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**Executive summary**

**Note by the Secretariat**

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## II. Executive summary

### Samoa

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

Samoa acceded to the United Nations Convention against Corruption on 18 April 2018.

Samoa has a constitutional system incorporating common law and customary laws. The Court of Appeals is the highest court; it has appellate jurisdiction only and can review the rulings of any other court (sect. 75 of the Constitution). The executive branch is comprised of the Head of State and the executive Government.

Samoa is a dualist State. Treaties are not self-executing and require to be incorporated domestically through an act of Parliament (sect. 111 of the Constitution).

The anti-corruption framework comprises provisions from several laws, notably the Crimes Act 2013, the Criminal Procedure Act 2016, the Extradition Act 1974, as amended in 1994, the Mutual Assistance in Criminal Matters Act 2007, the Police Powers Act 2007, the Proceeds of Crime Act 2007 and the Money-Laundering Prevention Act 2007, as amended in 2018.

Relevant institutions in the fight against corruption include the Public service Commission, the Office of the Ombudsman, the Office of the Attorney General, the Samoa Audit Office, the Samoa Police Service, the Samoa Transnational Crime Unit and the Samoa Financial Intelligence Unit.

#### 2. Chapter III: criminalization and law enforcement

##### 2.1. Observations on the implementation of the articles under review

###### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

The active and passive bribery of public officials is criminalized (sect. 138 of the Crimes Act). An official is defined as any person in the service of the Government of Samoa, including honorary service or service abroad, or any member or employee of any local authority or public body (sect. 132 of the Crimes Act). Bribery of judicial officers, ministers, Members of Parliament and law enforcement officers is criminalized separately (sects. 133–137 of the Crimes Act). Acts of indirect bribery are covered, as are third-party benefits. The definition of a bribe is not interpreted as including immaterial benefits. While the promise of a bribe is not explicitly criminalized, it is covered by the modality of “attempting to obtain” a bribe. All bribery offences contain a mental element of acting “corruptly”, interpreted to mean intent.

The consent of the Attorney General is required for the prosecution of bribery of a minister or a member of the legislative assembly (sects. 135–136 of the Crimes Act), but the decision must be delegated to another prosecutor in cases of conflict of interest.

The active bribery of foreign public officials and officials of public international organizations is criminalized under sections 150 and 151 of the Crimes Act. Section 15, paragraph 2, provides an exception for offences committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action, when the value of the benefit is small (“facilitation payments”). Section 152, paragraph 1, provides an exception if the offence was committed abroad and was not an offence under the laws of the country in which the bribee was situated. Passive foreign bribery is not criminalized.

While there have been no cases, the broad wording of the bribery offences covers active trading in influence. Passive trading in influence is not criminalized.

Bribery in the private sector is not criminalized.

*Money-laundering, concealment (arts. 23 and 24)*

Samoa criminalizes the laundering of proceeds of crime, including the different aspects of criminal participation and attempt (sect. 11 of the Proceeds of Crime Act and sect. 152 A of the Crimes Act).

Samoa has adopted a threshold approach; predicate offences must be serious offences under domestic law, defined as any act or omission that constitutes an offence and that is punishable by a maximum period of not less than 12 months of imprisonment (sect. 2 of the Proceeds of Crime Act). This includes the relevant offences established in accordance with the Convention (Convention offences).

Predicate offences include offences committed in another State when the relevant conduct is a criminal offence under the domestic law of that State and would constitute a serious offence under Samoan law.

Samoa has criminalized self-laundering.

Samoa has furnished a copy of the Proceeds of Crime Act in the course of the review.

No money-laundering cases have been brought for prosecution or are pending investigation.

Section 167 of the Crimes Act criminalizes as a separate offence the act of “receiving”, which covers the possession of, or control over, property obtained by any crime or helping in concealing or disposing of that property.

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

In the absence of a stand-alone offence of embezzlement, theft, theft by a person in a special relationship, criminal breach of trust and obtaining by deception or causing loss by deception (sects. 161, 162, 170 and 172 of the Crimes Act) are criminalized in the public and private sectors.

The abuse of functions is partially criminalized through the offences of general dishonesty against the Government and corrupt use of official information (sects. 47 and 147 of the Crimes Act).

