



**U N I T E D   S T A T E S**  
**DEPARTMENT OF THE INTERIOR**  
**OFFICE OF INSULAR AFFAIRS**

**A Private Sector Assessment for  
American Samoa**

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**2006 Island Fellows**

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## I. Foreword

This report is designed to be helpful to American Samoan policymakers who are looking for ways to make American Samoa more hospitable for private sector economic development. We don't pretend to have all of the answers; we're just trying to make a constructive contribution to the conversation. This report analyzes policy from the perspective of impact on the business climate. We realize that policymakers don't have the luxury of examining policy from that perspective alone, and that social and political factors also have to be taken into account. We believe that it would be presumptuous of us to try to evaluate local policies from a social or political perspective, and respect the prerogative of local leaders to perform that analysis.

We would like the readers of this report to keep a couple of important things in mind. First, this report is designed to focus on areas where the business climate might be improved. The report may therefore appear to present a more negative picture of the business climate in the territory than is warranted. While the U.S. territories are not perfect, their business climates are arguably much better than those in the many developing economies that routinely attract outside investment. All of the territories benefit from the protection of the U.S. flag and the U.S. legal system, duty-free access to the U.S. market, safety (including U.S. military protection), U.S. financial support, use of the U.S. dollar, an English-speaking workforce that is well trained by the standards of the developing world and infrastructure that is good by the standards of the developing world. Each of the territories has its own particular competitive advantages as well.

The reader should also keep in mind that this report is based upon conditions as we found them in the summer of 2006. It is always possible that subsequent events could have a significant impact on how one might analyze the business climates of the territories.

This report was created by two MBA students and reviewed and edited by the staff of the Office of Insular Affairs. We therefore consider the report to be a product of OIA. It is offered with the greatest humility out of the desire to be of service. We recognize that the future of American Samoa belongs to the people of its islands, and that the role of the Federal Government is to provide our best information and analysis to help island leaders make informed decisions about their future. We hope that this report will be put to good use, and will help the people of American Samoa navigate their way to a strong, prosperous future.

*David B. Cohen*  
*Deputy Assistant Secretary of the Interior*  
*Washington, D.C.*  
*December 2006*

## II. Introduction

### A. Methodology Employed

Two Island Fellows were competitively selected by the Office of Insular Affairs, U.S. Department of Interior and traveled to American Samoa June 22 - July 13, 2006. There they consulted with business owners, managers, and government officials to gather information about the business climate in the territory. The Fellows met with officials at the Department of Commerce, Attorney General's Office, Port Administration, Tax Office, American Samoa Treasury, Customs Office, Office of Tourism, and Immigration Office, along with the Lieutenant Governor, Governor's legal counsel, and President of the Senate. They also met with several semi-autonomous agencies, including the American Samoa Power Authority, the American Samoa Telecommunications Authority, the Development Bank of Samoa, and the Small Business Development Center. They attended the meetings of the Business and Professional Women's Organization, the Rotary Club, the Project Notification and Review System, spoke with Chamber of Commerce members, and personally met over twenty business owners and managers covering the banking, legal, insurance, telecommunications, retail, tourism, surveying, journalism, and technology industries, among others.

The Fellows used these meetings to solicit information regarding specific aspects of the business climate, including government transparency, business licensing, taxation, the legal system, land ownership, labor, financial infrastructure, and physical infrastructure. They used this information, along with data from similar jurisdictions, to examine the benefits and challenges businesses face when operating in American Samoa.

### B. Economic Condition of American Samoa

In general, it is difficult to find updated statistics on the economic condition of American Samoa. The most recent information currently available is found in the 2000 Census, the March 2004 National Income and Product Accounts report, the Basic Financial Statements of September 30, 2005, and the 2005 annual report on the "State of the American Samoa Economy." The Household Expense and Income Survey was due to be published after the research for this report was completed, and should contain more recent information on the state of the economy.

During the Fellows' field research, many people working in American Samoa reported dissatisfaction with the economic growth of the territory and with their income earning opportunities. This impression seems to be borne out by the State of the Economy Report, which indicates that a population increase, combined with low wage rate increases have caused the economic growth to be spread over a larger population, resulting in a decline in the growth rate of per capita income.<sup>1</sup> Private monetary payments constricted by 1.3% and island employment rates decreased in fiscal year 2005.<sup>2</sup> American Samoa is also currently experiencing inflation, largely due to the increase in fuel prices.

The government has historically run a deficit of approximately \$34 million. In recent years the deficit has not been as large, and for several years there have been surpluses, due to several large

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<sup>1</sup> *State of the American Samoa Economy 2005 Annual Report*, p. 1. Found at <http://www.asdoc.info/PRISM/2005SOTE.pdf>

<sup>2</sup> ASG Department of the Treasury, *Basic Financial Statements for Fiscal Year Ending September 30, 2005*, June 26, 2006, p. 12.

insurance settlements and pressure from the U.S. Congress to balance the budget.<sup>3</sup> However, in Fiscal Year 2007, a budget cut of 5% for all agencies except the Legislature will be required.

In addition to these issues, there is a major concern that the tuna canneries will leave American Samoa. Canned tuna processing is the largest private sector employer, providing approximately one third of total employment in American Samoa.<sup>4</sup> It is widely believed that the two canneries have been contemplating leaving American Samoa in anticipation of loss of U.S. tax benefits.<sup>5</sup> The impact of the canneries' closing will have a dramatic effect on the entire economy as the economic growth of many other private sector employers in the consumer retail and service sectors is tied directly or indirectly to the tuna industry.<sup>6</sup> The cannery workers also contribute to the Treasury, through income taxes. Although the U.S. Congress is currently considering a two-year extension of possession tax credits for the canneries, such an extension does not address the long-term needs of the economy.

It is widely recognized that private sector development is crucial for driving long-run economic growth. American Samoa has many attractive qualities, such as access to a U.S. market with English-speaking residents, reliable power and telecommunications infrastructure, improving roads, a deep harbor in a strategic location, and a functioning legal structure. Yet as an island economy, American Samoa's businesses also face the possibility of unpredictable external shocks such as hurricanes and rising fuel prices. The challenge of the American Samoa Government is to ensure that it is well-poised to capitalize on its natural advantages by creating an environment that allows the private sector to flourish.

### **C. Analysis**

The analysis of information on the business climate in American Samoa led the Fellows to focus on the following four areas in which policy changes may improve the business climate:

#### **i. Transparency**

American Samoa's laws have been carefully crafted to prevent conflicts of interest, yet there remains an impression of preferential treatment that discourages new business development.

#### **ii. Business Licensing Practices**

The current processes for issuing business licenses can be improved. A complex and lengthy business licensing procedure can place significant opportunity costs on business operations, stifle investment and entrepreneurship and actually harm rather than protect American Samoan businesses.

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<sup>3</sup> Adam Stein, *American Samoa Business Opportunities Report*, September 2004, p. 3. Found at [www.doi.gov/oia](http://www.doi.gov/oia).

<sup>4</sup> U.S. Department of Labor Economic Report, *The Minimum Wage in American Samoa*, March 2005.

<sup>5</sup> Development Bank of American Samoa, *Creation of Seed Capital Facility of American Samoa Report*, May 2006.

<sup>6</sup> U.S. Department of Labor Economic Report, *The Minimum Wage in American Samoa*, March 2005.

**iii. Taxation**

Relatively high corporate tax rates coupled with inconsistent enforcement may raise concerns for potential investors, and existing tax incentives may cost more revenue than is generated by the business activity they were intended to attract.

**iv. Labor**

There is some concern about the ability of American Samoan businesses to attract and maintain trained labor from the local population.

In addition to these four areas, the Fellows also reviewed the legal system, the financial system, land rights, and infrastructure. An assessment of these areas is also included in this report.



### **III. Transparency**

The people of American Samoa have a history of being very family and community-oriented in all areas of their lives. As in many localities where these relationships are important for doing business, American Samoan business people report feeling pressure to show favoritism for family and friends in business dealings. It is not surprising that businesses in American Samoa face challenges related to these pressures, which may lead private businesses to conclude that the business climate is non-transparent. While economists recognize that a certain amount of informality between business and government is helpful in overcoming obstacles and lowering transaction costs, businesses that do not have the same informal status may be at a disadvantage in their dealings with the government.

#### **A. Government Procurement**

Government procurement is particularly susceptible to influence by political interests due to the discretionary nature of sourcing goods and contracts. In American Samoa, it is believed by some who were interviewed that government officials have an ability to influence the bidding process for government contracts so that their own family's or friends' businesses might win the bid.

Although American Samoa has a regulatory framework (see Appendix 1) to protect the procurement process from undue influence, many business people in American Samoa reported they believe there are practices that circumvent or entirely ignore the process. This perception alone can be damaging to the business climate of any jurisdiction. Many challenges businesses face might be remedied with enforcement of the existing regulations and by increasing the transparency of the procurement process. Some reported issues include the following:

- i. Businesses providing services to the government reported having seen requests for proposals published less than one week before the deadline, while businesses which have relationships to government officials could have heard about them earlier and have had more time to prepare for the request.
- ii. It is believed by some that if they do not have a close relationship with any officials of the proposal issuing department, their bids may not be seriously considered.
- iii. Results of the bidding process are not always provided and justified to the public or to the bidding businesses.
- iv. Conflicts of interest are sometimes perceived to exist and are seemingly ignored or deemed unimportant in the decision process.

The authors were not in a position to verify reports of the above practices fully or to determine how widespread they are, but the fact that these practices are widely perceived to occur could itself discourage businesses from investing in the American Samoa economy. To the extent that they are in fact occurring, practices such as those described above have the potential to create large inefficiencies in the procurement process as the most qualified and cost effective businesses may not be fairly evaluated. Monies intended to provide for the public good may instead be misspent due to inefficient practices of the winning bidders. In many countries and territories where there are challenges to the efficiency of procurement, the laws governing the procurement process are outdated and inconsistent, making it difficult for agencies to enforce

them. There are also often layers of overlapping bureaucracy and large amounts of paperwork involved in each procurement.

More public announcements of the services and goods being procured and publication of procurement results could alleviate concerns about the transparency of the local procurement process. In many countries, if the public or the auditors are unable to monitor how the money is being spent, taxpayers pay inflated prices and businesses find themselves unable to compete with those businesses with political influence.

Reform of procurement practices is possible. For example, the Buenos Aires city government was able to cut its procurement budget by \$200 million in one year following procurement system reforms. This included opening the bidding process to more competitors, using benchmark prices on the goods and services being procured, making purchase details available to the public using an internet database, and centralizing the payment system so contractors were paid promptly (and contractors would no longer use delinquent payments as a justification for overcharging).<sup>7</sup> Many agencies such as the U.S. Navy and states such as Virginia are turning to the internet to increase public awareness of the bidding opportunities as well as allowing bids to be submitted electronically after the firms have registered.

### **Alternatives for Consideration**

Fortunately, American Samoa has regulations in place to combat perceptions of favoritism toward certain businesses, and there are some additional alternatives it could consider to further bolster its existing efforts:

- i. Increased and more consistent enforcement of the regulation requiring request for proposals (RFPs) be made available at least 30 days before the due date to allow all eligible businesses the time to prepare a responsive bid.
- ii. Increased and more consistent enforcement of regulations requiring that the delegated procurement officers state conflicts of interests and ties to bidding businesses to the chief procurement officer and recuse themselves from the procurement transaction to eliminate the perceived conflicts of interest in the procurement process.
- iii. Consistent requirement of public justification for accepted bids that are not the lowest cost. This would help to eliminate the perception that having a low cost bid is not as important as having government ties.
- iv. Benchmarking of costs for procured items or services against regional or international standards to help ensure American Samoa pays a reasonable price.
- v. Public announcement of bid winners and the amount of the bids, and briefing of non-winning bidders on how they could improve their future bids. This could help bidders more effectively tailor their bids to the needs of the government, as well as make the procurement officers consider all bids seriously.

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<sup>7</sup> Paul Constance, "Lousy Deal," and "Come See for Yourself! The Buenos Aires City Legislature Hopes the Internet Will Erase Doubts About How It Spends Taxpayer Money," *IDBAmérica*, May/June 2000. Found at <http://www.iadb.org/idbamerica/Archive/stories/2000/eng/JUN00E/e600e1.htm>.

- vi. Design and implementation of procedures allowing businesses to submit objections about the bidding procedures which will be investigated by a bureau separate from the procuring bureau. This is a type of self-policing mechanism that can help alleviate the perception that bidding procedures are not transparent.

## **B. Immigration**

Many employers recruit employees from off-island for reasons that will be further discussed in section V, and to do so they must work with the Office of Immigration. One particular complaint of businesses is the length of time it takes for employees to receive their immigration clearance to work. The Immigration Office reports that clearance may take up to five months to complete. There is a perception that immigrant workers who are sponsored by Office of Immigration employees or by businesses with ties to Office of Immigration employees may receive expedited clearance. In order for foreigners to work in American Samoa, they must be sponsored by a U.S. national or a business licensed in American Samoa. Immigration officials can recruit foreigners to work in their private enterprises under their sponsorship, which can lead to accusations of preferential treatment for these officials' private enterprise employees.

The length of time required for a foreign employee to receive clearance can create large opportunity costs for businesses, especially those with foreign management. In many cases the foreign employees believe they are unable to travel internationally or secure bank financing until they have received clearance. Also, businesses which might be able to recruit large numbers of immigrant workers and have them quickly cleared for work would be able to offer cheaper bids on contracts and place businesses staffed by American Samoan workers or foreign workers waiting for clearance at a competitive disadvantage. Even having the perception that Immigration Office employees expedite certain workers' applications discourages new businesses from opening on American Samoa if they believe they will not have equal opportunity to hire immigrant workers.

