

TOOLKIT ON ANTI-CORRUPTION FOR WOMEN-OWNED BUSINESSES

SAMOA CHAMBER OF COMMERCE & INDUSTRY INC.

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WHAT IS THE TOOLKIT ABOUT?

This toolkit is a guide to anti-corruption methods in Samoa, particularly laws and policies that address corruption. The toolkit has been refined and prepared by the Samoa Chamber of Commerce & Industry, with the support of the United Nations Development Programme; intended for women in micro, small and medium businesses in Samoa. This toolkit supports advocacy and raises awareness on various forms of corruption that are deemed punishable by law if proven.

The goal is to ensure that business women are well prepared and informed on ways to protect businesses from corrupt practices. Approaches to address bribery and integrity in conducting businesses are also highlighted.

WHY IS THIS TOOLKIT NECESSARY?

This toolkit does not only highlight aspects of laws and policies addressing corruption that business women should understand, it also stresses the importance of human rights to question the enforcement of Government laws, policies and programmes involving corruption. Every woman involved in entrepreneurial activities has the right to seek answers from any office or Government Ministry to respond or report on matters related to corruption as per provisions under the United Nations Convention against Corruption (UNCAC).

WHO BENEFITS FROM THIS TOOLKIT?

This toolkit is primarily for women-owned businesses in Samoa. It is a step toward supporting women entrepreneurs, to thrive in an environment free of corruption, and contribute to the well-being of their families and the country's economic growth. This aligns with the Government of Samoa's goal to improve revenue and income sources for women in Samoa.

Although women-owned businesses are the primary target, the information contained in this toolkit is also useful for all and any business owner as many principles and offences could be experienced in any sector or setting.

CORRUPTION IN THE PACIFIC

A research conducted in Fiji in 2018 reflected the vulnerability of women-owned businesses to corrupt practices. The majority of women who participated in the research raised reasons behind their involvement under the following themes:

1. Lack of understanding of laws and policies on forms of corruption;
2. Lack of awareness of Government agencies where corrupt practices could be directly addressed and reported to;
3. Lack of guidelines and/or code of conduct for small and medium enterprises;

The main outcome related to the above reasons point to the lack of awareness and advocacy to highlight key aspects of applicable legislations addressing various forms of corruption, for the information of women-owned businesses. Further, consistent follow-up and enforcement of national laws and policies addressing anti-corruption especially in village communities is important to this cause.

In Samoa, there has not been any research about the level of corruption, however, it is highly likely that Samoan women-owned businesses experience similar issues and challenges. These further complement reports documented by the UN attesting to issues and challenges faced by women-owned businesses in the Pacific, hence, adequate knowledge and understanding on forms of corruption and methods to alleviate such is a key goal for this toolkit.

A report by the Asian Development Bank (ADB) in 2014 documented that, women entrepreneurs face difficulties and may often feel reluctant to lodge complaints and report corruption to Government agencies due to uncertainty and lack of confidence in reporting mechanisms. The report recommended providing women-friendly consumer complaint mechanisms via online anonymous complaint processes, and ensure that both women and men have equal access.

In this context, linkages between corruption and gender equality in general, and in the business sector in particular contribute to the subject of gender dimension in democratic governance. Raising awareness and adequate knowledge of laws and policies thus concurrently advances progress toward the agenda on alleviating corruption and growth of women's rights.

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

It has been more than ten(10) years since the UNCAC was adopted in 2003 by the UN General Assembly and enforced in 2005.

As of the 12th December 2016, a total of 140 countries have ratified and become States parties to the Convention, including 14 Pacific Island Countries. The UNCAC provisions entail three(3) key priorities being:

- To raise and enforce methods toward anti-corruption;
- To improve close collaboration among states parties on work against corruption;
- To increase good governance and transparency in every country, and workers' ethics and integrity.

Samoa ratified and became a state party to the UNCAC in April 2018. In general, Samoa's ratification of the UNCAC provided a robust foundation on which efforts toward promoting and enforcing national laws and policies have been realized.

This has also presented opportunities to realise synergies among relevant offices and Government Ministries with administrative responsibilities on anti-corruption. Examples of these agencies include the Office of the Attorney General, Office of the Ombudsman, Public Service Commission, Office of the Auditor General, Central Bank of Samoa, Ministry of Police, Office of the Legislative Assembly, Office of the Electoral Commission, Ministry of Finance, and Ministry of Courts and Justice.

KNOWING THE LAW

Below are the core policies and legislations providing parameters and forms of corruption for the information of women entrepreneurs and whom this toolkit is useful.