Illicit enrichment is not criminalized.

*Obstruction of justice (art. 25)*

While there is no stand-alone offence of obstruction of justice, several provisions cover the relevant conduct, including unlawful intimidation, injuring in the course of criminal conduct, aggravated assault, using a firearm against a law enforcement officer, perjury, fabricating evidence, conspiring to defeat justice, threatening words or behaviour to a Member of Parliament or an officer and contempt of court (sects. 46, 121, 122, 127, 139–141, 145 and 222 of the Crimes Act) and impersonating a member of the police service (sect. 70 of the Police Service Act 2009).

*Liability of legal persons (art. 26)*

The definition of person in the Acts Interpretation Act 2015 encompasses natural persons as well as bodies of persons, whether corporate or unincorporated. If a body corporate commits an offence for which the only penalty prescribed is a term of imprisonment, the body corporate is liable to a fine instead (sect. 56, para. 2, of the Acts Interpretation Act).

The Proceeds of Crime Act establishes criminal liability for money-laundering offences committed by legal persons (sects. 11, 12, 54, 64, 69 and 77). Nothing in Samoan law prejudices a natural person’s criminal liability. For the offence of money-laundering, a legal person’s liability for acting in an official capacity for or on behalf of a body of persons brings with it the natural person’s culpability (sect. 12 of

the Proceeds of Crime Act). No case law is available regarding the liability of legal persons.

Civil action can also be brought against legal persons.

*Participation and attempt (art. 27)*

The Crimes Act covers ancillary offences, including conspiracy, incitement, accessory before and after the fact, counselling and procuring (sects. 33 and 35–38). The attempt to commit or procure the commission of an offence is criminalized (sect. 39), but not the mere preparation of an offence.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Sanctions for Convention offences range from up to 50 penalty units (one penalty unit is 100 tala, that is, approximately \$37) or up to two years' imprisonment for the bribery of customs officials, to up to seven years' imprisonment for bribery of all other public officials and money-laundering. For theft in a special relationship, sentences depend on the value of the property and are aggravated for offences committed by a public official. Sentences for passive bribery of judicial officers, ministers, associate ministers or chief executive officers of the Government are also aggravated (up to 14 years' imprisonment).

The Head of State enjoys absolute immunity while holding office, except for crimes under the Rome Statute of the International Criminal Court (sect. 5 of the Head of State Act). A member of the legislative assembly may be convicted of a criminal offence but may not be arrested during attendance of the assembly or a committee thereof, in accordance with section 4 of the Legislative Assembly Powers and Privileges Ordinance 1960. Functional immunities are granted to specific public officials where it is established that they acted in good faith and properly exercised their power, as provided for, for example, in sections 75 and 83 of the Proceeds of Crime Act.

The decision to prosecute or not is bound by the outcome of a three-step test consisting of a *prima facie* case test, a reasonable prospects test and a public interest test. Any element of "official corruption" or abuse of authority by the defendant is a pro-prosecution factor. A decision against prosecution can be reversed in justifiable circumstances (sect. 9 of the Prosecution Guidelines). Private prosecution exists in accordance with section 2 of the Crimes Act, and the division for police complaints of the Office of the Ombudsman can be called upon, in accordance with section 18 of the Ombudsman Act 2013.

A defendant may be granted bail under the conditions laid out in sections 99 *et seq.* of the Criminal Procedure Act. While not codified, in practice, parole decisions depend on the seriousness of an offence and behaviour and time spent in prison.

The Public Finance Management Act 2001 provides for the suspension of authority, including of a head of department, from dealing with public funds or public property, pending an investigation (sect. 14). An employee or officer suspected of breaching the code of conduct or charged with or convicted of the commission of an offence may be suspended from duty, temporarily assigned to other duties within a ministry or removed (sects. 43–47 of the Public Service Act 2004). Procedures for the disqualification from or relinquishment of posts following a conviction exist for Members of Parliament, the Electoral Commissioner, the Ombudsman and directors of public bodies. No disqualification procedure exists for other public offices or offices in State-owned enterprises, for which applications are handled on a case-by-case basis and objective decisions are provided for by a selection panel consisting of one commissioner and at least one private sector representative. The possibility of parallel criminal and disciplinary measures is not precluded by legislation.