### **Alternatives for Consideration**

In order to make the business climate more attractive to investment, American Samoa could consider reviewing its immigration policies and practices. Some possible alternatives that may help equalize the field for businesses entering American Samoa include:

- i. Limiting the number of immigrants an immigration officer or board member can sponsor to five or fewer. This would help prevent the perception that immigration officers are recruiting workers for their own gain.
- ii. Making publicly available the list of all immigration applicants, their status in the approval system, their sponsors, and when they applied, to help diffuse perceptions that certain people receive preferential treatment in the process.

## **C. Other areas**

There is a fairly common perception by businesses in American Samoa that government agencies have employees that give preferential treatment to their own friends and family. A report to President of the Senate Lolo Moliga by OTICIDE-SPICIN-INTERPOL concluded that it is "common knowledge" that certain business owners engage themselves with or befriend high governmental officials and prominent members of the community to facilitate their business

ventures.<sup>8</sup> Such preferential treatment and conflicts of interest make it appear to be prohibitively expensive and time-consuming for businesses to operate without political or familial connections. Delays in essential services may lead to inefficiencies and raise costs for the territory and for society.

The Pacific island country of New Zealand is ranked as one of the “least corrupt” countries in the world, according to the agency Transparency International.<sup>9</sup> One of the tools the country uses to help combat perceived inefficiencies is an Ombudsman’s Office, which is not tied to the elected government. The Ombudsman’s Office is organized to hear complaints against the government and investigate the claims to help create a perceived climate of equal opportunity for businesses.

A territory which once had similar problem with conflicts of interest, particularly in immigration, the Commonwealth of the Northern Mariana Islands (CNMI), has to some extent overcome similar challenges. This is reportedly due to the role of the Public Auditor, who actively manages conflicts of interest in government offices (see Appendix 2 for an example of the first page of a form required). Government employees, upon hiring, are required to report their involvement in businesses and activities that may influence them in their capacity as government employees. The Public Auditor will then review the statement and may judge that there are certain activities that could be too influenced by the employees’ outside interests.

### **Alternatives for Consideration**

Although American Samoa has the framework to prevent inefficiencies due to conflicts of interest, it may want to consider more aggressive enforcement of the regulations. As part of this enforcement, American Samoa could consider several options:

- i. Setting up a position for the Public Auditor to monitor employees’ conflicts of interest, similar to the function the Public Auditor has in the CNMI.
- ii. Creating an Ombudsman’s Office responsible for hearing businesses’ complaints and resolving them with the appropriate government agencies. Doing so could help alleviate the perception that government officials can behave unscrupulously with impunity.
- iii. Creating a hotline where businesses can anonymously report illegal behavior of governmental officials, perhaps tied to either an Ombudsman’s Office or a Public Auditor. There would need to be anti-retribution regulations to accompany such a hotline so that hotline callers do not face persecution. Such a hotline could allow businesses to report improper behavior without being disrespectful to government officials.

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<sup>8</sup> OTICIDE-SPICIN-INTERPOL, American Samoa Government, *American Samoa Threat Assessment on Terrorism, Drug Trafficking, Human Trafficking*, December 2005, p. 22.

<sup>9</sup> Found at <http://www1.transparency.org/cpi/2005/cpi2005.sources.en.html#cpi>.

## IV. Business Practices

Before starting any business, be it a proprietorship, partnership, or corporation, potential entrepreneurs have to obtain a business license. While in most states receiving a business license simply means that one has registered a business, in American Samoa the process has come to include almost every agency in the government affiliated with beginning a business. New businesses report that in practice the licensing procedures can be cumbersome and lengthy, while established businesses can more easily obtain a new license.

According to the Department of Commerce, the length of time required to obtain a license ranges from two weeks for an “additional use” license to over a year if the business requires a land use permit (if it is physically modifying any of the areas it will occupy). According to a majority of businesses interviewed, it is rare for a new business to receive its license in less than six months. American Samoa also requires businesses to obtain an “additional use” license to undertake a separate business venture under the same roof. For example, if a retail store wants to open a snack shop inside, it must obtain a separate business license. For a change to the physical space of the business, land use permits and zoning variances are required before the business license application is accepted. A 2005 report found that the Department of Treasury recorded almost 3,000 licenses, but a physical survey of the island only found about 600 business establishments.<sup>10</sup> All business licenses expire on December 31 of each year and must be renewed.

At least eight agencies are involved in approving a business license, and which specific agencies are involved may not be clear to new applicants in the beginning, nor is there a fully explanatory “how to” guide for general types of businesses. Despite the requirement that applicants gain approval from numerous agencies, some former agency personnel interviewed were not clear on their role in the process. The business licensing process is generally detailed in Appendix 3.

Non-Samoan businesses<sup>11</sup> are required to go through an additional step before their license is approved. The application must be reviewed by the Territorial Planning Commission (TPC), which is designed to follow a general territorial policy of selectivity regarding which businesses it allows, to prevent foreign businesses from competing directly with Samoan businesses.<sup>12</sup> Businesses report that the TPC has often had difficulty reaching the necessary quorum to approve the licenses. The Governor appoints the TPC members, and it is perceived by some that the TPC members do not have technical knowledge of the issues they are asked to evaluate. For investments of over \$1 million, the business must also receive a Foreign Investment Certificate, which has steps in addition to the business license. There are additional rules for foreigners, such as a requirement that the Immigration Office deny all sole proprietor applicants that are non-Samoan, and some concerns were raised about the consistency of their enforcement.<sup>13</sup>

<sup>10</sup> OTICIDE-SPICIN-INTERPOL, American Samoa Government, *American Samoa Threat Assessment on Terrorism, Drug Trafficking, Human Trafficking*, December 2005, p. 19.

<sup>11</sup> An American Samoan business is defined as a sole proprietorship, partnership, or corporation in which the majority ownership is of American Samoans, US citizens, or permanent residents.

<sup>12</sup> American Samoa Code (ASC) 27.2601(b). Found at <http://www.asbar.org/>.

<sup>13</sup> American Samoa Administrative Code (ASAC) 41.0327. Found at <http://www.asbar.org/>.

A cumbersome and lengthy process can discourage new and/or non-Samoan businesses from operating in American Samoa. The opportunity cost of waiting six months for a business license is very high for a starting business, particularly smaller ones. It is often not possible for the business to get basic financing until the license is approved, which in turn means that construction cannot begin. There is in turn an additional regulation that has created some concern for new businesses; if construction is not started within a year of the land use permit issue date, the permit is revoked, rendering the business license invalid, so the delay in the ability to pursue financing can create a tight time frame for new businesses.

The selective nature of the process has the potential to have many negative consequences, even for the businesses it is intended to protect. Because of the wide discretion, businesses which may be opposed by the majority of American Samoans based on cultural reasons may end up licensed to operate if the TPC uses its discretionary powers to decide in favor of the business. At the same time, businesses deemed competitive to a present American Samoan business may not be licensed, even if they could provide better services at a lower cost, improving the welfare of many residents. Such selectivity could also lead to businesses seeking alternatives to this process, with a venture being owned and operated by foreigners, while being licensed by Samoans.<sup>14</sup> These arrangements may circumvent the TPC, and but still add transaction costs to the business owners.

Most business licenses in the United States can be obtained in only a few minutes over the internet. Guam's average processing time for a license is one week. According to the World Bank's Doing Business Indicators, the average time it takes to get a business license in a Pacific island country is approximately two months.<sup>15</sup> American Samoa's average is about six months. The territory has several options to streamlining the business license process, including eliminating the requirement to have so many agencies review the license. Doing so may place more of a burden on the applicant to make certain s/he is complying with other agencies' regulations, which may be confusing for business people unfamiliar with the territory or its regulations.

### **Alternatives for Consideration**

Even if other agencies remain a part of the application process, there are other options for consideration that could streamline the process:

- i. Training agency personnel on their role in reviewing the license. Currently, agency personnel may sign the license without checking the records as the application process intended them to do, possibly defeating the purpose of their review of the license.
- ii. Reviewing the legality of agencies' withholding businesses licenses in the review process. If an agency is required to perform a record search of the applicant, but cannot legally withhold a business license if the applicant's record is unsatisfactory, the review might not achieve its goal (or be a necessary step). An example of this possible problem can be found in the business license regulations concerning the fees and debts owed to the government. The license may be withheld only if the debts and

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<sup>14</sup> *American Samoa Threat Assessment on Terrorism, Drug Trafficking, Human Trafficking* by OTICIDE-SPICIN-INTERPOL, American Samoa Government, December 2005, p. 19.

<sup>15</sup> Found at <http://www.doingbusiness.org/>.



- fees owed to the government are “clearly related to the operation of the business,”<sup>16</sup> but if the applicant is applying for a new business license, the business could not have had any debts or fees owed to the government, and the license could not be legally withheld, adding no benefit to the government and increasing opportunity costs for the business.
- iii. Assigning back-up personnel for each signatory power. Currently, if an official required to sign off on license applications is out of the office, no substitute may be available to sign for him or her. Not having signature authority can delay an application for weeks if the signatory power is on official travel or vacation.
  - iv. Having instructions available for business license applicants which clearly delineate all the necessary steps, together with who is responsible for implementing them. Currently brochures are available but usually begin with “come into the Department of Commerce to review what is needed,” without specifying each step in the process.
  - v. Allowing the applicant to make an addendum to each license for an additional use instead of requiring a new license for each activity. This could cut the renewals processed each year by a factor of six, likely reducing transaction costs overall both for the government and the applicants.
  - vi. Eliminating the TPC step required for non-Samoan businesses, after ensuring that the Land Use Permit system and the Zoning Board address the areas of the TPC’s concern. This may help streamline business management in general in the territory, and would speed the application process for non-Samoans.

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<sup>16</sup> American Samoa Administrative Code (ASAC) 27.0217. Found at <http://www.asbar.org/>.

## V. Taxation

### A. Background

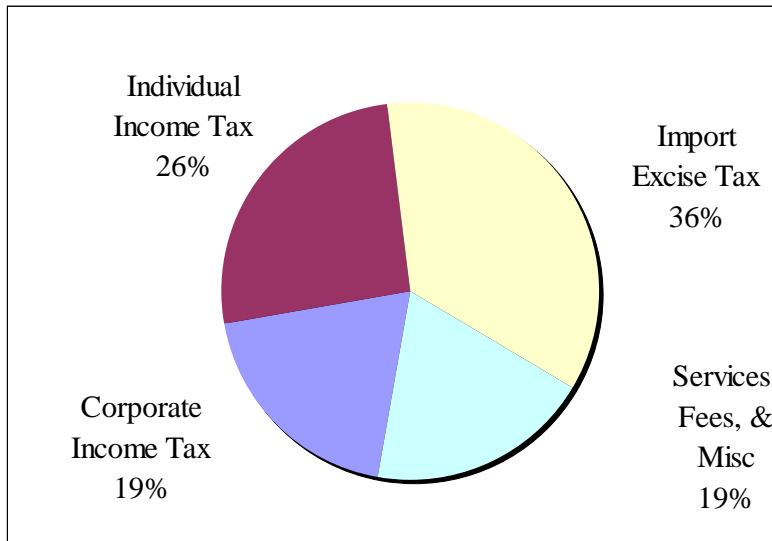
In fiscal year 2005, 80.9% of local operations revenue derived from taxes – 19.3% from corporate income taxes, 26% from individual income taxes, and 35.6% from import excise taxes.

**Table 4.1 Local Revenue from Operations as of September 30, 2005**

Revenue Sources	FY 2005 Total	Percentage of Revenue
Corporate Tax	\$ 10,598,969	19.3%
Individual Tax	\$ 14,237,320	26.0%
Excise Tax	\$ 19,525,427	35.6%
<b>Total Taxes</b>	<b>\$ 44,361,716</b>	<b>80.9%</b>
License and Permits	\$ 900,291	1.6%
Fines and Fees	\$ 2,015,378	3.7%
<b>Total License &amp; Fees</b>	<b>\$ 2,915,669</b>	<b>5.3%</b>
<u>Charges for Services</u>		
Port Admin.	\$ 2,127,263	3.9%
Rents and Leases	\$ 870,691	1.6%
Others	\$ 403,554	0.7%
<b>Total Public Services</b>	<b>\$ 3,401,508</b>	<b>6.2%</b>
<u>Miscellaneous</u>	\$ 849,868	1.5%
<b>Total General Fund</b>	<b>\$ 51,528,761</b>	<b>94.0%</b>
Driver's Training	\$ 94,935	0.2%
Industrial Park	\$ 429,761	0.8%
Public Market	\$ 108,764	0.2%
Agriculture Dev. Fund	\$ 60,961	
Golf Course	\$ 118,079	0.2%
Airport	\$ 1,605,044	2.9%
Equipment Fund (DPW)	\$ 4,127	0.0%
Housing Fund	\$ 551,075	1.0%
Print Shop	\$ 338,024	0.6%
<b>Total Treasurers Cash Pool</b>	<b>\$ 3,310,770</b>	<b>6.0%</b>
		100%

Source: Preliminary and unaudited General Fund Revenue Report & Financial Report



**Graph 4.1 Percentage of Local Revenue**

After a period in which financial statements in the territory were not audited, the ASG, in partnership with the U.S. Department of the Interior, developed a Fiscal Reform Plan. As a result, the territory's financial statements are reviewed by local and independent auditors, and then monitored by the U.S. Department of the Interior. Despite this, actual expenditures often exceed budgeted appropriations. In fiscal year 2005, the reported revenues fell short by \$3.4 million (4.3%), and expenditures exceeded final appropriations by \$5.4 million (or 6.6%).<sup>17</sup>

## **B. Introduction**

A review of American Samoa's tax structure indicates high and complex income and import excise taxes compared to other Pacific areas. Many jurisdictions, including those in the Pacific, have implemented tax reforms to attract business investment. Changes to American Samoa's tax structure and policies could help the territory become more competitive with other areas. To attract business investment, American Samoa may want to consider adaptations which will increase the attractiveness of the overall tax environment.