I. SAMOA CRIMES ACT 2013

The Samoa Crimes Act 2013 replaced the Crimes Act 1961. This is the core legislation providing judicial parameters on corrupt practices in the following aspects:

- *Bribery of judicial officer etc.*
- *Corruption and bribery of a Minister of the Government of Samoa*
- *Corruption and bribery of Member of Parliament*
- *Corruption and bribery of law enforcement officer*
- *Corruption and bribery of official*

The same Act provides for the legal definition of *bribery* and *corruption* under section 132.

PART XI: CRIMES AGAINST THE ADMINISTRATION OF JUSTICE

132. Interpretation –

In this Part, unless the context otherwise requires:

“bribe” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“corruptly” means a person acts corruptly in relation to any bribe where he or she knows or is reckless to the fact that the bribe is intended to influence the person bribed to act or omit to act in breach of any oath of office, or otherwise than in accordance with his or her legal obligations or duties in relation to any public office;

“judicial officer” means a Judge of any court, or a District Court Judge, Coroner, Faamasino Fesoasoani, or any other person holding any judicial office, or any person who is a member of any tribunal authorized by law to take evidence on oath;

“law enforcement officer” means any constable, or any person employed in the detection or prosecution or punishment of offenders;

“official” means any person in the service of the Government of Samoa (whether that service is honorary or not, and whether it is within or outside Samoa), or any member or employee of any local authority or public body.

133. Judicial corruption –

- (1) A judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the judicial officer in his or her judicial capacity.

- (2) A judicial officer, and every Registrar or Assistant Registrar of any court, is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity, not being an act or omission to which subsection (1) applies.

134. Bribery of *judicial officer, etc* –

- (1) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by a judicial officer in his or her judicial capacity.
- (2) a person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any other person with intent to influence any judicial officer or any Registrar or Assistant Registrar of any court in respect of any act or omission by him or her in his official capacity, not being an act, or omission to which subsection (1) applies.

135. Corruption and bribery of a *Minister of the Government of Samoa* –

- (1) A Minister, Associate Minister or Chief Executive Officer of the Government of Samoa is liable to imprisonment for a term not exceeding 14 years *who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.*
- (2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister, Associate Minister or Chief Executive Officer of the Government of Samoa in respect of any act or omission by him or her in his or her capacity as a Minister, Associate Minister or Chief Executive Officer.
- (3) No person shall be prosecuted for an offence against this section without the consent of the Attorney General of Samoa. Notice of the intention to apply for the consent is to be given to the person whom it is intended to prosecute, and the person shall have an opportunity of being heard against the application.

136. Corruption and bribery of *member of Parliament* –

- (1) A Member of Parliament is liable to imprisonment for a term not exceeding 7 years *who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her capacity as a Member of Parliament.*
- (2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Member of Parliament in respect of any act or omission by him or her in his or her capacity as a Member of Parliament.
- (3) No person shall be prosecuted for an offence against this section without the consent of the Attorney General of Samoa. Notice of the intention to apply for the consent is to be given to the person whom it is intended to prosecute, and the person shall have an opportunity of being heard against the application.

137. Corruption and bribery of law enforcement officer –

- (1) A law enforcement officer is liable to imprisonment for a term not exceeding 7 years *who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his official capacity.*
- (2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by the law enforcement officer in his or her official capacity.

138. Corruption and bribery of official –

- (1) An official is liable to imprisonment for a term not exceeding 7 years who, whether within Samoa or another country, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the official in his or her official capacity.
- (2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by the official in his or her official capacity.

II. SAMOA PUBLIC SERVICE ACT 2004

The Public Service Act 2004 is administered and monitored by the Public Service Commission. This Act contains provisions on the process and procedures for lodging complaints and/or reports of corruption to Government Ministries.

It is the responsibility of Government officials to assist the public with daily enquiries. Good governance continues to be a public service value that is to be upheld in conducting work of Government officials. The Government continues to encourage public servants to seek effective methods to reduce and alleviate corrupt practices that could hinder Government agencies' duties and responsibilities to the public.

It is the right of every Samoan citizen to provide feedback on public servants if required services are unsatisfactory or whether services offered are legally ambiguous and may need proof of legality. Listed below are provisions under Part IV of the Act on the code of conduct to be upheld by Government workers through public service. This includes the desire for honesty and integrity in conducting public service obligations, and commitment to abide by the national laws of Samoa. In cases where public service is deemed unlawful or inadequate, reporting mechanisms are in place; a report of any form of corruption may be directly submitted to the Chief Executive Officer of the involved Government Ministry.