The rehabilitation and the reintegration of offenders into society appear to be an overarching concept in the criminal justice system. If considered practicable and safe for the community (sect. 5 of the Community Justice Act 2008), sentences of community work or supervision are preferred to prison sentences, and participation in a medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative or re-integrative programme may be ordered in addition.

An early guilty plea or efforts to make amends by the defendant may be taken into account by the court when sentencing. Collaboration with law enforcement is encouraged through the possibility of plea bargains or provision of immunity from prosecution. A co-defendant acting as a witness is subject to the protection measures for witnesses (under bail conditions not to contact prosecution witnesses) described in the section below on article 32.

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Samoa provides for the protection of witnesses and their relatives or close associates, including physical protection or relocation, and measures are in place to ensure safety when giving testimony, such as testimony provision through video link (sect. 48 of the Criminal Procedure Act and sects. 93–97 of the Evidence Act 2015). Possible witness tampering is grounds for bail revocation. Victims' rights are specifically protected through a memorandum of understanding with a victim support group, and victims' participation in criminal proceedings was cited by Samoa as one of the most important requirements of its system.

Samoa has not adopted legislation on the protection of reporting persons against unjustified treatment or retaliation. In practice, it was stated that the identities of reporting persons were protected upon request and that complaints were treated confidentially.

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Property considered by the court as "tainted" may be forfeited to the State under the Proceeds of Crime Act. Recoverable property includes any proceeds of crime or instruments, or portions thereof, whether situated within or outside Samoa (sect. 2). Proceeds of crime means any property wholly or partly derived or realized, whether directly or indirectly, from a serious offence or terrorist act (sect. 6). If the proceeds of crime are intermingled with other property from which they cannot be readily separated, that proportion of the whole represented by the original proceeds is deemed to be proceeds of crime (sect. 6, para. 2). Forfeiture is also possible where the accused has absconded (sects. 18 and 22). Value-based confiscation is provided for in sections 24 and 25. Before issuing a forfeiture order, the court may set aside or void any transfer of the property that occurred for the purpose of avoiding the forfeiture (sect. 26). Pecuniary penalty orders against a person for benefits derived from the commission of an offence are also possible (sect. 14).

Law enforcement authorities have access to several registers to facilitate asset tracing. The Proceeds of Crime Act and the Criminal Procedure Act provide for the possibility of search warrants that extend to seizure, as well as restraining orders (sect. 37–57 of the Proceeds of Crime Act and sect. 33 of the Criminal Procedure Act). Property seized on the basis of a search warrant must be returned if no forfeiture order is made within 28 days (sect. 42 of the Proceeds of Crime Act). An application for a restraining order may be made if the defendant is about to be charged with a serious offence within five days (sect. 48 of the Proceeds of Crime Act). Prior to issuing a restraining order, notice must be given to persons who may have an interest in the property. Upon request by the Attorney General, the court may consider the application for a restraining order without notice having been given, but a subsequently issued restraining order may only stay in effect for 14 days or any lesser period that the court may specify in the order (sect. 47, para. 3, of the Proceeds of Crime Act).

Bank, financial and commercial records can be requested or seized (sect. 33 of the Criminal Procedure Act and sect. 27, para. 3 (c), of the Financial Institutions Act). Bank secrecy is not an obstacle to effective criminal investigations (sect. 3 of the Money-Laundering Prevention Act).

Seized objects are to be kept and reasonably maintained by the head of the enforcement agency executing a restraining order as the responsible custodian (sect. 39 of the Proceeds of Crime Act). No guidelines exist in this regard. Forfeited assets are deposited in the Confiscated Assets Fund (sects. 34–38 of the Money-Laundering Prevention Act).

An offender is not required to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.

The Proceeds of Crime Act provides for the protection of bona fide third parties through notice requirements prior to the issuance of restraining (sect. 47) or forfeiture orders (sect. 15). A person claiming to have an interest in property subject to forfeiture may apply for an appeal for return of the property or compensation if the period allowed for appeals has expired (sect. 21).

*Statute of limitations; criminal record (arts. 29 and 41)*

No statute of limitations exists for offences with a maximum penalty of more than three months' imprisonment (sect. 16 of the Criminal Procedure Act).

