positive benefits of flexible, part-time formal sector employment. Often, part-time work is a door to full-time employment—raising the costs of hiring part-time workers negatively affects employment as a whole.

The Act gives substantial discretionary power to the chief executive officer of the Ministry of Commerce, Industry and Labour, and—by delegation—to labor inspectors. In other countries where labor inspectors have significant discretion, inspectors often apply rules arbitrarily to extract side payments.

Consultations with both employers and employees are needed to identify areas where labor costs have been raised, and where the Act's provisions negatively impact employers,

industries, and employees. These provisions should be modified to reduce costs.

Research elsewhere demonstrates that overly restrictive labor legislation has a severe impact on job creation.<sup>59</sup> With the Act in force since 2013, and given Samoa's need to create jobs, this private sector assessment (PSA) recommends reviewing the provisions.

## BUSINESS ENVIRONMENT REFORM IMPORTANT FOR JOB CREATION

Research also confirms just how significant business environment reform is for job creation.<sup>60</sup> The most important characteristics that contribute to employment creation are the following:

- **Labor regulation significantly impacts employment.** In particular, stringent regulation reduces the number of businesses that formalize, stunting formal sector growth and hampering small firms from expanding.<sup>61</sup> Small firms are less productive and grow more slowly.<sup>62</sup> Large firms are the primary job creators, and offer the productivity improvements necessary for faster growth. The need for a review of labor legislation is relevant to this issue.
- **Export-related infrastructure affects job creation.** This PSA emphasizes the importance

of international trade in promoting private sector development. Thus, export-related infrastructure that includes ports, airports, and customs procedures is essential to expanding trade. It also identifies quarantine facilities as vital to promote agricultural exports. Private (or contractually operated) facilities may provide the most efficient solution for overseas requirements.

- **Good quality, reasonably priced internet services enable essential contact with overseas customers for firms in remote countries, such as Samoa.** Reliable connectivity also extends firms' abilities to market their products to a wide geographic area. Connectivity positively affects urbanization, which positively impacts job creation and opens up opportunities for new information-technology-based businesses. A regulatory environment that facilitates telecommunications sector development (particularly internet accessibility) has spillover benefits that promote employment. Competition framework reforms will also help.

Government employment in Samoa is already substantial, although it is not high relative to other Pacific island economies. Still, it risks crowding out the private sector, which is the best potential source of productivity improvement that leads to long-term job creation. Business environment reform in Samoa is, therefore, critically important to promoting employment growth.

<sup>59</sup> G. Batra and A.H.W. Stone. 2004. *Investment Climate, Capabilities and Firm Performance: Evidence from the World Business Environment Survey*. Washington, DC: World Bank Group. (Using data from the World Business Environment Survey conducted in 80 countries, the paper finds that a one-point increase in the severity of labor regulations as a constraint lowers employment growth by 2.5 percentage points.)

<sup>60</sup> Footnote 57; A. Rahman. 2014. *Investment Climate Reforms and Job Creation in Developing Countries: What Do We Know and What Should We Do? Policy Research Working Paper 7025*. Washington, DC: World Bank Group; and G. Clarke, Y. Li, and L.C. Xu. 2013. *Business Environment, Economic Agglomeration and Job Creation around the World. Policy Research Working Paper 6076*. Washington, DC: World Bank.

<sup>61</sup> Informal employment is positively correlated with poverty and the lack of development.

<sup>62</sup> For example, the productivity rate of large firms in Mexico between 1999 and 2009 rose annually by 5.8%, while the rate of small firms declined by 6.5%. Source: McKinsey Global Institute. 2014. *A tale of two Mexicos: Growth and prosperity in a two-speed economy*. Mexico City: McKinsey and Company.

## 9 WOMEN'S ECONOMIC EMPOWERMENT

### Recommendations:

- Incorporate awareness training on the benefits of formalization to informal sector, particularly to women
- Encourage women's participation in agribusinesses
- Engage women's groups in policy dialogue on private sector to increase awareness and commitment
- Support the collation of gender-disaggregated data to assess the impact of initiatives and strategies

Failing to invest in economic opportunities for women reduces business productivity and potential, and economic growth. As the world's labor force is 40% women, promoting greater economic opportunity for them is known as “smart economics.” Gender equality increases the incomes of individuals and families.

Economic empowerment of women is recognized in the Government of Samoa's Strategic Plan 2013–2017 and the National Policy for Women of Samoa 2010–2015.<sup>63</sup> Legislative reforms to remove discriminatory provisions and allow for greater political participation have opened doors for women's participation.

However, institutional support—from both formal and informal institutions—is necessary for these reforms to enhance women's role in the private sector.