PART IV: VALUES, PRINCIPLES AND CODE OF CONDUCT

17. Values of the Public Service –

- (1) Subject to the Constitution and the rule of law, the Commission, every CEO and every employee must uphold the following values in their work:

- (a) Honesty – acting honestly, being truthful and abiding by the laws of Samoa;
- (b) Impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits;
- (c) Service – serving the people well, through faithful service to the Government;
- (d) Respect – treating the people, the Government and colleagues with courtesy and respect;
- (e) Transparency – taking actions and making decisions in an open way;
- (f) Accountability – being able to explain the reason for actions taken, and taking responsibility for those actions; and
- (g) Efficiency and effectiveness – achieving good results for Samoa in an economical way.

19. Code of Conduct – *Every employee and every CEO shall:*

- (a) Be honest and impartial;
- (b) Work carefully and diligently;
- (c) Treat everyone with respect and courtesy and without coercion or harassment;
- (d) Comply with all laws that apply to them;
- (e) Comply with all lawful and reasonable directions given to them by persons who have authority to give those directions;
- (f) Disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment;
- (g) Use Government resources properly;
- (h) Use official information only for official purposes;
- (i) Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body;
- (j) Uphold the values of the public service set out in section 17;
- (k) Comply with any other conduct requirements set out in the regulations; and
- (l) Uphold the good reputation of the public service.

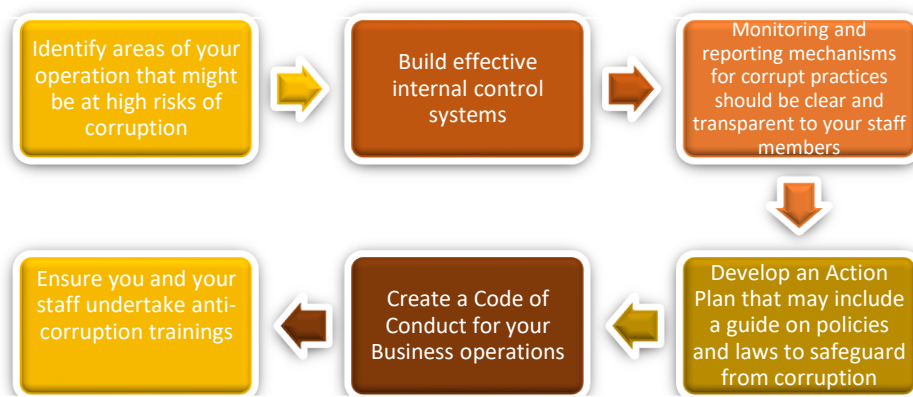
III. PUBLIC SERVICE REGULATIONS 2008

Section 7, paragraph 35 provides for the prohibition of any monetary gift or form of reward by any public servant, while on public service duty, unless otherwise permitted by the Public Service Commission.

Public servants expecting a reward for services provided to the public either before or after the fact has been one of the major issues. In some cases, monetary reward is expected in order for fast and convenient services. You have a right to report such cases as this is prohibited by national law.

HOW CAN YOU PROTECT YOUR BUSINESS FROM CORRUPTION?

There are several ways to keep your business safe from corrupt practices. Listed below are guidelines that could help you prevent corrupt practices from affecting your business:



STEP 1 - IDENTIFY AREAS OF YOUR OPERATION THAT MIGHT BE AT HIGH RISKS OF CORRUPTION

The business owner must have sufficient knowledge of all aspects of their business operations. This include areas of operations that are most likely vulnerable to corruption; either through procedures and methods applied, or via conduct and actions required for operations by staff members. After identifying all areas where the business owner may see corruption risks, rating the level of vulnerability of each risk to corruption is important. This is a basic risk assessment that must be done to ensure that adequate solutions are prepared for risks that have a high chance of occurrence including the cost should it occur.

Listed below are common occurrences in business operations where special attention should be given during a corruption risk assessment:

- **Business funding or sponsors to other Organisations**

It is a must for the business owner to keep track of how funding and/or monetary sponsors given to other organisations are used. Keeping track of outgoing business funding include verifying the type of organization requesting funding for support and the purpose of fundraising. Mismanagement of funding support offered by businesses has become a common occurrence.

- **Monetary gifting to Government officials for convenient services**

The business owner must be well aware of the mandatory services of Government Ministries, especially the right service fees to be paid as prescribed by law. If a Government official requests a fee that exceeds the actual amount prescribed for services, this should be reported as soon as possible to a senior officer, or an official in a Government Ministry that is responsible for monitoring corrupt practices.