A previous conviction or acquittal by a Samoan or foreign court may be presented as evidence in criminal proceedings (sects. 2 and 107 of the Evidence Act).

*Jurisdiction (art. 42)*

Samoa has established jurisdiction regarding the circumstances referred to in article 42 of the Convention, except for Convention offences committed against Samoan citizens or against Samoa (sects. 3–8 of the Crimes Act). Samoa has not established jurisdiction over such offences, except for the active bribery of foreign public officials (sect. 8, para. 1 (c), of the Crimes Act), when the alleged offender is present in its territory and it does not extradite him or her.

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

The determination of corrupt, fraudulent, collusive, coercive or obstructive conduct by a government contractor can be a reason for the rejection of proposals, the cancellation of portions of funding, the termination of contracts or the disqualification or sanctioning of the person or company, including their debarment from participation in procurement, be it as the tenderer or a subcontractor, supplier or other to the tenderer (part K, Treasury Instructions 2013 and subsequent amendments).

Nothing in the law prevents an entity or a person from initiating legal proceedings to obtain compensation for damages.

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

The police (fraud squad), the Attorney General, the Samoa Transnational Crime Unit and the Samoa Financial Intelligence Unit are primary investigative authorities for Convention offences. The independence of the Attorney General, the Auditor General and the Ombudsman are established by law. Training and resources for domestic investigations and prosecutions are limited.

No formal mechanism for inter-agency cooperation among law enforcement and other authorities exists, but informal cooperation takes place. For money-laundering, the Samoa Financial Intelligence Unit refers reports to law enforcement agencies, which may in turn request necessary information from the Unit (sect. 7 of the Money-Laundering Prevention Act). Cooperation also takes place between the central bank and the financial sector.

There is no legal requirement for public officials to report corruption and other misconduct to the investigating and prosecuting authorities; however, authorities stated that this is encouraged in practice. Financial institutions are obliged to report suspicious transactions (sect. 23 of the Money-Laundering Prevention Act).

## 2.2. Successes and good practices

- Samoa uses a pragmatic and needs-specific and needs-based approach to address capacity issues as they arise, such as the placement of foreign prosecutors in cases of possible conflicts of interest.
- The rehabilitation and reintegration system, including through tailored community sentences instead of prison sentences, has a high success rate and few convicts reoffend (art. 30, para. 10).
- No statute of limitations exists for Convention offences.

## 2.3. Challenges in implementation

It is recommended that Samoa:

- Consider harmonizing the sanctions for bribery of members of the police service with those for bribery of other public officials (art. 15 (a) and art. 30, para. 1).
- Amend its legislation to cover immaterial benefits (arts. 15–16).
- Monitor that the additional element of “corruptly” constitutes no obstacle to prosecution. If the judiciary does not interpret the law in this way in the future, legislative reform is required (arts. 15, 16 and 18).
- Abolish the exception for so-called “facilitation payments” and for offences committed abroad that are not criminalized in the country where the bribee was situated (art. 16).
- Consider criminalizing the passive bribery of foreign public officials and officials of public international organizations (art. 16).
- Monitor that embezzlement, misappropriation or other diversion are covered under section 162 of the Crimes Act. If the judiciary does not interpret the law in this way in the future, legislative reform is required (art. 17).
- Monitor the application of the legislation to ensure that active trading in influence is criminalized (art. 18).
- Consider criminalizing passive trading in influence (art. 18).
- Consider broadening its legislation to include any act or omission by a public official, in violation of laws, for the purpose of obtaining an undue advantage (art. 19).
- Consider criminalizing illicit enrichment (art. 20).
- Consider criminalizing bribery in the private sector (art. 21).
- Assess the necessity of absolute criminal immunity of the Head of State during his or her term of office (art. 30, para. 2).
- Consider codifying the conditions to be taken into account when deciding on parole and include as a condition the gravity of the offence (art. 30, para. 5).
- Consider establishing procedures for the disqualification of public officials convicted of corruption offences from holding public office or holding office in an enterprise owned by the State (art. 30, para. 7 (a)–(b)).
- Assess whether extending the period between applying for a restraining order and filing criminal charges to more than five days and issuing a longer restraining order when not having given notice would be conducive to effective restraint (art. 31, para. 2).