### LEGAL CONSTRAINTS TO GENDER EQUALITY IN SAMOA

Economic empowerment has to address the constraints impeding the freedom of both men and women to work, produce, and consume. These constraints include discriminatory laws, and institutional practices in the public and private sectors that treat women and men differently.

#### Formal and Informal Institutions

Formal institutions and informal practices work together to determine the extent to which women's private sector participation is enabled or impeded. Formal institutions, such as laws and government policies, are influenced by informal practices, such as customary laws, belief structures, and social norms. These informal practices indirectly discriminate against women's economic and political participation, and can hinder women's formal private sector participation.

<sup>63</sup> Government of Samoa, Ministry of Women, Community, and Social Development. *Strategic Plan 2013–2017*. Apia; and Government of Samoa, Ministry of Women, Community, and Social Development. *National Policy for Women of Samoa 2010–2015*. Apia.

## Political Disadvantage

Women are also disadvantaged in Samoan politics. Only 6.1% of parliamentarians are women, compared to the world average of 21.8%.<sup>64</sup> Members of Parliament are selected from matai, or those who hold chiefly titles within Samoa's *Fa'amatai* system. Matai leadership is the core of Samoan custom, and these titles are the common property of an extended family. Elders within these families decide on whom to bestow this title. Only 1,768 of the Samoa's 16,796 matai are women, reducing women's role in shaping political decisions. Although there are no direct barriers to women becoming appointed to the position, it is clear that this is uncommon in practice. In some cases, informal barriers exist to women becoming matais, or to exercising the authority of the position. A study found that in 41 villages, the village government refused to recognize the titles bestowed upon women by their extended families. In other cases where appointment was possible, the women matai were not allowed to participate in village council meetings (footnote 64).

The Samoan government has recognized that customary norms are the main impediment to women's participation and has instigated legislative reform. The Constitution Amendment Act 2013 amends Article 44 of the Constitution to reserve 10% of parliamentary seats (currently five) for women.<sup>65</sup> This is a commendable attempt to address informal practices through law reform and overcome women's political exclusion.

## REFORMS ADDRESSING GENDER EQUALITY

The government has attempted to remove direct discrimination by amending family and labor laws. However, their effectiveness relies on support from institutions and communities.

The Divorce and Matrimonial Causes Amendment Act 2010 was amended to include no-fault divorce, and it states that domestic violence can constitute grounds for divorce.<sup>66</sup> Further, the Family Safety Act 2013 outlines a procedure for protection orders in cases of domestic violence, requiring police officers not to discriminate against applicants on the basis of gender.<sup>67</sup>

Such reforms are essential for two main reasons: (i) they recognize equality principles enshrined in the Samoan Constitution, and in the Convention on the Elimination of All Forms of Discrimination against Women which the government ratified in 1995,<sup>68</sup> and (ii) they provide women with a process to access divorce and an equitable property share which, in turn, enables them to participate in the economy. These reforms have greater impact in urban centers than in rural villages, where access to supportive institutions—including courts and police—is limited.

## WOMEN AND EMPLOYMENT

A large informal sector is a general characteristic of the Pacific region, and Samoa is not an exception. In Samoa, as elsewhere in the region, women benefit

<sup>64</sup> P. Schoeffel and M. Meredith. Women in Politics in Samoa: Tradition versus Modernity. Unpublished.

<sup>65</sup> The Constitution Amendment Act 2013 states: "[...] (1A) Subject to this Article, women Members of the Legislative Assembly shall: (a) Consist of a minimum of 10% of the Members of the Legislative Assembly specified under clause (1) which for the avoidance of doubt is presently five (5)." Source: Government of Samoa. 2013a. *Constitution Amendment Act 2013* (No. 17). Apia.

<sup>66</sup> Government of Samoa. 2010. *Divorce and Matrimonial Causes Amendment Act 2010* (No. 16). Apia.

<sup>67</sup> Government of Samoa. 2013c. *Family Safety Act 2013* (No. 8). Apia.

<sup>68</sup> See Article 15 (Freedom from discriminatory legislation), Part II (Fundamental Rights). Source: Government of Samoa. 1960. *Constitution of the Independent State of Samoa*. Apia.

by joining the formal sector through improved access to finance, ability to enter into contracts for the supply of goods and services, and the opportunity to seek remedies in courts. Efforts to increase awareness of the benefits of formalizing among the informal sector should be promoted.

In Samoa's private sector, 72.6% of men reported being economically active, while the rate for women is considerably lower, with only 27.4% reporting being economically active (footnote 52). Women workers are concentrated in commerce and finance, retail and wholesale trade, making goods for sale, and working as street vendors. Men are concentrated in agriculture and transport-related activities.

