Preface and Acknowledgements

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

The Report has been produced for:

- The Government of Tonga, primarily the Ministry of Finance and the Ministry of Commerce, Industry and Labor, to make recommendations for reform actions for Government to further enable women in Tonga to participate effectively in the country's economic development.

- The International Finance Corporation: to inform its Tonga Regulatory Simplification and Investment Policy and Promotion Program and ensure that gender issues are incorporated in the Program’s design and implementation.

- AusAID: to assist development programs to mainstream gender and to enable women to benefit equitably from improvements in the business climate.

Research for the Report was primarily carried out during a mission to Tonga from February 9–13, 2009. The mission team, led by Sonali Hedditch (IFC), included Mark Blackden (IFC consultant), Fiona MacCulloch (The Law & Development Partnership), Vijaya Nagarajan (AusAID consultant), Tamara Haig (AusAID consultant) and supported by locally based experts Meleseini Faletau Lomu (economist) and Dana Stephenson (lawyer). Jozefina Cutura (World Bank consultant) and Christine Van Hooft (AusAID) undertook useful preparatory research from February 25–29, 2008. The mission team received valuable guidance from the IFC’s Task Leader for its Tonga Regulatory Simplification and Investment Policy and Promotion Program, Jonathon Kirkby, and IFC consultants based in Tonga, Christopher Hartwell and Vika Fusimalohi.

The authors wish to thank all the individuals who provided us with helpful information and were available for interviews during the in-country research. They include the Tongan government’s various ministries and departments including the Ministry of Commerce Industry and Labour and Ministry of Finance, donors, the Peace Corp volunteers, and the Tongan Development Bank. We also thank the Women Affairs Division of the Ministry of Education, Women Affairs & Culture for its valuable insights into the overall position of women in Tongan society.

Finally, we wish to thank the wonderful women entrepreneurs who took the time to share their stories and challenges during the Women in Business Forum in Nuku‘alofa, Tonga, and in one-on-one interviews.
**Contents**

Preface and Acknowledgements .............................................. i
Foreword .......................................................................... iv
Abbreviations ...................................................................... v
Executive summary ............................................................. vi

Chapter 1. Economic, social and cultural framework ................. 1
Chapter 2. Legal and policy framework ................................... 9
Chapter 3. Public private dialogue ......................................... 17
Chapter 4. Starting and licensing a business ........................... 27
Chapter 5. Access to justice, the courts and mediation .......... 43
Chapter 6. Access to land enforcement of rights over registered land 53

Annexes
Annex A: Tonga Planning Matrix ........................................... 59
Annex B: People Met ............................................................... 62
Annex C: Notes from Business Women’s Forum ..................... 63
Annex D: Bibliography ........................................................... 71
Annex E: Tools .................................................................. 73

**Tools**

Tool 1: Gender Working Group: Terms of Reference ............ 73
Tool 2: Business Women’s Forum: Terms of Reference .......... 76
Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan 78
Tool 4: List of Laws that hinder women’s full economic participation 83
Tool 5: Business Women’s Perception Questionnaire .............. 84
Tool 6: Using Business Registry Data to Establish Percentage of Registered Companies Headed by Women 86
Tool 7: Business Owners’ Survey ............................................ 88
Tool 8: Business Registry Sex Equality Checklist .................... 90
Tool 9: How to Undertake Outreach on Formalization for Business Women 91
Tool 10: Women’s Help Desk: Draft Terms of Reference .......... 91
Tool 11: Women’s Consultation / Training Checklist ............... 92
Tool 12: Companies Act Checklist .......................................... 93
<table>
<thead>
<tr>
<th>Tool</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Basic Partnership Agreement</td>
<td>94</td>
</tr>
<tr>
<td>14</td>
<td>Mainstreaming Gender in Regulatory Compliance Cost Tools</td>
<td>96</td>
</tr>
<tr>
<td>15</td>
<td>Analysis of Business Names Registration Process</td>
<td>100</td>
</tr>
<tr>
<td>16</td>
<td>Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses</td>
<td>103</td>
</tr>
<tr>
<td>17</td>
<td>Gender Perspectives on CIMC Informal Policy Concept Paper</td>
<td>104</td>
</tr>
<tr>
<td>18</td>
<td>Outline of Basic Contract</td>
<td>105</td>
</tr>
<tr>
<td>19</td>
<td>ADR Sex Equality Checklist</td>
<td>106</td>
</tr>
<tr>
<td>20</td>
<td>Methodology for Sex Disaggregation of ADR Users</td>
<td>107</td>
</tr>
<tr>
<td>21</td>
<td>ADR / Commercial Justice Users Perception Questionnaire</td>
<td>107</td>
</tr>
</tbody>
</table>
Foreword