- Adopt additional measures to improve the regulation of administration of frozen, seized and confiscated property (art. 31, para. 3).
- Consider adopting measures requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31, para. 8).
- Consider incorporating appropriate measures on the protection of reporting persons and provide for their effective enforcement (art. 33).
- Adopt measures to strengthen or formalize cooperation and coordination between the various bodies involved in the fight against corruption, which may include a regular round table or the implementation of the envisaged integrity office network (art. 38).

Samoa may wish to require public officials to report corruption and other misconduct to the authorities (art. 38).

It is recommended that Samoa:

- Adopt effective measures to encourage effective cooperation between law enforcement authorities and entities of the private sector (art. 39).
- Consider establishing jurisdiction over Convention offences committed against Samoan citizens or against Samoa (art. 42, para. 2 (a)–(d)).
- Consider establishing jurisdiction over Convention offences, beyond the active bribery of foreign public officials, when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).

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

- Assistance with quantifying corruption in Samoa (statistical and qualitative).
- Trainings on cybercrime, fraud, money-laundering and financial investigation (art. 30).

### **3. Chapter IV: international cooperation**

Samoa has a framework in place to combat corruption through international cooperation. However, owing to the absence of detailed statistics, it was difficult to assess in detail its practice regarding international cooperation in corruption cases.

#### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

Extradition is regulated by the provisions of the Extradition Act. The Act applies, with necessary modifications, where a bilateral agreement or arrangement exists (sect. 20). Samoa is bound by the London Scheme for Extradition within the Commonwealth.

Extradition is only available to and from other countries pursuant to a bilateral extradition treaty and, in the absence of a treaty, to Commonwealth countries designated by order of the Head of State (sect. 2 of the Extradition Act). Samoa has not concluded any bilateral extradition treaties, and only 10 Commonwealth countries have been designated as extradition countries. Samoa does not consider the Convention as a basis for extradition.

The extradition procedure involves both a judicial and an administrative procedure.

Requests for extradition must be submitted through the diplomatic channel for transmission to the Minister of Justice, who may issue an authority to proceed unless an order for extradition could not be made in accordance with the provisions of the Extradition Act (sect. 7).

An arrest warrant of the person sought for extradition may be issued by a district court judge (sect. 8 of the Extradition Act). The arrested person should be brought before a court of committal as soon as practicable. After hearing any evidence tendered, the court should commit the person to custody to await extradition or discharge that person from custody (sect. 9). The order of committal is subject to appeal before the Supreme Court (sect. 10).

Where a person is committed to await extradition and is not discharged by order of the Supreme Court, the Minister may order the person to be extradited or decide otherwise, for example, if the person could be or has been sentenced to death in the requesting country or if the person is a citizen of Samoa (sect. 11 of the Extradition Act). Although the Act does not mandate the submission of the case for prosecution if extradition is not granted, Samoa adopts the principle *aut dedere aut judicare* based on the principle of the legality of prosecution coupled with the provisions on active personal jurisdiction.

The Extradition Act is silent on the procedures to follow if an arrest warrant was not issued pursuant to its section 8.

Samoa requires dual criminality with a minimum penalty of 12 months' imprisonment in the requesting country as a precondition for extradition (sect. 2 of the Extradition Act). For extradition to a Commonwealth country, the minimum penalty required is two years in Samoa and the requesting country (art. 2 of the London Scheme). On the basis of dual criminality, some Convention offences are not subject to extradition because they have not been criminalized in Samoa.

The Extradition Act is silent on the matter of extradition requests covering several separate offences, some of which are not extraditable by reason of their period of imprisonment.

Samoa's legal framework does not guarantee that Convention offences are included as extraditable offences in existing and future extradition treaties.

"Extradition offence" includes offences of a purely fiscal character (sect. 2 of the Extradition Act), thus preventing the refusal of an extradition request on the sole ground that the offence is also considered to involve fiscal matters.

Samoa has not taken sufficient measures to expedite extradition procedures and to simplify evidentiary requirements relating thereto.