## **C. Individual Income Taxes**

American Samoa creates its own tax laws and policies through local legislation. Generally, the current American Samoan Income Tax is a mirror of income tax and the income tax rules in force in the United States of America in effect on December 31, 2000.<sup>18</sup> After multiple amendments and deletions the tax code was frozen, and has not been updated to reflect current United States tax laws.

The adoption of the U.S. tax code may not be the best tax option for American Samoa. The United States' individual income tax is a complex and progressive tax that has been criticized as containing many loopholes, deductions, and exemptions which render the collection of taxes and

<sup>17</sup> ASG Department of the Treasury, *Basic Financial Statements for Fiscal Year Ending September 30, 2005*, June 26, 2006.

<sup>18</sup> American Samoa Code (ASC) 11.0403. Found at [http://www.asbar.org/Newcode/Title%2011\(a\).htm#c01](http://www.asbar.org/Newcode/Title%2011(a).htm#c01).

the enforcement of tax law complicated and inefficient.<sup>19</sup> While it is debatable whether the complexities of the U.S. Tax Code hinder business in the United States, it is much easier to see the effects that the complex system would have on American Samoa's small economy. The complex system makes compliance difficult and tax evasion relatively simple. With a budget of \$1.3 million, the Tax Office is aware of tax evasion and non-filing, however, it reports that it does not have the resources to monitor and enforce tax rules. Tax evasion creates burdens complying taxpayers, placing them at an unfair competitive advantage, and distorts the appearance of a need for a higher tax rate.

In addition to its complexity, the frozen code results in higher individual income tax rates for American Samoan taxpayers than in the U.S. mainland. Subsequent to 2000, the U.S. Congress passed legislation which effectively lowers individual taxes, but because the income tax laws were frozen, American Samoans do not benefit. This is significant to the development of the private sector, because startup businesses often report their income through individual income taxes. For example, in the U.S., the number of individuals that filed federal tax returns with business income nearly doubled over the past 20 years, from 13.3 million in 1980 to 25.5 million in 2002.<sup>20</sup> Economists have observed a connection between higher individual tax rates and reduced investment, hiring, and small business income growth.<sup>21</sup> As a result, a higher individual tax rate can have a significant impact on an individual's entrepreneurial decisions.

### **Alternatives for Consideration**

There are several alternatives that American Samoa may want to consider to address the impacts that the current individual income tax structure has on business development:

- i. Adopting a more simplified tax code. A simple tax that eliminates excessive deductions and special exemptions could ease both compliance and enforcement.
- ii. Lowering tax rates and condensing the tax brackets into larger categories to simplify filing. Lowering individual taxes will make American Samoa especially attractive for sole proprietors, partnerships, and S-corporations. This alternative encourages entrepreneurial endeavors, which in turn will increase jobs, and as a result increase corporate and individual tax revenue for the Treasury. Further, lower income taxes should attract more businesses to American Samoa, despite the lower number of exemptions, and more businesses will ultimately lead to more tax collection.
- iii. Maintaining a frozen code. If the current Samoa Income Tax is updated, the current practice of a frozen code could be maintained to stabilize the tax environment, which is another factor that influences outside investment. A commitment to avoid

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<sup>19</sup> Wikipedia, The Free Encyclopedia, "Flat tax." Found at [http://en.wikipedia.org/wiki/Flat\\_tax](http://en.wikipedia.org/wiki/Flat_tax); University of Chicago Press, An interview with Edward J. McCaffery author of "Fair Not Flat: How to Make the Tax System Better and Simpler." Found at <http://www.press.uchicago.edu/Misc/Chicago/555607in.html>; John C. Goodman, "A Kinder, Gentler Flat Tax," September 9, 2005. Found at [http://www.forbes.com/free\\_forbes/2005/1017/042.html](http://www.forbes.com/free_forbes/2005/1017/042.html).

<sup>20</sup> KPMG International 2006, *Global Tax Rate Survey 2006*. No. 301-261, April 2006.

<sup>21</sup> Curtis S. Dubay and Scott A. Hodge, *State Business Tax Climate Index*, Background Paper, February 2006, No. 51, p. 16 (citing Gentry and Hubbard 2004 p. 7).

excessive amendments gives investors confidence that tax policies are constant and consistent, which may encourage longer term investment.

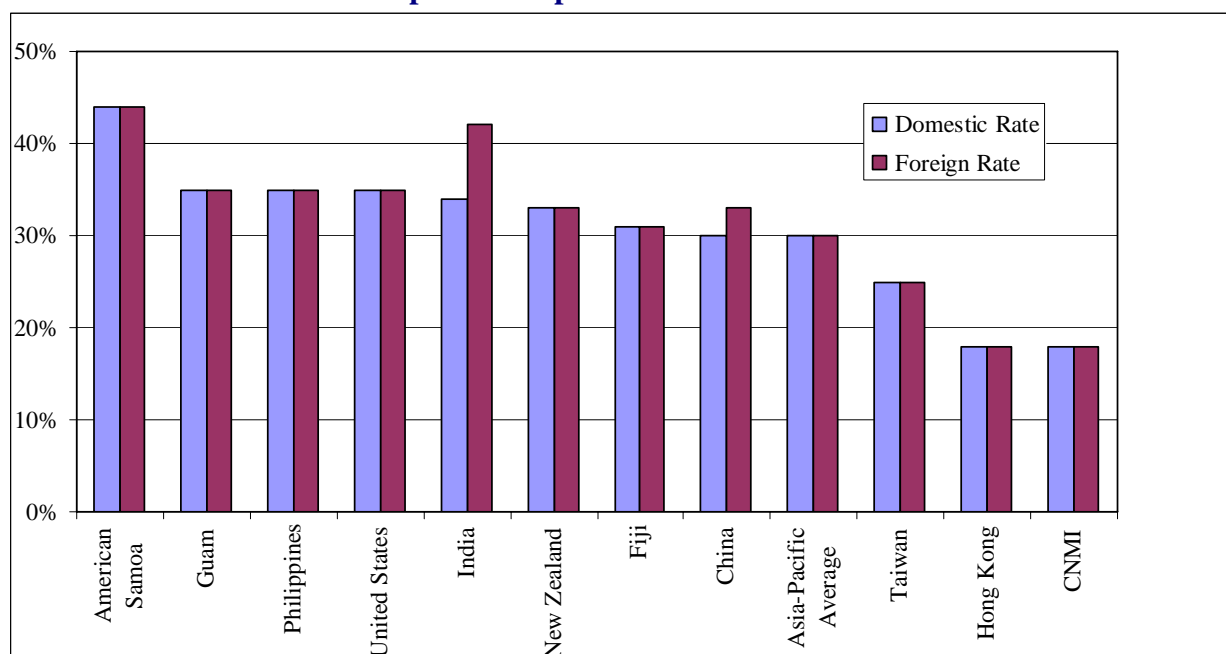
## D. Corporate Income Taxes

In fiscal year 2005 the Tax Office collected \$25.2 million from income taxes, of which 41.1% was from corporate income taxes (\$10.3 million).<sup>22</sup> The Samoa Corporate Income Tax rates are among the highest in the world. Amended from the U.S. scale, the rates are as follows:

Up to and including \$50,000	15%
\$50,000-\$75,000	25%
\$75,001-\$650,000	34%
Greater than \$650,000	44%

Currently, most effective corporate income tax rates in Asia are approximately 20-30%; in the EU, is 25.04%; the Asia Pacific Region, 29.99%; and Latin America, 28.25%. American Samoa's corporate taxes are higher than most of its Pacific Island neighbors, including Guam (highest rate of 35%), New Zealand (33%), and the CNMI (highest rate of 18% after business rebates).

**Graph 4.3 Corporate Income Tax Rates**



<sup>22</sup> ASG Department of the Treasury, *Basic Financial Statements for Fiscal Year Ending September 30, 2005*, June 26, 2006.

**Table 4.2 Corporate Income Tax Rates**

<b>Territory/ Country</b>	<b>Domestic Rate</b>	<b>Foreign Rate</b>	<b>Notes</b>
American Samoa	44%	44%	American Samoa Tax Code has been amended for Corporate Taxes. Progressive Tax Structure: > 650K is 44%, 75-650K is 34%, 50-75K is 25%, <50K is 15.
Guam	35%	35%	35% is Highest Rate in Progressive Tax Structure. US mirror. Businesses are subject to a 4% tax on gross receipts.
Philippines	35%	35%	After a four year start-up phase, domestic corporations and resident foreign corporations are subject to a 2 percent minimum corporate income tax (MCIT) based on gross income if the MCIT is greater than the corporate income tax determined by applying the 35 percent corporate income tax rate to the net income.
United States	35%	35%	35% is Highest Rate in Progressive Tax Structure
India	34%	42%	The effective tax rate for domestic companies is 33.66 percent (30 percent, plus surcharge of 10 percent of the tax, plus education duty of two percent on tax and surcharge). Foreign companies are taxed at 41.82 percent (40 percent, plus a surcharge of 2.5 percent of the tax, plus education duty of two percent on the tax and its surcharge).
New Zealand	33%	33%	The corporate income tax rate is 33%.
Fiji	31%	31%	-
China	30%	33%	State Tax 30%, Local Tax 3%
Asia-Pacific Average	30%	30%	-
Taiwan	25%	25%	Maximum Rate in tax structure, on income over \$TW 100,000
Hong Kong	18%	18%	The 17.5 percent rate applies to Hong Kong sourced profits that are derived from a business carried on in Hong Kong. Offshore profits, capital gains, dividends and most bank deposit interest income are also exempt from tax.
CNMI	3.5-18%	3.5-18%	US mirror. Businesses are rebated 50-90% of US corporate income mirror tax on a sliding scale. Businesses are subject to a 5% tax on gross receipts.

*Source: American Samoa, CNMI, Guam, KPMG Asia-Pacific Tax Analysis January 2006*

While American Samoa has maintained its high corporate rates, many countries have decreased statutory corporate income rates in the last twelve months,<sup>23</sup> and few have as complicated a structure as American Samoa. The local corporate tax rate is a significant factor for Foreign Direct Investment (FDI) decisions, and American Samoa's high rates could place the territory at a competitive disadvantage.

### **Alternatives for Consideration**

The American Samoan Government has announced a commitment to developing the private sector. Consideration of the following alternatives could facilitate this goal:

- i. Lowering commercial income tax rates in order to attract more private sector development and simplify collection. American Samoa's current corporate tax scale makes it almost prohibitive for businesses to earn substantial after-tax profits, making it unprofitable to expand and grow their operations. Tax incentives, which can cost more revenue than is gained by taxes on other segments of the economy, would be largely unnecessary if the tax scale was low enough to provide incentives for businesses to start or expand operations in American Samoa.
- ii. Eliminating mandatory full disclosure laws requiring foreign companies to disclose income earned outside of the territory. Large companies are very sensitive to financial data disclosure, especially in a small territory, where privacy may not be as large a concern.

### **E. Tax Incentives**

Few countries have been successful in offering tax incentives, and it is arguable to what extent tax incentives affect location decisions of FDI. Econometric analysis and numerous surveys of international investors have indicated that tax incentives are not the most influential factor for multi-national investors in selecting an investment location. Rather, the attractiveness of an area's overall business tax environment, infrastructure, political stability, and availability of labor is what businesses pay attention to when deciding where to make long-term investments.<sup>24</sup> Furthermore, the effects of tax incentives can be costly to American Samoa's economy, draining the Treasury of potential revenues, burdening the tax administration, restricting activities, and easing corruption.

### **Alternatives for Consideration**

- i. In light of the minimal benefit and high potential costs of implementing tax incentives, American Samoa may want to consider phasing out most tax incentives.
- ii. Critics of tax incentives have conceded that tax incentives affect the decisions of *some* investors *some* of the time, especially when investors are considering alternative locations that offer "*acceptable and roughly comparable conditions.*"<sup>25</sup> If American

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<sup>23</sup> KPMG International 2006, *Global Tax Rate Survey 2006*. No. 301-261, April 2006.

<sup>24</sup> Jacques Morisset, "Tax Incentives," *View Point*, January 2003, The World Bank Group – Private Sector and Infrastructure Network; Joel Bergsman, *Advice on Taxation and Tax Incentives for Foreign Direct Investment*, May 1999.

<sup>25</sup> Ibid; Joel Bergsman, *Advice on Taxation and Tax Incentives for Foreign Direct Investment*, May 1999.

Samoa finds it necessary to offer tax incentives in certain situations, it may want to consider applying all tax incentives equally between local, American, and foreign businesses to maintain the perception of an equal opportunity for all businesses, and provide a level playing field for local businesses.

## F. Import Excise Tax

American Samoa has a complex excise tax structure. Most items are taxed at 5%, while alcohol, tobacco, firearms, carbonated beverages, automobiles, and low-quality construction materials are taxed at varied and higher rates.

**Table 4.4 Import Excise Tax**

Item	Tax
Hard liquor	\$.15 per 1% alcohol content per liter (min \$2.00)
1 cigarette, cigar, or 10 grams smoking tobacco	\$.125
Beer	190%
Firearms and firearm ammunition	150%
Motorcycles, trucks, vans, and automobiles for commercial use	25%
Motorcycles, trucks, vans, and automobiles for personal use	10%
Motor vehicle fuel	\$.35 per gallon
Regular grade construction materials	40%
Carbonated non-alcoholic drinks	\$.15 per 12 ounces

*Source: American Samoa Code 11.1002*

When ASG needs to raise funds for a project, it often looks to increasing the import tax on certain products. Currently, ASG is contemplating increasing the tax on bottled water to help pay for the renovation on the Fono, as well as creating a new tax on commercial construction materials to pay for solid waste removal. The general excise tax requires businesses to pay taxes as items are imported, which adds extra up-front costs for businesses.