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

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

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

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

Pierre Guislain
Director
Investment Climate Advisory Services
World Bank Group
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative dispute resolution</td>
</tr>
<tr>
<td>BWF</td>
<td>Business Women’s Forum</td>
</tr>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>AusAID</td>
<td>Australian Agency for International Development</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CCL</td>
<td>Community Company Limited</td>
</tr>
<tr>
<td>CSP</td>
<td>Community Support Program</td>
</tr>
<tr>
<td>FCA</td>
<td>Federal Court of Australia</td>
</tr>
<tr>
<td>GWG</td>
<td>Gender Working Group</td>
</tr>
<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>MDG</td>
<td>Millennium Development Goal</td>
</tr>
<tr>
<td>M &amp; E</td>
<td>Monitoring and Evaluation</td>
</tr>
<tr>
<td>MLCI</td>
<td>Ministry of Labor, Commerce and Industry</td>
</tr>
<tr>
<td>NEDC</td>
<td>National Economic and Development Council</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Governmental Organization</td>
</tr>
<tr>
<td>PPD</td>
<td>Public private dialogue</td>
</tr>
<tr>
<td>PNG</td>
<td>Papua New Guinea</td>
</tr>
<tr>
<td>RRTF</td>
<td>Regulatory Reform Task Force</td>
</tr>
<tr>
<td>SME</td>
<td>Small and medium sized enterprise</td>
</tr>
<tr>
<td>TCCI</td>
<td>Tonga Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of reference</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
</tbody>
</table>
Executive summary

Introduction

Report purpose
This Report is one of six Gender and Investment Climate Reform Assessments undertaken in six Pacific nations including Tonga. The Report analyzes gender-based investment climate barriers which constrain private sector development and identifies solutions to address them. Four key investment climate areas are considered:

• Public private dialogue
• Starting and licensing a business
• Access to justice, the courts, and mediation, and
• Access to and enforcement of rights over registered land.

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

IFC, in partnership with Pacific Islands Governments, aims to enable women’s greater participation in private sector development in the Pacific by improving the business-enabling environment for women through its existing Investment Climate programs. Therefore, the Report’s recommended solutions are presented in the form of specific targets with associated activities (see Planning Matrix at Annex A) which will be incorporated into, and implemented through, Tonga’s Regulatory Simplification and Investment Policy and Promotion Program. The Program was established in March 2008 by the Ministry of Finance (MoF) and supported by IFC.

This Report does not aim to cover all gender issues in Tonga or all gender issues in private sector development or investment climate reform. All targets and activities recommended in this Report only relate to reducing gender constraints through the investment climate reforms that IFC is undertaking as part of the Regulatory Simplification and Investment Policy and Promotion Program. Any further recommendations made that are not linked to targets or activities are for the Government and its development partners to consider and advance as appropriate. By IFC taking action to reduce or remove gender constraints in key aspects of the investment climate it is anticipated that this will help to improve Tonga’s attractiveness for local and international investment and business growth. It is hoped that these reforms could be part of broader reform in Tonga to create equal opportunities for women and men.

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

Country context
The Kingdom of Tonga is an archipelago in the South Pacific Ocean comprising 169 islands, 36 of them inhabited, stretching over a distance of about 800 kilometers (500 miles) in a north-south line. Tonga has a population of 100,000 people, 22 percent of which were living below the national poverty line in 2002, 25 percent in urban areas in 2007, and 70 percent on the main island of Tongatapu.

Tonga provides free and mandatory education for all children up to the age of 14 with only nominal fees for secondary education, and foreign-funded scholarships for post-secondary education. Tongans enjoy a relatively high level of education with a 98 percent literacy rate, and higher education up to and including medical and graduate degrees pursued mostly overseas. Tongans also have universal access to a socialized medical system. Women and men have equal access to education and health care, and are fairly equal in employment.

Tonga has the distinction of being the only island nation in the region to have avoided formal colonization. Tonga is also the only constitutional monarchy among the island nations of the Pacific Ocean. Corruption and abuses are ongoing problems.