The Constitution guarantees fundamental rights for all persons regardless of their nationality, including the rights to personal liberty, a fair trial and freedom from discriminatory legislation (sects. 6, 9 and 15). A person shall not be extradited if that person might, if extradited, be prejudiced at trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, religion, ethnic identity, nationality or political opinions (sect. 6, para. 1 (c), of the Extradition Act). The Extradition Act also provides for procedures that allow the persons sought for extradition to defend themselves (sects. 9–12).

The legislation does not provide for the enforcement of foreign penal judgments (except for confiscation, sect. 49 of the Mutual Assistance in Criminal Matters Act), nor does it provide for the requirement to consult with the requesting State before refusing extradition.

The transfer of sentenced persons to and from Samoa is regulated by the provisions of the International Transfer of Prisoners Act 2009 and relevant treaties. Transfer is possible with the consent of the Cabinet, regardless of the existence of a treaty. Samoa is only party to the Scheme for the Transfer of Convicted Offenders within the Commonwealth and has not concluded any other relevant bilateral or multilateral agreements.

There are no provisions governing the transfer of criminal proceedings.

*Mutual legal assistance (art. 46)*

Mutual legal assistance is regulated by the provisions of the Mutual Assistance in Criminal Matters Act. Samoa is bound by the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and has not concluded any bilateral or multilateral mutual legal assistance treaty.

Samoa could provide assistance regardless of the existence of a treaty and the authorities can exchange information spontaneously.

The Office of the Attorney General is the central authority of Samoa for mutual legal assistance. The acceptable language for requests for mutual legal assistance is English. The Mutual Assistance Act does not determine the acceptable language or languages for such requests. The Secretary-General of the United Nations has not been notified in this regard. Section 23 of the Act implies that a request must be made in writing.

Outgoing requests for mutual legal assistance must be made by or through the Attorney General, while incoming requests must be made to the Attorney General or a person authorized by him or her (sect. 22 of the Mutual Assistance Act). Upon receiving a request, the Attorney General will determine whether the Act requirements are met. If so, the Attorney General will authorize the request to be executed by the appropriate authorities.

Requests for mutual legal assistance should be submitted through the diplomatic channel.

The Mutual Assistance Act requires dual criminality for all mutual legal assistance, including that not involving coercive actions (sect. 2 of the Proceeds of Crime Act).

In case of refusal of mutual legal assistance, the Attorney General should provide the requesting State with the notice of and reasons for refusal (sect. 25 of the Mutual Assistance Act).

The Mutual Assistance Act provides for a wide range of mutual legal assistance, including locating or identifying persons, obtaining evidence, arranging attendance of persons to give evidence abroad, search and seizure, arranging service and the enforcement of foreign confiscation and restraining orders (sects. 27, 28, 33, 39, 46, 49 and 50). However, the application of those provisions is limited to cases where dual criminality as a requirement for mutual legal assistance is available.

The Act permits examination or cross-examination through a video or Internet link from the requesting country of any person giving evidence or producing a document or other article (sect. 31).

Requests for mutual legal assistance regarding natural and legal persons are treated equally.

Section 20 of the Mutual Assistance Act, on restriction on use of evidence, appears to prevent Samoan authorities from disclosing received information that is exculpatory to an accused person. Section 23 outlines the requirements that a requesting State must meet in a request for mutual legal assistance. The Act does not prevent the Attorney General from requesting additional information that appears necessary for the execution of the request or when it can facilitate such execution.

Bank secrecy and the fact that an offence also involves fiscal matters are not recognized as a ground for refusal of assistance (sect. 24 of the Mutual Assistance Act). Requests for mutual legal assistance are executed in accordance with the domestic law of Samoa and, where possible, the procedures specified in the request (sect. 46, para. 3).

Samoa has not established clear and efficient processes for the execution of requests for mutual legal assistance in a timely manner and without undue delays or for communicating with foreign authorities.

A request for assistance may be postponed in whole or in part if, after consulting with the requesting State, the Attorney General considers that granting the request immediately would be likely to prejudice the conduct of an investigation or proceeding in Samoa (sect. 24 (b) of the Mutual Assistance Act). Consultations are carried out, as a matter of practice, before refusing a request for mutual legal assistance.