### Alternatives for Consideration

American Samoa may want to consider phasing out the import excise and corporate income taxes and replacing them with a sales tax or a value-added tax (“VAT”). Other countries in the Pacific are joining regional trade groups such as PICTA and PACER and eliminating customs and tariffs with member countries. This puts American Samoa at a disadvantage, because it cannot independently join the groups and thus will not enjoy customs free import and export with member countries.

These countries also have significantly lower corporate income tax rates, making them much more attractive places to operate businesses according to international investors. There are

serious implications to consider when deciding whether or not to implement a VAT; some include the following:

- i. Some critics suggest that it is very expensive and difficult to administer and collect a sales tax or a VAT.<sup>26</sup> American Samoa tried to implement a 2% sales tax in 1988,; but it was found to be inefficient and ultimately discontinued. The government decided it was impractical to require large number of business establishments to maintain proper records and estimated that only 40% of the estimated sales tax payable was actually collected.<sup>27</sup>
- ii. The VAT depends upon businesses to keep detailed and complete records, which may increase an organization's costs and require costly oversight by the Tax Office. Further, businesses can avoid becoming registered taxpayers by fixing numbers, which will lead to further fraud and tax avoidance.
- iii. It is easier for the ASG to collect all taxes up front at points of entry, and in a cash-driven economy businesses can avoid taxes by not recording sales.
- iv. If unsuccessful, American Samoa may be viewed as having unstable tax policies, which might make it even less attractive to businesses.

Despite these challenges, a VAT could be an increasingly attractive alternative for American Samoa. Currently, VATs are in place in more than 120 countries and have been more successful than other types of taxes where income tax collection is weak. Most countries have implemented the VAT with success, and it serves as a major source of revenue wherever it has been adopted. The average share of VAT in total revenue in Pacific island countries is 32%, which is higher than the world average.<sup>28</sup> There are many benefits that could result from American Samoa's implementing a VAT:

- i. Difficulties administering a VAT can be overcome by ASG's allocation of resources to developing legislation, administrative procedures, proper training, registration, and education of tax payers.<sup>29</sup>
- ii. A VAT may encourage more organization and systematic transactions within the Tax Office and encourage more accurate recordkeeping by businesses.<sup>30</sup> Good bookkeeping by businesses will serve to increase the attractiveness of American Samoa as a place to do business. Potential investors are not only concerned with government policies but also with business practices.
- iii. The VAT system lessens the ability of businesses to claim they are not end consumers and avoid the sales tax.

<sup>26</sup> Christophe Grandcolas, "VAT in the Pacific Islands." *Asia-Pacific Tax Bulletin*, Jan/Feb. 2004, p. 12. Found at

<http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN014879.pdf>.

<sup>27</sup> American Samoa Administrative Code (ASAC) 6.03. Found at [www.asbar.org](http://www.asbar.org).

<sup>28</sup> Christophe Grandcolas, "VAT in the Pacific Islands." *Asia-Pacific Tax Bulletin*, Jan/Feb. 2004, p. 15. Found at

<http://unpan1.un.org/intradoc/groups/public/documents/UNPAN/UNPAN014879.pdf>.

<sup>29</sup> Ibid at 22.-

<sup>30</sup> Ibid.



- iv. A VAT relieves new businesses of paying taxes up front, permitting them to use their resources to further develop their business.
- v. While full compliance in a cash economy is not likely and avoidance of taxes is common, implementation of a VAT will still allow the government to capture at least a portion of the value-added in the supply chain<sup>31</sup> which is not likely to be less than other types of taxes.

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<sup>31</sup> Wikipedia, The Free Encyclopedia, “Value added tax.” Found at [http://en.wikipedia.org/wiki/Value\\_added\\_tax](http://en.wikipedia.org/wiki/Value_added_tax).

## VI. Labor

Availability of cost-efficient and skilled labor would help develop American Samoa's private sector further. American Samoa has a unique wage system that requires a review of minimum wage rates (less than the mainland's statutory minimum rate) every two years. The current minimum wage ranges from \$2.57 to \$4.99, depending upon the industry classification of the job (see Appendix 4). These rates should make American Samoa an attractive alternative to doing business in the U.S. mainland and other territories, yet employers report that they have a hard time recruiting cost-efficient labor.

The public sector primarily employs American Samoans, and the private sector relies heavily on both skilled and unskilled labor from Western Samoa, the Philippines, New Zealand, and Fiji. This heavy dependence upon guest workers requires businesses to apply for worker clearance through the American Samoan Immigration Office, which local business people have indicated adds further costs for doing business.

### A. Factors affecting the availability of skilled local labor

A combination of factors affects the availability of skilled local labor, including education, experience, and opportunities for skilled workers to find higher paying jobs elsewhere.

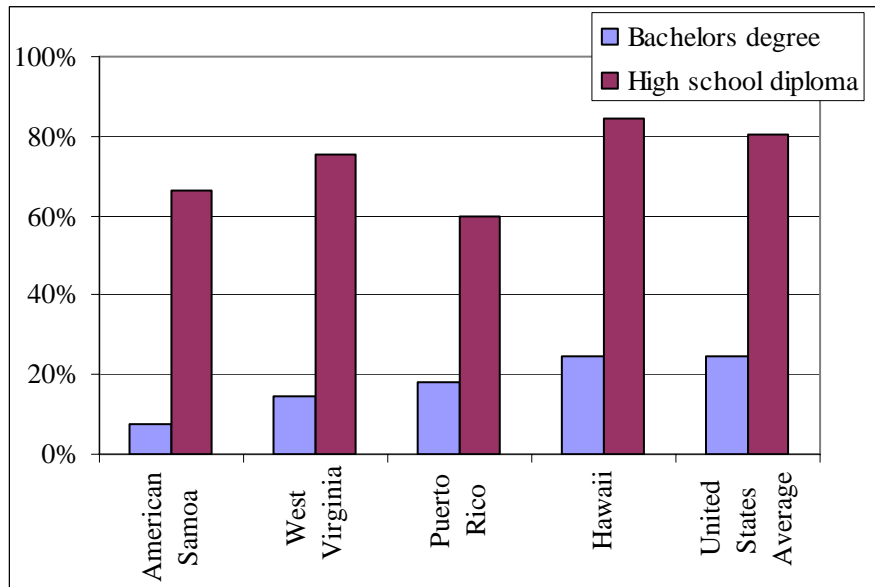
#### Lack of Education & Experience

The lack of education and/or experience of many American Samoans may contribute to the low availability of skilled local labor. In 2000, only 66.1% of American Samoans that were 25 and older had a high school diploma, and only 7.4% had a Bachelor's degree (See Appendix 5). This is significantly lower than the U.S. average in 2000, with 80.4% holding a high school diploma and 24.4% a Bachelor's degree. West Virginia, the state with the lowest percentage of individuals with a Bachelor's degree, has twice the rate of American Samoa.<sup>32</sup>

**Table 5.1 Educational Attainment**

	<b>American Samoa</b>	<b>West Virginia</b>	<b>Puerto Rico</b>	<b>Hawaii</b>	<b>United States Average</b>
Population 25 and over	25,380	1,233,581	2,288,326	802,477	182,211,639
Bachelor's degree	7.4%	14.8%	18.3%	24.4%	24.4%
High school diploma	66.1%	75.2%	60.0%	84.6%	80.4%

<sup>32</sup> TM-P042. Percent of Persons 25 Years and Over with Bachelor's Degree or Higher: 2000, U.S. Census Bureau. Found at <http://factfinder.census.gov>.

**Chart 5.1 Educational Attainment Level**

### **No focus on vocational trade**

Businesses have commented there is limited focus on vocational trades in American Samoa. It was reported that at one time there were plans to focus education on vocational skills, though due to lack of resources the plans were never implemented. Employers usually hire guest workers for highly skilled positions, though some employers have been willing to invest in training of locals. Some employers are adamant about hiring local employees; however, a simple cost-benefit analysis favors hiring skilled foreign workers, as they have proved willing to work for lower wages, and already possess the skills necessary for the positions.

Specific skill areas that businesses have mentioned to be lacking in American Samoa include carpentry, construction, and refrigeration. On the other hand, employers have complimented the computer and technology skills of the younger generation entering the workforce. This is mainly due to the availability and focus on computers in the classroom in local schools.

### **“Brain Drain”**

The low education attainment levels in American Samoa are thought to be compounded by a “brain drain.” Educated and trained American Samoans are likely either go off-island for higher paying jobs or to seek employment with the American Samoan Government. Private sector employers are very aware of this “brain drain” effect and express concern about the loss of skilled labor.

Many college graduates report returning to American Samoa with the hopes of finding a government job which offers relatively good wages, a familiar environment, and an appealing pension plan. While the minimum wage for government employees is \$2.77/hr, the average government wage is \$7.99/hr, 2.88 times the minimum. In 2004, the Government and its semi-autonomous agencies employed 33.7% of the total employed workforce,<sup>33</sup> and in 2005 the

<sup>33</sup> American Samoa Statistical Yearbook 2003 & 2004, Section Ten – Labor Force, Employment and Earning. Found at <http://www.asdoc.info/Labor%20Force/Labor.htm>.

government was the only sector that experienced growth, adding a total of 217 new jobs.<sup>34</sup> In comparison with other U.S. territories, American Samoa has the highest percentage of government workers in relation to total employment.

**Table 5.2 Government's Share of Total Employment**

	<b>Population</b>	<b>Total Employment</b>	<b>Local Govt Employees</b>	<b>Government Workers (% of population)</b>	<b>Government workers (% of employment)</b>
American Samoa	64,100	17,502	5,902	9.2%	33.7%
CNMI	69,221	42,753	4,996	7.2%	11.7%
Guam	159,547	55,750	12,700	8.0%	22.8%
USVI	109,344	46,370	11,438	10.5%	24.7%

*Source: American Samoa Statistical. Yearbook 2003 & 2004, 2004 Business Opportunities Conference Market Summaries*

The reason for the loss of educated and trained American Samoans to off-island opportunities should not be unexpected, given that there are more career opportunities and higher pay in Hawaii, the U.S. mainland, and nearby Pacific countries like New Zealand and Australia. In 1999, the American Samoa per capita income was only 16% of that of the United States.<sup>35</sup> This ratio has only worsened over the last two decades, from 26% in 1979 and 21.6% in 1989 to 16% in 1999. At the same time, real personal income in American Samoa increased only 1.3% annually from 1979 to 1999.<sup>36</sup> Faced with figures such as these, many people would likely choose to work in the mainland United States. Over 91,000 Samoans live in the United States and its jurisdictions (not including American Samoa), more than in the territory itself.

### **Alternatives for Consideration**

In order for American Samoa to address the lack of skilled local labor, it could consider the following alternatives:

- i. Starting vocational training early in high school by creating an apprenticeship program, where juniors and seniors have the option of spending part of their time shadowing private sector professional and technical workers while earning elective credits. This could be a low-cost program, as it would use elective course credits and require only administrative review and monitoring on the part of educators. Businesses may incur minor expenses, but a trained work force could certainly help reduce long-term training and labor costs.
- ii. Enforcing obligations for scholarship recipients to return to American Samoa for a set period of time. Currently, the ASG grants college scholarships with return obligations that place a moral obligation on recipients to return upon graduation and additionally require recipients that are ASG employees to continue employment with the government (see Appendix 6). Former grant recipients report that the

<sup>34</sup> State of the American Samoa Economy, 2005 Annual Report, a Report to the Governor.

<sup>35</sup> Territory Planning Commission and the ASG Department of Commerce, *American Samoa's Comprehensive Economic Development Strategy*, December 6, 2005, p. 20-21.

<sup>36</sup> Ibid.

- requirements are not enforced, and graduates do not always return to complete the requirement. To give the obligations value to the economy, ASG may want to consider replacing the “moral obligation” language with more affirmative language, up to and including obligating the recipient or their family to repay the scholarship. The scholarships would essentially convert into loans, with a percentage of the loan forgiven for each year that the student worked in American Samoa. In American Samoa, familial pride is extremely important, and imposing the obligation and repayment upon graduates’ families is likely to increase fulfillment of the obligation.
- iii. Increasing trade school sponsorship, similar to American Samoa Power Authority’s apprenticeship program that sends high-school graduates abroad to learn generator installation and maintenance. Sponsored students could be required to work in American Samoa for a certain number of years after their training. In order to enforce the work requirement, the ASG may want to consider structuring the education portion of the program similarly to the scholarships described above. The education would be paid by the ASG in the form of a scholarship, which would convert into a loan if the students do not fulfill their required work time in American Samoa.
  - iv. To support private sector growth and the availability of affordable skilled labor, the government may want to consider reducing the public labor force. In spite of stagnant economic growth in 2005, the size of government employment increased by 3.7%. This indicates that there is likely excess capacity in the public sector that could be released for private sector employment. This would simultaneously make skilled labor available for the private sector and reduce the single biggest cost of the government: payroll.<sup>37</sup>
  - v. Lowering the amount of pension plans promised to newly hired employees in order to make the ASG positions less attractive. It was apparent from speaking with management level employees that the ASG was their main competition for hiring skilled labor. Even when the business could offer better wages, individuals were attracted to the benefits that the government could offer. Lowering the amount of the pension plan, which is described as one of the biggest “selling points” for working for the government, could decrease the attractiveness of working for the government. Additionally, lowering the wages of newly hired government employees would further contribute to making government positions less appealing.