Agriculture and fishing, which are central to the Samoan economy, employ around 37% of the labor force. While much of this activity is classified as subsistence, families also benefit from the sale of produce for local consumption and to commercial buyers. In traditional Samoan custom, agricultural production is defined as a men's activity, and women's role is limited. While men are responsible for planting, harvesting, and other tasks requiring manual labor, women participate in marketing and operating small shops and roadside stalls. With dispersed settlement patterns, this division of labor is slowly changing, providing greater opportunities for both women and men. Efforts to include women in agribusiness investment should be undertaken by donors and investors.

The pattern of women's underrepresentation in business is also found in rural Samoa. A 2014 nationwide study demonstrates that fewer women than men own businesses in villages; women owners account for 34%, compared to 66% of businesses owned by men.<sup>69</sup>

Samoan women are more attracted to the public sector than the private sector. In 2010, they accounted for more than 60% of permanent public service employees.<sup>70</sup> Women are also well-represented on state-owned enterprise (SOE) boards, where 8 of Samoa's 12 SOEs had women directors.<sup>71</sup>

## Business Networks

Women have less access to business advisory networks, which is important for success in the market. Three key organizations provide support in skills building; and advice on technology, business and financial training, and related services. They are Women in Business Development, Samoa Small Business Enterprise Centre (SBEC), and Samoa Chamber of Commerce and Industry.

To increase awareness and commitment to building women's market participation, this private sector assessment (PSA) supports the existing participation of the three organizations in policy dialogue on private sector development, and recommends increased efforts to include other women's groups in ongoing discussions.

<sup>69</sup> Centre for Samoan Studies. 2014. *Village Government in Samoa: Do Women Participate?* Toomatagi: National University of Samoa.

<sup>70</sup> Government of Samoa, Ministry of Commerce, Industry and Labour. 2010. *Report: Labour Market Survey of Private Sector Employers in Samoa 2010*. Apia.

<sup>71</sup> Pacific Islands Forum Secretariat. 2014. Report on the Survey of Women's Representation on SOE Boards in Forum Island Countries. Background Paper for the Forum Economic Ministers Meeting and Forum Economic Officials Meeting on Strengthening Economic Linkages. Honiara. 8–11 July. [http://www.forumsec.org/resources/uploads/attachments/documents/2014FEMM\\_Background.F\\_Report\\_on\\_Survey\\_of\\_Women's\\_Representation\\_on\\_FIC\\_SOE\\_Boards.pdf](http://www.forumsec.org/resources/uploads/attachments/documents/2014FEMM_Background.F_Report_on_Survey_of_Women's_Representation_on_FIC_SOE_Boards.pdf)



## Access to Finance

A study on access to finance demonstrated that, unlike their counterparts in more economically developed countries, Samoan women consider borrowing as the main way to access capital. Yet, only a third of the women in the study were successful in obtaining bank loans; the remainder relied on their partners' incomes or family savings.<sup>72</sup>

This is partly explained by the absence of security for loans. Financial institutions identified the lack of collateral as the key reason for limited lending to businesses. As only 20% of land in Samoa is registered and can be used as loan security, other forms of security are needed.

An important source of capital for businesswomen has been SBEC Small Business Loan Guarantee Scheme (SBLGS). Under this scheme, government funds are kept as term deposits with financial institutions and used to provide loans to over 1,000 businesses. Guarantees cover 80% of the loan amount, while the borrower has to provide the balance. One participating bank reported that 40% of SBLGS beneficiaries were women (footnote 72).

Chapter 5 of this PSA outlines the benefits of strong implementation of the secured transactions framework. The reform has the potential to significantly increase access to finance for women-owned businesses.

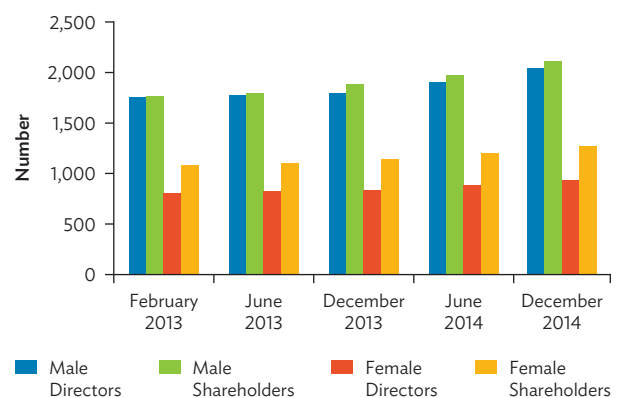
## SAMOA'S COMPANY LAW REFORMS BENEFIT WOMEN

The Companies Act reform and the electronic Companies Registry make it faster, easier, and cheaper to incorporate a business in Samoa. This shows that gender-neutral systemic reform can directly benefit women.