The Mutual Assistance Act does not address the costs of executing requests for mutual legal assistance.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

Samoa law enforcement authorities can cooperate at the international level through a number of mechanisms and networks, including the International Criminal Police Organization (INTERPOL). The Samoa Financial Intelligence Unit can also cooperate with its foreign counterparts through its membership in the Egmont Group of Financial Intelligence Units. The Samoa Financial Intelligence Unit is a member of the Association of Pacific Island Financial Intelligence Units. The Samoa Transnational Crime Unit is part of the Pacific Transnational Crime Network, and the Pacific Transnational Crime Coordination Centre is hosted by the Government of Samoa.

Samoa has a range of tools for communication and analysis at the international level. Standard communication channels are used, in addition to secure covert channels, such as the INTERPOL I-24/7 global police communications system and the Egmont Secure Web.

Australia and New Zealand have placed liaison officers who, as appropriate, act as advisers or mentors to the Samoa Police Service and help with cooperation at the operational level. Samoa has been involved in exchanges of personnel.

Samoa considers the Convention as the basis for mutual law enforcement cooperation. The Samoa Financial Intelligence Unit has signed memorandums of understanding with the financial intelligence units of Fiji, Indonesia and Papua New Guinea and with the Association of Pacific Island Financial Intelligence Units.

Part 18 of the Crimes Act (sects. 205–220) is dedicated to crimes involving electronic systems, which allows for cooperation in cases of offences covered by the Convention committed through the use of modern technology. The Fraud Squad of the Criminal Investigation Division has specialized personnel to handle cybercrimes.

The Samoa Police Service is able to work jointly with foreign counterparts pursuant to part IV of the Police Powers Act and has done so.

Special investigative techniques envisaged under the Police Powers Act may be used in relation to offences covered by the Convention, including communication interception and surveillance. Those methods can be made available in the context of international cooperation.

Samoa does not regulate undercover operations. Controlled delivery is only possible in relation to terrorist offences.

Samoa legislation does not prevent the conclusion of appropriate bilateral or multilateral agreements or arrangements for the use of special investigative techniques.

### **3.2. Challenges in implementation**

It is recommended that Samoa:

- Adapt its information system to allow it to collect data and provide more detailed statistics on international cooperation.

Samoa may wish to allow extradition for offences related to those established in accordance with the Convention (art. 44, para. 3).

It is recommended that Samoa:

- Take necessary measures to guarantee that Convention offences are included as extraditable offences in existing and future extradition treaties, including by ensuring that offences that still have to be criminalized (see sect. 2.3 above) are considered extraditable offences (art. 44, para. 4).
- Seek, where appropriate, to conclude treaties on extradition with other States (art. 44, para. 6 (b)).
- Clarify the procedures to follow if a warrant has not been issued; and endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto (art. 44, para. 9).
- Provide for the requirement to consult with the requesting State before refusing extradition (art. 44, para. 17).
- Seek, where appropriate, to conclude agreements or arrangements on extradition (art. 44, para. 18).
- Explicitly provide for the disclosure of received information that is exculpatory to an accused person (art. 46, para. 5).
- Allow for the provision of mutual legal assistance that does not involve coercive action in the absence of dual criminality (art. 46, para. 9).
- Notify the Secretary-General of the United Nations of the designated central authority and acceptable language or languages for requests for mutual legal assistance (art. 46, paras. 13–14).
- Ensure that requests for mutual legal assistance are executed in a timely manner, taking into account any deadlines requested, including by giving thought to adopting a manual and procedures or guidelines on mutual legal assistance that would outline in greater detail the steps to be followed by authorities in executing and making such requests, as well as any requirements and time frames to be followed, for further clarity, for the benefit of Samoan authorities and of requesting States (art. 46, para. 24).
- Determine the responsibility for the costs of executing requests for mutual legal assistance (art. 46, para. 28).
- Consider establishing a framework for transferring criminal proceedings (art. 47).
- Take measures to widen the scope of special investigative techniques to allow for the use of controlled deliveries and, where appropriate, undercover operations, and make those methods available in the context of international cooperation (art. 50, paras. 1–4).

### **3.3. Technical assistance needs identified to improve implementation of the Convention**

- Capacity-building on handling requests for mutual legal assistance (art. 46).
  - Assistance in developing a case management system in the Office of the Attorney General (art. 46).
-