## **B. Guest Workers**

Most American Samoans consulted for this assessment indicated a belief that their economy is dependent upon guest workers for both skilled and unskilled labor. While the demand for foreign skilled labor increases due to the unavailability of cost-efficient, skilled, local workers, the demand for unskilled guest workers increases as a result of a perception by some employers that American Samoans are less productive, unwilling to undertake employment in certain areas, and unwilling to work for minimum wages. Although the percentage of the guest worker population is unclear, it is estimated that 75-80% of the workers of the canneries are foreign workers, primarily from the Independent State of Samoa. Sponsors of foreign workers are

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<sup>37</sup> Ibid.

responsible for medical bills, taxes, and other public debts of the guest worker, yet despite these added costs employers still report the desire to hire guest workers. -

### **Immigration Process**

American Samoa controls its own immigration with little oversight from the United States. Employers consulted for this assessment found the immigration process for guest workers cumbersome and costly for businesses. Although exceptions exist for highly skilled employees,<sup>38</sup> the process generally takes five months for guest workers to obtain work clearances, and clearances must be renewed every year. The Immigration Office acknowledges that renewal applicants must wait six months for their mandatory hearing, which is often comprised of questions and information gathering that could be done without a hearing. Currently, the Attorney General (AG) sits with the immigration board at every hearing, which is perceived by many to contribute to the delay. The lengthy process increases costs for businesses, especially when employees need to travel or when management need to secure loans in the interim period.

### **Alternatives for Consideration**

Under the current system meeting labor needs ends up being very costly for the private sector, either in pay to American Samoans or in the opportunity cost of time for businesses hiring and sponsoring foreign workers. Assuming that demand for guest workers will not decrease in the near future, there are steps American Samoa can consider to reduce the burden on businesses with guest workers.

- i. Having the Attorney General delegate the administrative task of reviewing immigration applications to make sure proper requirements are met to another administrator. In addition to his other responsibilities, the Attorney General himself reviews all immigration applications and then forwards them to the Immigration Board for a final decision. Ensuring compliance can also be accomplished by a well trained administrator. This could facilitate the lengthy process and allow the Attorney General to allocate his time to reviewing more complex and suspect applications.
- ii. Assigning legal and immigration specialists to the Immigration Board. All members of the Immigration Board are political appointees and are not required to have immigration or legal experience. Requiring experienced board members could make it unnecessary for the Attorney General to sit in on every hearing to ensure that the Board is not misled.
- iii. Changing immigration policies so that workers can be granted work visas for longer than one year at a time. Requiring renewals every year is burdensome to the government, to individuals, and to businesses. Professionals, highly skilled workers, and individuals who have been in American Samoa for extended periods of time could be granted longer work visas. Certain professionals and highly skilled workers make special contributions to the American Samoan economy and encouraging their stays would likely be beneficial to the economy. The United States recognizes the value of certain professionals and offers periods much longer than one year. The H1-

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<sup>38</sup> American Samoan Code (ASC) 41.0401(a)(2). Found at [www.asbar.org](http://www.asbar.org).

- B visa category initially permits professionals to work in the United States for three years, which can be extended to six years. Lengthier stays are possible, depending upon the type of employment and status of green-card applicants. Work visas in New Zealand are initially valid for up to three years and thereafter extended for three year periods.<sup>39</sup> The United Kingdom has special immigration programs that are likely to input value in its economy, including the Highly Skilled Migrant Programme (HSMP) for successful individuals with sought-after skills and the Innovator Programme for entrepreneurial individuals with original business ideas. Such options would greatly increase the efficiency of the use of guest workers in the American Samoan economy<sup>40</sup>
- iv. Eliminating the mandatory hearing requirement of workers to come before the Immigration Board upon renewal, especially those workers who already have been in American Samoa for extended periods of time. Many foreign residents have complained that mandatory hearings consist of questions that they answered in submitted immigration documents. Limiting the hearings to those workers whom the offices need to get clarifying information from would decrease costs of both the Immigration Office and businesses.

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<sup>39</sup> Workpermit.com, “New Zealand work visa/work permit guide for Employers.” Found at [http://www.workpermit.com/new\\_zealand/employer.htm](http://www.workpermit.com/new_zealand/employer.htm).

<sup>40</sup> Workpermit.com, “Highly Skilled Migrant Programme.” Found at [http://www.workpermit.com/uk/highly\\_skilled\\_migrant\\_program.htm](http://www.workpermit.com/uk/highly_skilled_migrant_program.htm).

## VII. Infrastructure

The infrastructure in American Samoa is relatively business friendly, especially when compared to other Pacific islands.

### A. Postal Services

American Samoa is under the United States Postal Service (USPS) domestic rates, and FedEx, UPS, and DHL ship to and from the island. The mail for these services arrives on air flights, but may be delayed for weeks during busy seasons, as passengers and their luggage are usually the airline's first priority. Businesses, especially hotels, reported having to wait up to six weeks for USPS shipments to arrive, and mail that requires a signature for delivery has not always been delivered.

Currently, no street addresses exist; there are only Post Office boxes. Without street addresses, arranging for delivery with FedEx, DHL, and UPS can be time-consuming. The cost for shipping packages to American Samoa is often expensive, as private shippers charge international rates. Businesses reported they often made cooperative agreements with offices on the mainland to receive their packages to avoid the international delivery charges. The mainland offices then freight forward the packages to the American Samoan business.

### Alternatives for Consideration

Without more frequent air flights, it is unlikely that USPS can deliver mail more quickly, but other options could be considered:

- i. FedEx, DHL, and UPS delivery would be much easier if American Samoa was able to receive an exemption from the U.S. Postmaster to have privately shipped packages delivered to P.O. boxes. To the authors' knowledge, this has not been requested by another territory.
- ii. Another option is to design a simple address system. The Commonwealth of the Northern Mariana Islands recently completed a street naming project to name and provide street signs, which cost \$762,000.<sup>41</sup> American Samoa could look to this project as a model to evaluate the benefits CMNI businesses and residents realized for the investment.

### B. Power

Electricity in American Samoa has been reliable since the late 1980s, when the American Samoa Power Authority (ASPA) became semi-autonomous. The cost per kw/hour has increased substantially with the rising cost of fuel. Further increasing the price of electricity is a cross-subsidy (almost \$5 million in 2005) by the power revenue to fund the sewer system, water system, and solid waste collection.

Charges for electricity are divided into five categories: residential, small general service, large commercial service, industrial, and ASG. Industrial categories pay the least (\$.21 kw/h), followed by large commercial service (\$.25 kw/h), residential (\$.27 kw/h), and small general service (\$.28 kw/h), on the basis that the more power an entity uses, the more able ASPA is able

<sup>41</sup> Edith G. Alejandro, "Mayor: Street Naming Almost Done," *Saipan Tribune*, Vol. 13, Issue 324, November 20, 2003.



to spread the fixed costs, making it cheaper for all users. Hotels have used solar panels and generators to supply some of their own power, but do not find it cost effective to detach from the territorial power supply completely.

American Samoa seems to be one of the few areas in the region charging enough to recover the cost of generating the electricity and perform regular capital expenditures and maintenance. Because American Samoa is able to charge this amount, its service and reliability seem to be among the best in the region. It loses only 6.7% of the electricity on the way to end users, and has not had rolling blackouts since the 1980s.

High electricity rates do create barriers to entry that likely depresses the willingness of businesses to come to American Samoa. The cross-subsidization of sewer, water, and solid waste increases the cost of power to businesses. Policy-makers say the reason this subsidy is in effect is because they want to encourage people to hook up to the water and sewage lines rather than exposing citizens to untreated water or allowing pollutants to contaminate the environment. Small businesses and residential users pay a higher electricity cost in order to subsidize the lower industrial and large businesses rates, and current power customers are also subsidizing the electricity bills ASPA was unable to collect in the 1980s.

### **Alternatives for Consideration**

In general, ASPA is a model for its reliability and quality. There are some options it could consider to further lower costs for businesses:

- i. ASG could consider setting an example to other non-payers by paying its past debts to ASPA, which would help decrease the amount current users pay, as part of the current rates go towards recovering losses from prior years.
- ii. ASG could also consider gradually ending the cross-subsidy of sewer, water, and solid waste from power revenues over a 6-10 year period. If ASG wishes to subsidize these entities, it could do so directly from the ASG budget, or by establishing tipping and use fees for those utilities. Ending the cross-subsidy would help to lower electricity costs.

### **C. Telecommunications**

Telephone, mobile, and internet service is available to residents and businesses at what businesses have deemed a reasonable cost and with generally reliable service, though the one local phone company, American Samoa Telecommunications Authority (ASTCA), a semi-autonomous agency, has been accused of unfair pricing practices in a grievance filing with the FCC. ASTCA and Blue Sky (a completely private company) offer mobile service and internet service; and a third company, Pacifica IT, also offers internet service.

Long distance rates to and from the U.S. mainland at \$.20-\$.35/minute is expensive relative to long distance costs from state to state, but inexpensive relative to other Pacific islands, which charge anywhere from \$.60 to \$4.00/minute (see Appendix 7). Internet access is also relatively expensive (\$75/month for high speed), and the high speed is still 300 MB/second, slow when compared to mainland technology.

Currently, both telephone and internet communications transmit through a satellite system. The transmission often faces a delay of several seconds, meaning that businesses cannot currently carry on work that requires high quality phone service or high speed internet connections.

Underwater fiber-optic cable has not yet reached the island as the offer of an underwater cable was initially rejected, though that project is now under consideration.

### **Alternatives for Consideration**

- i. In order for American Samoa to compete for service industries such as call centers, it will likely need to continue pursuing fiber-optic linkages from an underwater cable.
- ii. To maintain the perception that it is operating fairly and competitively, continued efforts to move toward compliance with FCC rules and regulations on pricing, de-regulation, and disclosure practices would be beneficial.
- iii. American Samoa could also consider privatizing ASTCA. On January 25, 2005, Guam sold its Telephone Authority to a private company, and since then there has reportedly been major improvement in overall telephone quality and service. American Samoa could study Guam's example to help determine if privatization would be beneficial.

### **D. Sea Ports**

Pago Pago has one of the best deep-water ports in the region, but deteriorating facilities may limit its ability to increase the number of vessels that enter and exit the harbor. Port operations are semi-autonomous, and the port's budget is mandated by the government each year. The port authority reports that it usually does not receive enough money to complete big projects, and uses stopgap measures to continue its operation. The port authority is also responsible for maintaining airports, and cross-subsidization by the seaport revenues of airport expenses regularly occurs.

The port is the island's lifeline to the outside world, and allowing the facilities to deteriorate could seriously harm the ability of businesses to operate in American Samoa. Large tankers that supply the island with fuel may not enter when one of the tugboats is not operational, and deteriorating docks could discourage ships from entering the harbor.

### **Alternatives for Consideration**

There are several alternative practices which would help improve the port condition:

- i. It may be less costly to budget for big-ticket items such as tugboats in one fiscal year rather than to spread the cost out over five years. ASG could consider rotating the agencies that receive the large payments such as Capital Improvement Project funds in order to fund large projects fully in a year.
- ii. ASG could follow through with agreements to allow the Port Administration to take over land it exchanged in order to increase container capacity.
- iii. ASG could consider separating sea port administration from the airport administration to eliminate the cross-subsidization.
- iv. A more aggressive alternative would be to privatize the port in a public-private partnership, leaving a much smaller Port Administration in place to help regulate the operations, while a private company managed the day to day operations. This would provide revenue to the ASG to use for capital improvements on the port. Guam's legislature recently passed a law requiring their port to enter a public-private

partnership. In the coming years ASG could look to Guam's experience with the port to evaluate the costs and benefits of privatization.

### **E. Air Transport**

Airports are under the authority of the Port Administration and regularly operate at a loss if capital grants are not included in the operating budget. The administration receives funds from the Federal government for equipment to comply with Federal Aviation Administration standards, but not for the manpower to comply with the rules, making labor costs very high when compared to the small amount of air traffic the airport has.

There are only two or three commercial flights per week from the U.S. mainland and only one air service provider, Hawaiian Airlines. There are other flights to Manu'a and Apia, and there are three airlines that service the various routes. The Port Administration reports that part of the reason there cannot be many more flights is that the airport does not have the capacity to house more than a few planes overnight.

The small number of flights means that air shipping charges and commercial flight prices from the U.S. mainland are very high. Cargo is often the last priority of the commercial flights, meaning that deliveries can be delayed for long periods of time.

### **Alternatives for Consideration**

One option ASG has acted on in the past and could continue to consider is to request a waiver from the Department of Transportation (DOT) to allow foreign air carriers to stop in American Samoa and proceed on to the U.S. mainland. Such cabotage is likely to increase frequency of flights and decrease prices. There is precedent for such a waiver, as foreign fishing vessels are allowed to dock in American Samoa thanks to the Nicholson Act, and as Guam recently received a DOT exemption to allow foreign air cargo flights to transit through its territory.<sup>42</sup>

### **F. Healthcare**

Business owners report that the healthcare system in American Samoa is troubled. The hospital is semi-autonomous, receives large amounts of grant money from the federal government, and is required to operate at no or little cost to American Samoans. The U.S. Department of Health and Human Services has provided ASG with more than \$72 million during the years 1995-2002 to assist American Samoa in addressing its health care needs. According to Congressman Faleomavaega, how much money ASG disburses to hospital is unclear.<sup>43</sup> In Fiscal Year 2003 it received over \$26 million in federal health care monies, approximately \$433 per capita, which is significantly higher than the U.S. average of \$165, and on par with Hawaii's and Alaska's \$499 per capita.<sup>44</sup>

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<sup>42</sup> Gerardo R. Partido, "Guam Gets Air Services Exemption for Cargo," *Pacific Islands Report*, Pacific Islands Development Program/East-West Center, August 7, 2006.