As of end December 2014, the number of women directors and shareholders in registered companies rose by 14% and 17%, respectively, compared to when the Samoa company registry was first launched in February 2013 (Figure 6). The total increase is greater than that in Solomon Islands, although the reform there has been going on for a significantly longer period.

While undoubtedly more remains to be done, the demonstrable increase in women-owned and registered businesses—as a reform outcome—is an encouraging development.

**Figure 6: Samoa Company Directors and Shareholders by Gender, February 2013–December 2014**



Source: Samoa Companies Registry. <http://www.companies.gov.ws/>

<sup>72</sup> ADB. Promoting Gender Equality and Women's Empowerment. Consultant's report. Manila (TA 6143-REG). Unpublished.

## 10 LAND REFORM

### Recommendations:

- Make more land available to the private sector
- Make leasing through the Samoa Land Corporation and Samoa Trust Estates Corporation more transparent, and contract out the management of the leasing operation
- Use low-cost technology solution to identify land rights

An ongoing technical assistance project funded by the Asian Development Bank (ADB) aims to strengthen the economic use of customary land.<sup>73</sup> As part of the reform process, a Customary Land Advisory Commission (CLAC) was established in 2013 to facilitate and promote the economic use of customary land.<sup>74</sup> CLAC conducts public consultations on legal areas relating to customary land and recommends legal reform. Its ongoing work should ease access to land for investment and productive output.

### Courage and Vision

The Samoan government has shown courage and vision in recognizing land's importance to economic development. Increasing the land available for lease is a positive step toward encouraging investment and productivity. While the cost and availability of leases significantly deter business expansion, there has been progress in this area through the ADB project.

Given the particular sensitivity surrounding issues related to land, obtaining consensus at each reform stage is essential. This is occurring in Samoa, and with admirable thoroughness. However, the process is far from complete. When finally in place, the reforms need to address issues that have hampered land use in the past. The most important areas needing attention are the following:

- **Improve cadastral maps.** Boundaries for many customary land titles are still poorly defined. The development of advanced and low-cost technology since 2005 has sharply reduced the costs of verifying cadastral boundaries. While there is some resistance to defining boundaries, these techniques should be employed without delay. This is a welcome move especially in cases where communities would like to lease their land to investors.
- **Reduce the time taken to obtain leases.** The leasing process is tortuous, and it can take months or even years to finalize obtaining a lease.

<sup>73</sup> ADB. 2013. *Technical Assistance to the Independent State of Samoa for Promoting Economic Use of Customary Land, Phase III*. Manila.

<sup>74</sup> Government of Samoa. 2013b. *Customary Land Advisory Commission Act 2013*. Apia.

- **Remove individual ownership restrictions on freehold land.** This is a barrier to foreign investors.<sup>75</sup> However, the new Companies Act makes this a far less important barrier than before.
- **Continue advocacy and dissemination activities to inform landowners of their rights and obligations under the reforms.** While successful to date, this process is ongoing under the ADB project.
- **Focus on making more land available to Samoans for agricultural purposes.** While progress has been reported, this particular area needs to proceed more rapidly.

### Land Leases as Collateral

One reform goal has been to allow land leases as loan collateral. However, several letters to Samoan newspapers have expressed concern that reform provisions allowing land to be pledged as collateral could lead to customary land being “taken away” from their owners.<sup>76</sup> While these fears appear unfounded—leases, not land ownership rights, will be used as collateral—there is still significant unease regarding their use.

This private sector assessment (PSA) strongly welcomes customary land being made more available for economic use. However, experience in other countries has not been positive in using

land leases as collateral. While a lease pledging framework could improve access to finance, in practice, using leases as collateral warrants caution. If a borrower defaults on a loan using a land lease as security, lenders have the right to seize that security. This leads to several problems, and the resulting ambiguities create the following legal uncertainties:

- Unreliable cadastral records (especially unclear land boundaries) could significantly delay land lease repossession.<sup>77</sup>
- Experience in the Pacific region indicates that land lease repossession can take several years.
- Lenders may have difficulty disposing of seized leases, and the role of the landowners (the lessors) in finding potential lessees is unclear.
- It is uncertain whether landowners will receive ongoing lease payments from the financial institution that has repossessed the lease.