1 The others are Papua New Guinea, Samoa, Solomon Islands, Timor-Leste and Vanuatu. A World Bank-IFC-AusAID assessment was conducted in Vanuatu in May 2008, prior to the availability of the Gender and Investment Climate Reform Assessment Practitioner’s Guide. The Solution Design for the GICRAs includes Vanuatu, to apply the assessment to IFC’s Vanuatu project.
in Tonga, causing public dissatisfaction with the Government and hindering economic growth. Nobles and others with connections to the political elite own large tracts of land and dominate big and medium-size businesses. Government and members of the Royal Family are also heavily involved in private sector activity. Much of small business, particularly retail establishments on Tongatapu, is now dominated by recent Chinese immigrants who arrived under a cash-for-passports scheme that ended in 1998.

The pro-democracy movement in Tonga promotes reforms, including better representation in the Parliament for the majority commoners and better accountability in matters of state. Severe tensions arose in the political structure and led to riots in November 2006. The economy was battered by the political rioting with years before recovery gains momentum. Over the last five years it has averaged just over one percent GDP growth per annum. However, following the riots in November 2006, there was negative growth in 2007 (-3.5 percent) with growth recovering to 1.2 percent in 2008. The private sector in Tonga faces the typical challenges of operating in a small island state including:

- Remoteness and isolation resulting in relatively high transport costs, coupled with a small domestic market
- Susceptibility to natural disasters and environmental change
- Limited diversification because of small domestic markets
- Limited capacity in the public and private sector, and
- Openness, resulting in heavy exposure to events in global markets and trade regimes, over which it has little influence.

Tonga has taken significant steps to strengthen its investment climate, resulting in a ranking of 52nd out of 183 economies in the World Bank’s Doing Business 2010 Report.

Tonga’s Doing Business 2010 rankings

<table>
<thead>
<tr>
<th>Doing Business indicators</th>
<th>Tonga’s ranking out of 183 economies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting a business</td>
<td>32</td>
</tr>
<tr>
<td>Dealing with construction permits</td>
<td>35</td>
</tr>
<tr>
<td>Employing workers</td>
<td>11</td>
</tr>
<tr>
<td>Registering property</td>
<td>121</td>
</tr>
<tr>
<td>Getting credit</td>
<td>113</td>
</tr>
<tr>
<td>Protecting investors</td>
<td>109</td>
</tr>
<tr>
<td>Paying taxes</td>
<td>30</td>
</tr>
<tr>
<td>Trading across borders</td>
<td>51</td>
</tr>
<tr>
<td>Enforcing contracts</td>
<td>55</td>
</tr>
<tr>
<td>Closing a business</td>
<td>103</td>
</tr>
</tbody>
</table>

As the table above suggests, although Tonga scores well in some key areas some important investment climate challenges remain for Tonga. The Doing Business methodology assumes that businesses have all the information required to complete the procedures as efficiently as possible. But in fact, navigating bureaucratic and administrative approval processes in Tonga can be a highly unpredictable, time-consuming experience due to the lack of clarity of the processes and lack of available information unless an entrepreneur is well known and well connected. While in some areas regulations are light, in many others they are heavy-handed and difficult to understand. There are crucial areas relating to the legal foundation for commercial transactions in Tonga that are missing; currently there are no statutes governing insolvency, receiverships, or the sale of goods. Contract law is very outdated, and there is no consumer credit law, or law regulating electronic transactions.

---

2 In October 2006, a Report recommending to Government the formation of an Anti Corruption Commission was presented by Mr. John Wood, a former Australian Ombudsman. The Report recommended that legislation should be in place first before such a Commission is established, because of the need for the Commission to have the authority to deal with corruption, unlike the existing Public Relations Commission, which has no such authority. The Minister of Justice, Hon. ‘Alisi Taumoepeau, commented she was optimistic that an Anti Corruption Commission would be established by about July 2007.


4 See ADB, Transforming Tonga: A Private Sector Assessment, 2008 at p.6: ‘Doing business in Tonga means contending with complex regulations and entering contractual arrangements within a commercial legal framework that lacks many standard laws.’

5 Until recently, whenever Tongan law did not provide guidance, it was possible to use English statutes and case law. However, a 2003 amendment to the Civil Law Act (1966) removed the possibility of using the English statutes, so gaps in the commercial legal framework are more serious than they used to be.
Methodology

An assessment team undertook a mission to Tonga for five days from February 9–13, 2009. The Methodology was guided by the IFC’s Gender and Investment Climate Reform Practitioners’ Guide. The mission commenced with a half-day Women’s Business Forum, attended by 36 participants including business women ranging from sizeable enterprises to market stall holders, where gender-based constraints in the investment climate were discussed thematically. Notes from the Forum and a full list of participants are at Annex C. During the remainder of the mission, interviews, using semi-structured questionnaires, were held with a wide variety of stakeholders including: private sector representative organizations; private sector operators; lawyers; civil society; Government Departments and bodies; and donors. A full list of people consulted is at Annex B. A wide-ranging literature review was undertaken (see Bibliography).