<sup>43</sup> U.S. House of Representatives press release – "Faleomavaega Responds To Fono Request for Information on Federal Funding." May 31, 2003. Found at [http://www.house.gov/list/press/as00\\_faleomavaega/federal\\_funding.html](http://www.house.gov/list/press/as00_faleomavaega/federal_funding.html).

<sup>44</sup> GAO-06-75, *U.S. Insular Areas: Multiple Factors Affect Federal Health Care Funding*, Report to Congressional Requesters, October 2005. See also <http://www.unitedhealthfoundation.org/shr2005/components/healthexpend.html>.

As the hospital is expected to provide services to American Samoa residents for little cost, it seems reasonable to expect that it will need to receive large subsidies from the ASG, as federal money was intended to only to provide coverage for the most needy. Most hospitals in the United States do not have a mandated price ceiling for providing services and they accept health insurance, which allows the hospitals and private practices to collect revenue.

There is a perception that the hospital spends much of its budget for medical evacuations to Hawaii for treatment not available at the hospital. The healthcare quality locally is perceived to be extremely low; business owners will pay for themselves and their family members to be flown off-island for treatment in a timely manner, increasing the cost of doing business there. They also may feel the need to purchase traveler's insurance in order to pay for these additional costs.

### **Alternatives for Consideration**

ASG could consider allowing the hospital to charge patients for their care, or increasing the subsidies from ASG. To charge patients, it will need to change the regulations that prohibit this. While this will likely be very unpopular with the American Samoan population given that they are accustomed to receiving health care for little cost, it may help improve the accountability for health care spending, as well as encourage qualified physicians to set up private practices.

## **G. Roads**

Roads have been improving throughout the island, but will need continual maintenance. Access to villages can be difficult, especially during the rainy season, and there are indications that vehicles depreciate more quickly than the norm. Given the current bank appraisal system, poor road conditions could create problems for those wanting to obtain mortgages if they do not have good access to roads. ASG should continue with its current efforts of road repair and maintenance.

### **Alternatives for Consideration**

To reduce maintenance costs, there are other models that ASG could consider. One model currently in use in Finland applies road cooperatives. The cooperatives are responsible for collecting funds from users of the roads (on a percentage basis) to maintain their roads and for requesting public funds for the government as a reward for maintaining the roads in acceptable condition.<sup>45</sup> This would seem to fit well with the communal system American Samoa operates under, and would allow the communities to contract road maintenance to members of their community or other qualified contractors.

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<sup>45</sup> Jukka Isotalo. "Community Participation in Rural Road Maintenance: Finnish Experience and Lessons for Sub-Saharan Africa," *Infrastructure Notes: Transportation, Water, and Urban Development Department of the World Bank*, November 1992, Transport No. RD-13. Found at <http://www.worldbank.org/transport/pulicat/tr-rd13.htm>.

## **VIII. Legal system**

American Samoa's legal system is based on the American Samoan Constitution, "fundamental" or "certain natural rights" of the U.S. Constitution, customary and traditional law, and common law. Although American Samoa's legal system operates efficiently and supports business investment, there are some perceived additional costs and obstacles for businesses.

### **A. Local laws**

In general, economists that focus on private sector policies believe that the lack of a sale-of-goods act, bankruptcy statutes, or intellectual property laws prevent private sectors from flourishing.

#### **Contract Law**

While a court system itself may not be detrimental to business, lack of standard contract laws can increase the costs of doing business. Lawyers generally recognize that non-standard contract creation laws require businesses to hire attorneys to write comprehensive contracts even for minor transactions. The lack of sophisticated contract laws may also increase the likelihood of non-compliance with contract terms, and businesses will either hire lawyers to pursue enforcement or forego enforcement altogether. Although contracting parties can contract to have various portions of the Uniform Commercial Code (UCC) apply to the sale of goods, adopting the UCC sale-of-goods provisions in their entirety would likely create a more reliable legal framework.

#### **Bankruptcy Statutes**

The lack of bankruptcy laws is also thought to hinder large scale development. American Samoa may want to consider adopting bankruptcy laws to protect both debtors and creditors. This would allow creditors to settle the debts through asset confiscation, and allow debtors a chance to start over in new business dealings. Under U.S. bankruptcy laws, creditors have the option of initiating bankruptcy proceedings to recover what they are owed. Although most creditors do not take advantage of this option, it provides creditors leverage to encourage settlement with debtors.

#### **Intellectual Property Statutes**

The only protection provided for intellectual property in American Samoa is for trademarks and trade names.<sup>46</sup> Federal copyright and patent laws are also not applicable in American Samoa. Adopting intellectual property laws that protect copyrights and patent could assist in encouraging creativity and development.

#### **Alternatives for Consideration**

American Samoa may want to consider several options to strengthen its business environment:

- i. Adopting a version of the Uniform Commercial Code, starting with Article 2 – Sale of Goods and Article 9 – Secured Transactions.
- ii. Adopting bankruptcy laws.
- iii. Adopting laws that protect intellectual property.

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<sup>46</sup> American Samoa Code (ASC) 27.0301. Found at [www.asbar.org](http://www.asbar.org).

## **B. Court of Appeals**

Although litigants have an automatic right of appeal, a case may take years to be reviewed by the Appellate Division of the High Court, potentially leaving claims unsatisfied for years and increasing litigation expenses. Due to the small number of appealed cases, the Appellate Division only convenes every few years, after a certain amount of cases are on the docket. In the meantime issues can become moot or irrelevant, which in nonetheless can add costs for claimants.

## **C. Federal Laws**

Businesses in American Samoa are required to follow Occupational Safety and Health Administration regulations, as well as other federal laws. However, the lack of federal jurisdiction and local federal offices lead to little enforcement of some federal laws that do apply. Those businesses that comply with federal laws may be at a competitive disadvantage, incurring expenses that non-complying companies do not.

### **Alternatives for Consideration**

Alternative practices that American Samoa may want to consider include the following:

- i. Granting the American Samoa High Court limited federal jurisdiction, or establishing a federal court in American Samoa. The High Court has been granted limited jurisdiction in the past to hear certain cases that involved federal statutory issues, including OSHA and ship mortgage actions.<sup>47</sup> Federal jurisdiction raises social and political issues, and the possible establishment of a federal court in American Samoa is a highly controversial subject on which the community is divided. Many fear that the existence of a federal court in American Samoa may lead to challenges to the Samoan way of life, including their unique matai (chief) system, Senate selection process, and their unique land laws. The basis for this fear, however, is not clear. For example, the Commonwealth of the Northern Mariana Islands has a federal court, and yet retains the restriction of land ownership to the indigenous people of those islands. Establishing a high court in American Samoa would likely increase compliance with federal law and provide additional comfort to those who might invest in the territory.
- ii. Another option would be to expressly grant the Hawaii District Court federal jurisdiction over American Samoa. This would facilitate compliance with federal laws. Again, however, some in the community have raised similar concerns that if the Hawaii District Court is granted federal jurisdiction claims would arise that challenge American Samoa laws. Whether or not the Hawaii District Court has jurisdiction over federal crimes committed in American Samoa is unclear. The U.S. District Court has asserted that the lack of federal jurisdiction in American Samoa makes Hawaii the proper venue to hear the criminal cases; however, this decision is currently being appealed to the 9th Circuit Court of Appeals.

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<sup>47</sup> U.S. House of Representatives press release – “Chairman and Ranking Member of Resources Committee Join Faleomavaega in requesting GAO study of American Samoa’s Judicial System.” July, 20, 2006. Found at [www.house.gov/list/press/as00\\_faleomavaega/chairandrakingjoineni.html](http://www.house.gov/list/press/as00_faleomavaega/chairandrakingjoineni.html).

#### **D. Searching System**

American Samoa's legal searching system reinforces the need for foreign investors to have local partnerships. The lack of a commercial legal search system likely contributes to the delays in published opinions (opinions are only published up to the year 2000) and to the difficulty of searching. Searching for relevant case law may be difficult for non-locals, because court opinions are not organized by subject. Most outside private investors find it essential to hire local attorneys who are familiar with American Samoan case law and/or to partner with local business people who understand the legal landscape, which can add to costs and uncertainty for investors considering operations in American Samoa.

#### **Alternatives for Consideration**

- i. The ASG could form a partnership with a commercial publisher to publish court opinions. Currently, opinions published by the CNMI, USVI, and Puerto Rico are available on LexisNexis, a searchable archive of legal documents, court opinions, and secondary authority; this would significantly reduce costs for non-Samoan businesses and increase the efficiency of local legal operations.
- ii. ASG could work to organize court opinions by subject to ease searching.



## IX. Land

The total land area of American Samoa is approximately 76.1 square miles, or 48,767 acres, with only one third of the land developed for use.<sup>48</sup> There are generally four forms of land ownership in American Samoa, including government, free-hold, individually/privately owned, and communal. 90% of the land is reported as communal, which is supported by land ownership registration. As of 2004, only 5,610 acres of the total land area had been registered as non-communal land, amounting to 11.5%. After conversations with community members regarding the present and active privatization of communal lands, though, it appears that the percentage of communal land may be shrinking.

### A. Background

#### Ownership

Free-hold land is similar to fee-simple land, and can be freely transferred and purchased by non-Samoan persons. Individually owned land can only be owned by individuals that are at least 50% Samoan, but this rule does not seem to be adhered to strictly. In practice, individuals who are less than 50% Samoan have inherited individually-owned property, and none have reported challenges to their ownership. Communal lands are village lands that are controlled by the matais, traditional chiefs. The Governor must give written approval for any conversion of communal land to individually owned land<sup>49</sup> or any leases of communal lands.<sup>50</sup>

#### Leases

Non-Samoan individuals and non-Samoan corporations can lease government, individually owned, and communal land. Government property can be leased up to 25 years, with an option to extend for an additional 30 years. Any lease on government property for more than 10 years requires legislative approval.<sup>51</sup> Communal land can be leased up to 55 years.

#### Structures

Businesses report that they can protect their investments on leased land and securely contract to own structures on leased property. Pursuant to American Samoa Code, the matai and land owners have the authority to contract that any structure on lands they own are separate and distinct from the lands, subject to ownership separate from the land, and also subject to removal by the owner of the structure as personal property.<sup>52</sup> When leasing land, businesses contract with the landowner to own improvements on the land after the lease ends. After the lease ends the landowner can either pay for the improvements or extend the lease. Banks report that they are more willing to loan to businesses that have contracted to own land improvements, so this policy is clearly beneficial to the business environment.

<sup>48</sup> U.S. Department of Labor Economic Report, *The Minimum Wage in American Samoa*, March 2005; Bank of Hawaii Economic Report, 1997. Found at <http://www.boh.com/econ/pacific/as/10.asp>.

<sup>49</sup> American Samoa Code (ASC) 37.0204. See Appendix 8 for full text.

<sup>50</sup> American Samoa Code (ASC) 37.0221. See Appendix 8 for full text.

<sup>51</sup> American Samoa Code (ASC) 37.2030. See Appendix 8 for full text.

<sup>52</sup> American Samoa Code (ASC) 37.1502. See Appendix 8 for full text.



## **B. Uncertain Title**

Land titles in American Samoa have the potential to be easily challenged. This instability could create a degree of uncertainty for lessors, and it appears to inhibit the availability of title guarantee insurance in American Samoa. It also has the potential to decrease availability of financing and decrease the value of land.

### **“Blood Quantum” Restriction**

According to the American Samoa Code, alienating non-freehold lands (essentially individually-owned or communal land) to any person less than 50% Samoan is prohibited, and only children that are 50% Samoan can inherit non-freehold lands from their parents.<sup>53</sup> However, the law does not appear to be enforced, and in fact many non-50% Samoans have inherited and purchased individually-owned land. Businesses taking out leases may want to be wary of leasing individually-owned land from a non-50% Samoan, because there is potential that their ownership will be questioned (e.g., other heirs who are 50% Samoan could challenge ownership). Further, in these situations banks may be wary of taking the structures on this property as collateral as the leasehold title is not secure. Despite this possibility, landowners reported they are generally not worried about challenges to their land ownership, and businesses have not reported concern about the status of their leases.

### **Governor’s Approval**

The Governor must approve of any and all alienation of communal lands. There is, however, land that has been registered as “individually owned land” that does not have a Governor’s signature. It has been reported that some chiefs are currently privatizing parcels of communal land in their names and the names of their families and later leasing or selling it to businesses. There is still uncertainty about these transactions, which may cause wariness both from investors and lenders.

### **Alternatives for Consideration**

- i. To address these issues an inventory and registration of all the lands in American Samoa could be taken to start the process of clarifying title to individually-owned land. Formally clarifying title would likely decrease banks’ and title insurance companies’ perceptions of risk, leading to increased access to title insurance, increased valuation of land, and decreased interest rates, unlocking more capital for investment in economic activity.
- ii. Additionally, ASG may want to consider modifying the 50% Samoan requirement for land inheritance and alienation. Given the prevalence of interracial marriages, it seems inevitable that the population of 50% Samoans will be further diluted, and strict compliance with the law may not allow landowners to leave non-50% Samoan children their land. The current requirement can also create distortions in the local land market that would have negative long-term economic implications.

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<sup>53</sup> American Samoa Code (ASC) 37.0204. See Appendix 8 for full text.