Nevertheless, government has expressly stated that, in cases where land leases are used as collateral, there is no possibility that this might lead to the alienation of customary land. Yet, experience elsewhere in the Pacific region supports moving cautiously in this area, and illustrates that land is often not as reliable a form of collateral as many perceive. For example, lenders in Solomon Islands and Vanuatu have taken land leases as security

<sup>75</sup> There is no barrier to ownership of freehold land by foreign companies. Individual foreign investors, including Samoan citizens resident overseas, may not own freehold land in Samoa.

<sup>76</sup> See Samoa Observer. 2013a. PM demands response. 1 October. <http://www.samoaoobserver.ws/home/headlines/7284-pm-demands-response>; and the Attorney General’s response to the published letters, which began with a letter from the Prime Minister to six banks dated 17 September 2013. See Samoa Observer. 2013b. AG rejects threat to customary land. 3 October. <http://www.samoaoobserver.ws/other/legal/7332-ag-rejects-threat-to-customary-land>

<sup>77</sup> Technology increasingly provides the opportunity for certifying land rights. For example, see P.F. Schaefer and C. Schaefer. 2014. An Innovative Approach to Land Registration in the Developing World: Using Technology to Bypass the Bureaucracy. *Policy Analysis No. 765*. Washington, DC: Cato Institute.

for loans but, due to legal issues in seizing land leases, arrears on loans secured by leases are high. For some lenders, over 20% of loans secured by land leases are classified as nonperforming. Experience in both these countries suggests that using leases as collateral does not greatly enhance the availability of finance for business.<sup>78</sup>

Therefore, taking charges over movable property through the Personal Property Securities Act 2013 is a superior way to finance business activity, including agriculture. Chapter 5 of this PSA discusses methods to achieve this objective.

Through the Samoa Land Corporation and Samoa Trust Estates Corporation (STEC), government owns a substantial amount of agricultural land. Both organizations lease land to the private sector for housing, agriculture, and nonagriculture commercial use. STEC has made available over 5,000 acres to the private sector to use, under leases whose terms range from 30 years to 100 years. Yet, the lease process is not transparent, and the private sector reports that management is inefficient. Making the process more transparent and contracting out the management of leases would address both of these concerns.

<sup>78</sup> ADB. 2014c. *Unlocking Finance for Growth: Secured Transactions Reform in Pacific Island Economies*. Manila. (Using land leases as collateral has resulted in substantial arrears for financial institutions.)

## 11 MOVING AHEAD

Samoa's growth experience after the far-reaching policy measures undertaken during the 1990s demonstrates the effectiveness of comprehensive reform. This private sector assessment has outlined a further policy program to improve the business environment, to enable the private sector to realize its potential as Samoa's engine of economic growth.

Samoa's long-term prosperity depends on promoting private sector development and limiting the role of the state in the economy. The government is demonstrating foresight in moving toward this goal, and further key reforms will raise the economy's growth potential.

Improving the efficiency of Samoa's capital stock by raising state-owned enterprise productivity through privatization—or better performance—will bring many positive benefits in the form of higher growth. Samoa's exporters have already demonstrated their ability to sell Samoan products in world markets. Enhancing the ability of financial markets to intermediate effectively will provide them with the access to finance that they need to grow. Fully implementing the Personal Property Securities Act 2013 will also encourage businesses to flourish.

Introducing an effective competition framework is underway, and, once implemented, will bring more competition and efficiency to the Samoan economy. The Companies Act reform and electronic Companies Registry have made Samoa a world leader in business registration. Following this achievement by modernizing other business laws will further improve the business environment, especially if the reforms include fundamental changes to licensing procedures, from licensing of activities to licensing of businesses.

Further, promoting economic opportunities for women by removing formal and informal barriers to their economic advancement will bring far-reaching benefits to the economy. Continuing with reforms that will enable investors to securely access land will also eliminate an important bottleneck in the economy.

Samoa has both the ability and potential to become a high-performing economy. Moving ahead with the recommended reforms in this private sector assessment will help the Government of Samoa, and the private sector, to achieve this goal.

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## Reform Renewed

### *A Private Sector Assessment for Samoa*

In the decade to 2006, Samoa was a leading policy reformer in the Pacific region. From 2007, however, the pace of reform slowed sharply. Compounded by the global financial crisis, two significant natural disasters, and increases in fuel and food prices, economic growth rates decreased, lasting until 2011. Despite progressive reforms in a number of key areas, several barriers to productivity and growth remain. This private sector assessment (PSA) describes how Samoa can further improve its competitiveness through reforms supporting private sector growth, and focuses on primary constraints to investment and entrepreneurship.

This PSA was produced by the Pacific Private Sector Development Initiative, a regional technical assistance facility cofinanced by the Asian Development Bank, the Government of Australia, and the New Zealand government.

### About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to the majority of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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