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

Key findings and recommendations

Social, cultural, and legal constraints

Women in Tonga fare better than their counterparts in other Pacific nations and participate actively in the formal economy. Women are highly regarded in Tongan society and have equal access to education. However, women professionals and entrepreneurs face several constraints that inhibit their full potential for economic growth. Women are held back by traditional gender roles; cultural obligations that add familial responsibilities to women; limited access to land; and poor representation in Government. Women are further constrained by a legal framework that does not adequately protect their interests, particularly in relation to property rights and employment.

Public Private Dialogue

Tonga has a newly formed National Women’s Association which has registered over 400 members. The association’s main objective is to protect women’s rights. The association is also involved in promoting women in business, and undertakes some activities to promote small business to bolster family income. Additionally, a Women in Law Association has recently commenced which has formed to engage in advocacy to encourage Tonga’s ratification of the Convention Against the Elimination of Discrimination Against Women (CEDAW). The Tonga Chamber of Commerce and Industry, the leading organization representing the private sector in Tonga, is engaged in dialogue with Government on a range of topics. It undertakes surveys among its members on issues and obstacles its members face and communicates these concerns to Government. It maintains a fortnightly newsletter that communicates policy changes and things of note to the private sector while soliciting information that can be transmitted to the Government. Other, smaller-scale private sector organizations work to engage the Government in dialogue, including the Tongan Growers’ Association, the Tongan-New Zealand Business Association, and the Fishing Industry Association of Tonga. While women do participate in these organizations, there is no formal mechanism for them to express their business issues and concerns. The Tonga National Women’s Association campaigns on women’s rights but is not engaged in PPD structures around private sector development. There is therefore no formal national private or public sector organization in Tonga that specifically represents the interests of the vast majority of business women in the country.

The Office of Women in the Ministry of Education, Women’s Affairs and Culture is the key Government agency charged with promoting the interests of women. Its activities include providing cultural development workshops for village women in rural and outer islands, especially the preparation of mats and tapa for traditional customary activities and celebrations. It has also provided training on certain traditional crafts which are not ‘indigenous’ to some of the outer islands, for example the production of tapa cloth in the Niuas where traditionally people are weavers. Although the Office of Women is charged with the administration of the Government’s Action Plan for its Gender and Development Policy, the Office has no resources to implement it; has no specific targets for women’s economic empowerment; and its current focus is on women in decision-making (in preparation for the 2010 elections).6

Although the Office of Women is charged with the administration of the Government’s Action Plan for its Gender and Development Policy, the Office has no resources to implement it; has no specific targets for women’s economic empowerment; and its current focus is on women in decision-making (in preparation for the 2010 elections). Further, the Ministry of Commerce, Industry and Labour does not have any specific gender policies or programs on women’s economic empowerment.

6 Interview with IFC team during mission.
Due to the limited representation in the private and public sectors, women's voice is therefore not currently properly represented in public private dialogue (PPD) processes, and the significant legal and regulatory impediments that relate specifically to women's economic empowerment are not satisfactorily addressed. In addition, training and business networking activities for business women in Tonga are limited. IFC recommends that if the existing PPD structures in Tonga (including the Regulatory Reform Task Force and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints, then a new Gender Working Group be formed to address these issues. Targets and activities for incorporation in the PPD component of the Regulatory Simplification and Investment Policy and Promotion Program to improve the policy environment and support network for business women are:

**Target 1.1 Improved policy dialogue on investment climate reform for women's economic empowerment**
Measured by: the proportion of members representing business women's interests on Regulatory Reform Task Force and Working Groups; and the number of papers featuring women's economic empowerment considered by Cabinet.

**Activities**
- Ensure appropriate representation of women's interests in existing PPD structures (Regulatory Reform Task Force and Working Groups). If necessary revise ToRs.
- Form new Gender Working Group (high level representation of public and private sector with 4–8 members) if the existing PPD structures (Regulatory Reform Task Force and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

**Target 1.2 Improved legal framework for women's businesses**
Measured by: the number of reforms to improve the investment climate for women enacted and implemented.