## **X. Financial Infrastructure**

### **A. Business Loans**

Businesses with strong business plans are more likely to receive competitive rates on business loans. However, new businesses, large projects, and risky projects may not have easy access to on-island capital. There are two commercial banks in American Samoa, as well as the American Samoan Development Bank. While both commercial banks are profitable and experience very low commercial delinquency rates, the Development Bank has much higher delinquency rates due largely to a lack of penalties for late payments. The Development Bank rarely lends to small businesses; its lending focus is on homeowner mortgages. The commercial banks' loan policies have been described as somewhat conservative, particularly in relation to new businesses and large (over \$5 million) loans. Although the bank representatives consulted did not mention it specifically, this may be a result of the 18% interest rate ceiling imposed by the American Samoa Code. Despite (or perhaps because of) the presence of financial institutions that are not FDIC regulated, businesses reported having to go outside of American Samoa for large commercial loans.

### **Alternatives for Consideration**

To encourage an increase in the availability of financing, American Samoa could increase its efforts to market the Economic Development Revolving Loan Fund administered by the Development Bank of American Samoa. The revolving loan fund is partially funded by the U.S. Department of Commerce and provides loan funding to private sector businesses engaged in job creation, export development, import substitution, and entrepreneurial development.<sup>54</sup> It is available to all local private businesses with a focus on economic priority industries, including manufacturing, fish processing, tourism, and agriculture. Although the fund's portfolio is valued at \$1.5 million, the bank has difficulties loaning the funds. This results partially from lack of applications and the inability of businesses to fulfill business plan requirements. All applicants must submit a business plan, for which assistance is available through the Small Business Development Center at the community college.

In addition, the 18% interest ceiling has been shown to discourage lending, and ASG could consider amending or abolishing the cap.

### **B. Collateral Framework**

The lack of a formally adopted UCC Article 9 Secured Transaction framework does not currently seem to hinder business in American Samoa. Lenders are confident that upon default they are able to seize property, either on their own or through judicial procedures. While current laws are sufficient for the current size of the economy, this system could be inadequate in the event of significant economic growth.

Sophisticated businesses contract to include the Uniform Commercial Code and/or Article 9 in their security agreements. The current system is adequate for the current number of security interests being created, though this might not be the case if the number of business transactions were to grow sharply. More complex priority issues may arise and thus a more comprehensive set of rules will likely be necessary.

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<sup>54</sup> Development Bank of American Samoa website. Found at <http://www.dbas.org/edrlf.htm>.

The registration process is completely manual, and in the event of a natural disaster all the information could be easily lost. Businesses must retain hard copies for themselves to protect against this occurrence. An increasing amount of search inquiries could create a backlog on the manual system and would probably increase the time it would take to get adequate results.

### **Alternatives for Consideration**

To prepare for economic growth, American Samoa could consider adopting a version of the Uniform Commercial Code to include a collateral framework for secured transactions, as well as an upgrade of the registration process to an electronic system.

### **C. Land as collateral**

Businesses and banks can (partially) overcome restrictions on land ownership through use of structures and lease terms as security. In the event of foreclosure, banks are able to “sell” the lease.

#### **Communal Land**

Communal lands can be leased for a maximum of 55 years as long as the sa’o (senior chief) of the village and the Governor agree to the lease.<sup>55</sup> Banks will give a mortgage on communal land as long as the lease and recording agreement are valid; however, they are generally hesitant to use communal land as collateral for commercial loans. It is difficult for banks to assess the value of a lease on communal property and thus the amount of the loan and interest rate will depend upon the situation and location of the structure. The location significantly impacts the value of the land because upon foreclosure the bank may find itself owning the lease for a parcel that is surrounded by family members of the creditor. Currently, banks must hire local appraisers, which increases costs and may contribute to higher interest rates and fees for businesses.

When banks do extend credit to businesses operating on communal lands, they typically take security in the structures and the lease itself. The law supports that any structures on communal lands can be owned separately from the land and is subject to removal by the owner.<sup>56</sup>

#### **Privately/Individually Owned Land**

Privately owned land can only be owned by individuals that are 50% or more Samoan. Non-Samoans and businesses can lease these lands directly from the owners. As with loans to creditors on communal lands, banks will take security in the structures and the leases itself. In the event that a 50% Samoan owner of privately owned land obtains financing, banks will usually charge higher interest rates, because upon default the land can only be resold to a limited population.

### **Alternatives for Consideration**

Current alienation restrictions on land provide a unique atmosphere for lending, and maintaining these restrictions gives rise to economic trade-offs. Under the current property structure, American Samoa may never have the most cost-efficient lending environment. However, the creation of recording agreements that allow individuals to obtain mortgages on communal land, and the legal division of structures and real estate present a system in which commercial banks

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<sup>55</sup> American Samoa Code (ASC) 37.0221. See Appendix 8 for full text.

<sup>56</sup> American Samoa Code (ASC) 37.1502. See Appendix 8 for full text.

are generally comfortable. These laws have allowed American Samoa to overcome collateral and lending challenges that face other areas with similar land laws, especially Palau and the CNMI.<sup>57</sup>

The option of abolishing the interest ceiling would allow banks to charge interest comparable to the risk involved and ultimately help small business owners secure loans on their property.

#### **D. Foreclosures**

Foreclosing on collateral is generally smooth and inexpensive. Banks reported they generally do not experience any problems with repossession, and in the rare case that involuntary repossession is necessary common law protects the self-help efforts of creditors. Judicial foreclosure is not usually necessary and in such cases the decisions by the courts are rarely disobeyed.

#### **E. Insurance**

Insurance issues are shaped by a number of forces in the American Samoan system, including land ownership, tax codes, American Samoa laws, and federal contract laws. It is reported that U.S. insurance companies will no longer write policies in American Samoa due to the number of hurricanes and past fraudulent claims. There is currently no title insurance available, presumed to be due in large part to the complicated history of land ownership and the possibility that ownership might not be determinable.

Various regulations in American Samoa have created perceptions that it is difficult to operate an insurance company in the territory, thereby limiting the availability of insurance in American Samoa. The newest version of the U.S. tax code allows for greater tax-free investment in retirement and health care expenditure accounts, which are attractive to insurance companies. Since ASG has not adopted the newest tax code, these are not as attractive in American Samoa. American Samoa laws pertaining to car insurance have legislated maximum premium payments and very low minimum coverage, and these have not changed since 1978 (ASC 29.1564). Further, the insurance commissioner no longer belongs to the national insurance commission and may not receive updates about important changes in law affecting the insurance industry.

The unavailability of insurance can hamper business development directly, as is the case with federal construction contracts. Construction companies must be bonded by a U.S. underwriter to compete for federal contracts (such as road building), but as there are no U.S. companies to underwrite the bonds, American Samoan companies are not eligible to compete for on-island federal contracts.

Additionally, the lack of a Fair Claims Settlement Act can be less attractive to businesses because it increases the likelihood of uncertainty on claims collection.

#### **Alternatives for Consideration**

American Samoa could consider taking a number of steps to help remedy the insurance problem and increase the number of insurers on island:

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<sup>57</sup> In the CNMI the high court held that allowing lessors of land to own the improvements on the land amounted to a *de facto* alienation of land. Similarly, although the Palau constitution provides for 99-year old leases, a Palau court decided that 99-year lease amounted to *de facto* ownership and set a 50 year limit on leases.

- i. Abolishing the premium payment ceiling and raising the minimum coverage required to reflect current prices.
- ii. Reinstating the membership of the insurance commissioner to the national insurance commission so she/he can relay important updates to the industry.
- iii. Adopting a version of the Fair Claims Settlement Act or clarifying the process for appealing denied claims to make the insurance environment more attractive to business.

## **XI. Conclusion**

Despite the number of difficulties small island economies face, there is significant potential for private sector growth and development in American Samoa. The authors of this report hope that the information and suggestions above will be helpful to decision makers in the challenges they face each day. The authors would like to thank all those in American Samoa, the Enterprise Research Institute, and the Office of Insular affairs for their time and assistance in this project.

## **XII. Appendixes**

### **A. Appendix 1 Regulations on Procurement**

**Excerpts from Regulations on Procurement from the American Samoa Administrative Code (Chapter 10) found at [www.asbar.org](http://www.asbar.org)**

10.0231 Methods of source selection.

(a) It is the policy of the government to conduct all purchases and procurement actions in a manner that provides maximum open and free competition.

(b) Unless otherwise authorized by law, all government contracts shall be executed by competitive sealed bidding, in accordance with Subsection 10.0231, except as provided in:

(1) Subsection 10.0231 (c) for small purchases;

(2) Subsection 10.0231 (e) for negotiation; or

(3) Subsection 10.0231 (f) for emergency procurements.

(c) Small purchases. Any procurement not exceeding \$10,000 including purchases made using impress funds shall be made using simplified small purchase procedures promulgated by the chief procurement officer. Procurement requirements may not be artificially divided so as to constitute a small purchase under this subsection and circumvent other source selection rules required under this section.

(d) Competitive sealed bidding.

(3) Public notice. Public notice of the Request for Proposals shall be made at least one week prior to issuance date of the invitation. Such notice shall be furnished to all suppliers of the goods or services being procured who have requested to be included in bidders mailing lists; shall be published in a newspaper of general circulation in American Samoa, and foreign newspaper if required; and displayed at the office of the chief procurement officer, the U.S. Post Office, and at other appropriate public places

(4) Bidding time. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the government. A bidding time of 30 calendar days shall be provided, unless the chief procurement officer determines a shorter period is reasonable and necessary.

(8) Recording of bids. The Request for Proposals number, bid opening date, names and addresses of bidders, prices bid, and evaluation as may be required by subsection 10.272 shall be entered in an abstract or record and shall be open to public inspection by interested persons. The record shall be completed as soon as practicable after the bid opening and the bid opening official shall certify the accuracy of the record.

10.0292 Standards of ethical conduct.

(a) Ethical standards for employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employees must meet the requirements of this section.

(b) Ethical standards for contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.

(c) Employee disclosure requirements.

(1) Disclosure of benefit received from contract. Any employee who has, or obtains any benefit from any government contract with a business in which the employee has a financial interest shall report such benefit to the chief procurement officer or designee.

(2) Failure to disclose benefit received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of ethical standards of this section.

(d) Employee conflict of interest.

(1) Policy. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

(a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.

(b) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement: or

(c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(2) Discovery of actual or potential conflict of interest, disqualification, and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved.

(e) Use of confidential information. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.



## B. Appendix 2 CNMI conflict of interest document

<b>OFFICE OF THE PUBLIC AUDITOR</b> <b>COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS</b>			
<b>STATEMENT OF FINANCIAL INTEREST</b> <b>FOR CALENDAR YEAR 2004</b>			
<b>Report Type:</b> <input type="checkbox"/> Initial Report/New Filer <input type="checkbox"/> Annual <input type="checkbox"/> Amendment		<b>Report By:</b> <input type="checkbox"/> Elected Official <input type="checkbox"/> Appointed Commonwealth Official or Judicial Officer <input type="checkbox"/> Public Employee Receiving Additional Compensation for Professional Services Rendered or as an Independent Contractor to the Commonwealth Government	
<b>Full Name (Last Name, First Name, Middle Name):</b> _____		<b>Date of Birth (mm/dd/yy)</b> _____	<b>Social Security No.</b> _____ <b>Telephone Number</b> Work : _____ Home : _____
<b>Home Mailing (P.O. Box) Address:</b> _____		<b>Preferred Mailing (P.O. Box) Address:</b> _____	
<b>CNMI Government Position/s Filing For:</b> <b>Position</b>		<b>Department/Agency</b>	
1. _____ 2. _____ 3. _____			
<b>PRELIMINARY INFORMATION - ANSWER EACH OF THE QUESTIONS BELOW. PUT AN "X" ON THE CHECK BOX BESIDE YOUR ANSWER.</b>			
1. Were you an officer, director, associate, partner, proprietor or employee, or did you serve in any advisory capacity in any professional, business or other organization other than the Commonwealth Government from which you derived any income in excess of \$2,500 during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule A.</b>		9. Were you a creditor, a debtor, or guarantor of debt to persons who transacted business with the CNMI Government, the debt of which exceeded \$5,000, in the preceding calendar year (Note: Regular loans from banks and publicly held corporations, except the Commonwealth Development Authority, need not be disclosed)? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule I.</b>	
2. Did you render any professional, business or other services to persons conducting business with the CNMI Government from which you received compensation in excess of \$5,000 during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule B.</b>		10. Did you have any financial interest in or hold any position with any person who transacted business with the CNMI Government during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule J.</b>	
3. Did you have a financial interest in any person who applied to the CNMI Government for any license or franchise or any permit for annexation, zoning, or rezoning of real estate during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule C.</b>		11. Did you receive additional compensation as a public employee for professional services rendered to, or as an independent contractor for, the Commonwealth Government? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule K.</b>	
4. Did you realize a capital gain of \$5,000 or more in the preceding calendar year for any capital asset other than the sale of your principal place of residence? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule D.</b>		<b>VERIFICATION</b>  Commonwealth of the Northern Mariana Islands ) ) s.s. Island of _____ ) _____, being duly sworn on oath, deposes and says:  That he/she is the individual named above; that the foregoing Statement of Financial Interest for Calendar Year 2004 was read to him/her; that he/she knows the contents thereof, including the contents of all attached Schedules; and that the contents are true of his/her own knowledge. He/She understands that providing false information herein is subject to civil and criminal penalties as provided by the Government Ethics Code Act of 1992, Public Law 8-11 (as amended by Public Law 8-28), codified as 1 CMC §8501 through §8577.  _____ <b>Signature of Reporting Individual</b> <span style="float: right;"><b>Date (Month, Day, Year)</b></span> Subscribed and Sworn to before me this _____ day of _____, 200____.  (Seal)  (Notary Public Stamp)	
5. Were you employed by any unit of government other than the CNMI Government during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule E.</b>			
6. Did you receive one or more gifts or honoraria, except gifts from relatives, having an aggregate value in excess of \$500 during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule F.</b>			
7. Did you have a financial interest in any person conducting business in the CNMI, except for publicly held corporations, during the preceding calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule G.</b>			
8. Did you in the preceding calendar year and/or do you now have any form of direct or indirect financial interest in real estate located in the CNMI, other than your principal place of residence? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If Yes, Complete and Attach Schedule H.</b>			