STEP 2 – BUILD EFFECTIVE INTERNAL CONTROL SYSTEMS

You must consolidate proper measures to avoid corrupt activities affecting your business operations. After conducting a risk assessment, identifying and rating areas of operations that are most likely to be prone to corruption, an action plan of internal prevention measures for staff members' information, should be mapped out to understand and follow.

How can this be done? The below questions can be used for brainstorming and gauging information to assist you:

- Do we have a good understanding of the market we are operating in?
- What interactions with the outside world do our business activities involve?
- Who do we interact with?
- Do we conduct a lot of business with Government agencies?
- Am I aware of all the local laws on corruption?
- What other firms do we usually do business with and are they exposed or affected by any form of corruption?
- Do we conduct proper background checks on our business partners and employees?
- Do we have proper and simple contracts with clear payment terms for business partners and employees?

Your answers to all of the above questions should contain information that you can use to prepare an action plan and code of conduct to prevent corrupt practices affecting your operations. It is also important that you are well aware of the laws and policies in place to guide your action planning.

STEP 3 & 4 – MAKING SURE YOUR STAFF UNDERSTAND REPORTING MECHANISMS, AND PREPARING YOUR ACTION PLAN

Based on information and answers obtained from step 2, you must prepare and inform your staff members on ways to monitor and report corrupt activities that may occur in your business operations, especially interactions between your business and Government Ministries. These reporting mechanisms could be identified and laid out in an Action Plan guide that includes laws and policies, and steps that your staff can take if they have suspicions about corrupt activities.

As mentioned in step 1, it is important that you work together with your staff to prevent corruption affecting your business. This is made easier if you and your staff are informed on the laws and policies on corruption when conducting business and interactions with Government.

Actions to ensure staff awareness can include putting up information posters of a guide to anti-corruption in your business, at common areas of the business premises. This information can also be useful for your business customers.

STEP 5 – CREATING YOUR BUSINESS CODE OF CONDUCT

The Code of Conduct for workers, is a very important guide for any business, so that staff members understand values and principles to adhere to in the workplace and through service provided to the public.

You must work with your staff on preparing a Code of Conduct to get their input, understand their views, and increase motivation to comply.

Your code can include values and principles listed below:

- *The values and principles of our business;*
- *Acceptable and unacceptable behaviours within the confines of the law;*
- *How to treat the resources and properties of the business;*
- *How do we treat the gifts that we receive during our daily business activities?*
- *How do we deal with conflicts of interest?*
- *How do we respond to complicated situations that might expose us to corrupt practices?*
- *What should be the processes for reporting corrupt practices within the business?*
- *What should be the incentive for abiding by the Code of Conduct?*

STEP 6 – ENSURE YOU AND YOUR STAFF UNDERTAKE ANTI-CORRUPTION TRAINING

After creating and confirming your business Code of Conduct, a staff training or workshop should be conducted to ensure everyone is aware and understands the values in the code. It is important that staff members not only understand corruption and ways to avoid it, but also to reaffirm that workers' rights are secured, so that your business operations remain steady.

SUSTAINABLE DEVELOPMENT GOALS



The 2030 Agenda for Sustainable Development (Agenda 2030) is a plan of action for universal peace, and sustainable development for all nations. The Agenda 2030 includes 17 Sustainable Development Goals (SDGs) and 169 targets that all UN member states have pledged to achieve. Provided below are the 17 SDGs for ease of reference:

SDG 1: End poverty in all its forms everywhere

SDG 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

SDG 3: Ensure healthy lives and promote well-being for all at all ages

SDG 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

SDG 5: Achieve gender equality and empower all women and girls

SDG 6: Ensure availability and sustainable management of water and sanitation for all

SDG 7: Ensure access to affordable, reliable, sustainable and modern energy for all

SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

SDG 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

- SDG 10: Reduce inequality within and among countries***
- SDG 11: Make cities and human settlements inclusive, safe, resilient and sustainable***
- SDG 12: Ensure sustainable consumption and production patterns***
- SDG 13: Take urgent action to combat climate change and its impacts***
- SDG 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development***
- SDG 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss***
- SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels***
- SDG 17: Strengthen the means of implementation and revitalize the global partnership for sustainable development***

CONCLUSION

The Samoa Chamber of Commerce & Industry (SCCI) hopes that the core principles of combating corruption are well covered in this toolkit.

The aim is to ensure that we contribute to the development of Samoa, and that businesses and industries are protected from corruption. Through this toolkit, the SCCI would like to remind that we all have the right to enquire about the conduct of service you receive as well as decisions made for your business.

Exercising your rights as a business owner and citizen of Samoa in that regard, will contribute to achieving Samoa's responsibilities under UNCAC.