OPA Form EC-101 Revised 12/04

### **C. Appendix 3 Steps to receive an American Samoa Business Permit**

1. Obtain a valid lease if land is not owned by applicant.
2. Meet with Department of Commerce for initial consultation on which approvals/permits are required for business license.
3. Gather necessary documents to obtain approval including at least the following:
  - copy of birth certificate (to prove required US or American Samoan citizenship of at least 51% of partners or shareholders if business is not incorporated in American Samoa)
  - copy of American Samoa voter registration card
  - commercial or ASG lease agreement
  - copy of passport for all U.S. citizens/ nationals
  - partnership agreement, if business structure is a partnership
  - articles/certificate of incorporation, if business structure is a corporation
  - articles/permit to transact business as a foreign corporation
  - provide proof of bank accounts or financial statements, or both, for verification of capital investments upon request by the licensing authority
  - provide proof of issuance of stock certificates verifying ownership if the applicant is a corporation
  - immigration clearance for private employment for all aliens involved in business
  - provide copy of relevant trade certification
  - land use permit application
  - zoning variance application
  - site plan with parking plan
4. If new or additional construction is required, obtain a land use permit, which requires review by a number of agencies, through the Project Notification and Review System (PNRS). The following is needed to process the license:
  - certificate of registration for Freehold or Individual owned land, or Agreement to Lease for communally-owned or government-owned land
  - site plans for the construction
  - a vicinity map
  - an erosion control plan
  - a federal consistency certification and an environmental assessment
  - a meeting which includes the following agencies:
    - Coastal Management Programs, Department of Commerce
    - American Samoa Environmental Protection Agency

- American Samoa Power Authority
- Department of Public Works,
- Department of Marine and Wildlife Resources
- American Samoa Historic Preservation Office
- Department of Health
- Department of Parks and Recreation

The cost of the permit increases according to the following schedule for the anticipated cost of construction:

- Less than \$10,000      \$10
- \$10,000-\$29,999      \$25
- \$30,000-\$49,999      \$50
- \$50,000-\$249,999      \$150
- \$250,000-\$499,999      \$300
- \$500,000-\$1,000,000      \$500
- For each additional \$1,000,000 increment or portion thereof, \$500.

5. Obtain approval from the Zoning Board (ZB). Most of the land is already zoned, and if the land is not currently zoned for commercial use, a variance must be obtained. To apply for a zoning variance, the following must be provided:

- site plan
- parking plan
- floor plan
- lease agreement or proof of ownership
- 300 foot radius notice list

6. Submit the application for the business license. The applicant may then leave the application with DOC for routing to appropriate agencies, or may choose to take it to each agency in person to expedite the process. Agencies which will likely see the application are listed below:

- Building Branch, PWD, for structure and location
- Public Health for sanitary and health requirements
- Workmen's Compensation for coverage for employees
- Tax Office for income tax
- Credit and Collection Branch for accounts receivable
- Immigration Board for eligibility and residency status
- others depending on the type of business (not exhaustive list)

- cosmetology board for hair salons
- alcoholic beverage control board for any business selling alcohol

7. All non-Samoan business licenses must be reviewed by the Territorial Planning Commission (TPC) which contains nine commissioners appointed by the Governor and is overseen by an advisory board composed of the office heads of each of the departments of government.

8. After TPC approval, the Governor must review and sign the application. During this review, the Governor may send the application to the TPC for review in the case of Samoan businesses or re-review in the case of non-Samoan businesses.

9. After the license is approved, there is a \$25 payment required, pro-rated for the time of year it is issued.

#### **D. Appendix 4 Average American Samoa Earnings**

The average government wage is \$7.99/hr. The minimum wage ranges from 2.57 to 4.99. As a result the average government salary to minimum wage salary ratio ranges from 1.95 to 3.11.

<b>Industry Classification</b>	<b>2004 Avg Hrly Wages</b>	<b>2004 Minimum Wage Rate (\$/hr)</b>	<b>Avg govt salary to minimum wage</b>
Government Employees	7.99	2.77	2.88
Fish Canning and Processing	3.60	3.26	2.45
Petroleum Marketing	5.92	3.85	2.08
Shipping and Transportation: Classification A	4.41	4.09	1.95
Shipping and Transportation: Classification B	4.57	3.92	2.04
Shipping and Transportation: Classification C	5.30	3.88	2.06
Construction	4.81	3.60	2.22
Retailing, Wholesaling, and Warehousing	4.55	3.10	2.58
Bottling, Brewing, and Dairy Products	*	3.19	2.50
Printing	4.13	3.50	2.28
Publishing	8.14	3.63	2.20
Finance and Insurance	7.90	3.99	2.00
Ship Maintenance	6.54	3.34	2.39
Hotel	4.07	2.86	2.79
Tour and Travel Services	6.71	3.31	2.41
Private Hospitals and Educational Institutions	3.23	3.33	2.40
Miscellaneous Activities	5.01	2.57	3.11

**E. Appendix 5 American Samoan Educational Attainment****AMERICAN SAMOA EDUCATIONAL ATTAINMENT BY LEVEL  
2000**

<b>Population 25 years and over</b>	<b>25,380</b>	
Less than 9th grade	3,120	12.3%
9th to 12th grade, no diploma	5,476	21.6%
High school graduate (incl. equivalency)	9,983	39.3%
Some college	3,173	12.5%
Associate degree	1,755	6.9%
Bachelor's degree	1,224	4.8%
Graduate or professional degree	649	2.6%
		0.0%
High School Graduate %	16,784	66.1%
BS+ %	1,873	7.4%

Source: American Samoa Statistical Digest, 2003-2004.

**U.S. EDUCATIONAL ATTAINMENT (highest level) 2000**

<b>Population 25 years and over</b>	<b>182,211,639</b>	
Less than 9th grade	13,755,477	7.5%
9th to 12th grade, no diploma	21,960,148	12.1%
High school graduate (incl. equivalency)	52,168,981	28.6%
Some college	38,351,595	21.0%
Associate degree	11,512,833	6.3%
Bachelor's degree	28,317,792	15.5%
Graduate or professional degree	16,144,813	8.9%
		0.0%
High School Graduate %	146,496,014	80.4%
BS+ %	44,462,605	24.4%

Source: U.S. Census Bureau – QT-P20. Educational Attainment by Sex: 2000

**F. Appendix 6 Regulation of Scholarship recipients****13.0109 Return obligation.**

(a) Except as provided in subsection (b), a scholarship recipient incurs a moral obligation to return to American Samoa upon completion of the study for which the award is granted for employment in or near his or her field of study for a period of time equal to 1/2 the time enrolled under this program.

(b) A scholarship recipient who is an ASG employee shall be obligated contractually to continue his or her employment with the government upon completion of the study for which the award is granted for a period of time at least equal to the time enrolled under this program. The employment is to be in or near the recipient's field of study to the fullest practicable extent.

**G. Appendix 7 Cost of Calls to the United States**

<b>Country</b>	<b>Telephone Call to the U.S. (US\$ per minute)</b>
Australia	~0.16 <sup>A</sup>
Micronesia	0.60 – 1.20 <sup>B</sup>
Tonga	0.75 – 0.80 <sup>C</sup>
Palau	1.15 – 1.50 <sup>D</sup>
Fiji	1.46 <sup>E</sup>
Vanuatu	1.56 – 2.00 <sup>F</sup>
Solomon Islands	1.65 – 2.96 <sup>G</sup>
Samoa	1.74 <sup>H</sup>
Marshall Islands	2.00 <sup>I</sup>
Cook Islands	2.06 <sup>J</sup>
Kiribati	2.42 – 3.03 <sup>K</sup>
Tuvalu	4.00 <sup>L</sup>
Papua New Guinea	1.44 <sup>M</sup>

Notes: Rates are for October 2004 using the exchange rate on Nov. 4<sup>th</sup>, 2004 to convert to US Dollars. If a range is provided, it is for off-peak (weekends and evenings) and peak times. (Except for Tuvalu and Marshall Islands for which recent information was not readily available. See reference notes for those two countries.)

<sup>A</sup> Source: Telestra

<sup>B</sup> Source: FSM Telecommunications Corporation

<sup>C</sup> Source: Tonga Communications Corporation

<sup>D</sup> Source: Palau National Communications Corporation

<sup>E</sup> Source: FINTEL Fiji

<sup>F</sup> Source: Telecom Vanuatu Ltd.

<sup>G</sup> Source: Solomon Telekom Company Ltd.

<sup>H</sup> Source: SamoaTel (Rates include 12.5% VAGST)

<sup>I</sup> Representative, converted to US\$ using the ave. exchange rate for 2001. Source: The World Bank, 2001.

<sup>J</sup> Source: Telecom Cook Islands Ltd.

<sup>K</sup> Source: Telecom Services Kiribati Ltd.

<sup>L</sup> Source: ADB, Tuvalu 2002 Economic and Public Sector Review.

<sup>M</sup> Source: World Bank World Development Indicators Database 2005.

## **H. Appendix 8 Regulations on land**

### **37.0204 Restrictions on alienation of land.**

(a) It is prohibited for any matai of a Samoan family who is, as such, in control of the communal family lands or any part thereof, to alienate such family lands or any part thereof to any person without the written approval of the Governor of American Samoa.

(b) It is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood, and if a person has any nonnative blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life.

(c) If a person who has any nonnative blood marries another person who has any nonnative blood, the children of such marriage cannot inherit land unless they are of at least one-half native blood.

(d) This section does not prohibit the conveyance and transfer of native land for governmental purposes to the United States Government or to the government of American Samoa or to a lawful agent or trustee thereof, or the conveyance and transfer, in the discretion and upon the approval of the Governor, to an authorized, recognized religious society, of sufficient land for erection thereon of a church, or dwelling house for the pastor, or both; provided, that the reconveyance and retransfer of such land shall be to native Samoans only and in the discretion and upon the approval of the Governor.

(e) The true children of the present record titleholder of Swains Island, which became a part of American Samoa some 25 years subsequent to the original enactment of this section and is not under the matai system, and their lineal descendants born in American Samoa, shall, notwithstanding any other provision of this section, be deemed to have heritable blood with respect to said island or any part thereof, and an otherwise valid devise of said island or any part thereof to any such true child of such descendant shall not be construed to be alienation in violation of this section.

### **37.0210 Registration required—Notice of contents.**

(a) No instrument shall be effectual to pass the title to any land or any interest therein, or to render such land liable as security for the payment of any debt or obligation until such instrument has been duly registered with the Territorial Registrar.

(b) Due registration of an instrument relating to land or an interest therein shall be notice of the contents of such instrument to all persons thereafter dealing with such land or interest therein.

### **37.0221 Leasing of native land.**

(a) Native land may, with the approval of the Governor, be leased to any person for any term not exceeding 55 years for any purpose, except for the working of minerals and cutting of timber.

(b) Provisional agreements for the leasing of native land as provided in subsection (a) may be entered into with the native proprietor or proprietors. Every such provisional agreement, stating in full its terms and conditions, shall be submitted with a plan showing the situation of the land to the Governor for approval, and it shall have no validity until such approval has been signified in writing.

(c) All leases of native land approved under this section shall be conditioned on the occupation or cultivation of at least 1/10 of the area of the land leased, by the lessee within a period of 2



years from the date of approval. Upon failure of this condition or failing the continuous occupation or cultivation of the land for any period of 5 years after the date of approval, the Governor may, if he deems it necessary and expedient, cancel the lease, and the land shall revert immediately to the native lessor. Land leased pursuant to this section shall be deemed occupied by the lessee if the lessee is a party to a mortgage of such land granted in connection with the acquisition or erection of improvements situated thereon.

(b) (d) The lessee must, within 2 calendar months after any provisional agreement to lease has been approved by the Governor, deposit in the Office of the Governor a properly drawn and legally attested lease for confirmation under the hand and seal of the Governor, and such lease shall be registered in a book to be styled registrar of titles.

(e) If a lessee enters into a mortgage of land lease pursuant to this section to finance the acquisition or construction of housing or other improvements of any type situated thereon, the lease of such land shall not be subject to cancellation or revert under subsection (c) of this section during the original stated term of such mortgage or any renewal or extension thereof.

### **37.2030 Ten-year lease.**

No lease of real property owned or controlled by the government which extends for a period of 10 years or longer may be effective until it has been submitted to the Fono, and not disapproved by a concurrent resolution duly adopted within 30 days of its submission. A special session may be called for the purpose of considering such leases.

### **37.1502 Power and authority for agreement of separation— Recording agreement— Encumbrances.**

(a) The senior matai in charge of communal lands belonging to his family, or the male members of the family owning and residing on communal lands, or the owner of individually owned lands or freehold lands, shall have the power and authority, as limited by this chapter, to agree with any person that any structure now existing or hereinafter erected on such lands shall not be or become a part of the real estate, but shall remain separate and distinct therefrom, subject to ownership separate from the land, and also subject to the right of removal by the owner of the structure.

(b) Any agreement made under the authority of this section shall be reduced to writing and offered to the Territorial Registrar for recording.

(c) After recording has been completed in accordance with the terms of this chapter and subject to the restrictions provided by law, any person may obtain a lien or encumbrance on the structure which may be foreclosed or enforced as though the structure were personal property.