**Activities**
- PPD structures (Regulatory Reform Task Force and Working Groups and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.
- Introduce law reforms to Parliament, including those recommended in Table 2.1.
- Enact and implement new laws.

**Target 1.3 Improved training and networking for business women**
Measured by: business women's perception of training and networking.

**Activities**
- Continue regular Tongan Business Women's Forums (with open invitation to business women attendance ranging from the informal sector through to big business), as commenced by IFC in February 2009, in partnership with local organizations and existing business women's associations.
- Develop and undertake networking and monthly training on investment climate for the Business Women's Forum.

**Starting and licensing a business**
For both male and female entrepreneurs, formalizing a business brings with it advantages including the potential for growth, access to credit, and investment. Some women may prefer to run micro-enterprises and remain informal. But while informal enterprises may provide a short-term solution to a household's livelihood needs, creating an economy with a higher proportion of formal enterprises and jobs is important to long-term welfare creation, stability, and poverty reduction. As the case studies in this Report show, there are women in Tonga running enterprises that are, or have the potential to be, growth-orientated. Enabling such women to formalize and thus grow their businesses and increase their income can reap benefits at the household level: there is international evidence that resources in the hands of women do more for family welfare than if they are controlled by men.

Men and women may face different barriers to formalization. It is sensible for investment climate reforms designed to facilitate business formalization to address the barriers faced by women, as well as those faced by men. Women in Tonga have the highest level of formal participation in business out of all six countries analyzed. Of the women who do register their businesses, it is usually as sole traders. Females currently constitute 50 percent of sole traders. Women that are currently operating as sole traders may not understand the processes of registering as a limited liability company, nor the
benefits, so choose to operate as sole traders. Some women manage the family business on a day to day business, but the business is registered in their husband’s name. These women also may not understand the benefits of setting up as a limited liability company or partnership, so their role in the business is legally recognized. Rural and market women tend to not formalize their businesses at all, even as sole traders. There is scope to simplify company registration processes, and simplified processes have the potential to be of particular benefit to all women. The complex and totally unsatisfactory business licensing regime needs urgent reform. Targets and activities for incorporation in the business startup and licensing component of the Regulatory Simplification and Investment Policy and Promotion Program to improve the policy environment and support network for business women are:

**Target 2.1 Increase by five percentage points the proportion of (a) registered companies and (b) partnerships that are female-headed.**
Measured by: companies registry and business owners survey data.

**Activities**
- Ensure operations of the Companies Registry are gender sensitive
- Undertake outreach activities in respect of business women’s formalization, focused on the benefits of the Limited Liability Company form (e.g. training on the processes for the new Company Act, and Company Registry; develop Women’s Help Desk at new Companies Registry), and how to set up a partnership (see Target 2.2)
- Ensure all information on registering a business is equally accessible to men and women, and produce a gender-sensitive business entry handbook

**Target 2.2 Improved legal framework for women’s business entry**
Measured by: number of reforms undertaken.

**Activities**
- Review Companies legislation to ensure best practice legal framework for facilitation of women businesses registering as companies
- Develop and promulgate basic partnership agreement in partnership with civil society and business organizations

**Target 2.3 Reduced regulatory compliance cost on female-headed businesses**
Measured by: sex disaggregated time and cost compliance assessments.

**Activities**
- Conduct women’s focus group discussion on trade and other license process maps developed by IFC to assess a) which licenses women most commonly obtain, b) if women identify steps different/additional to official process map
- Simplify procedures that have an adverse impact on female-headed businesses (revealed in focus group discussion and time and cost compliance analysis)

**Target 2.4 Increased number of female-headed businesses have appropriate sectoral licenses**
Measured by: sex disaggregated data on sectoral business licences.

**Activities**
- Identify sectors that are relevant to female-headed businesses
- Undertake training for women on sectoral licensing
- Introduce mechanism to sex disaggregate sectoral licensing data
- Sex disaggregate data in private enterprise surveys, for example time and cost compliance analysis

**Access to justice, the courts and mediation**
The justice system in Tonga is male dominated. Tonga’s formal business women rarely bring claims to the Supreme or Magistrates Courts. When they do, they prefer using court-referred mediation, especially if the mediator is female. IFC has provided assistance to Tonga to enhance court-referred mediation, as a simple, time and cost efficient method to resolve
commercial disputes. Market and rural women who operate in the informal sphere currently rely on verbal contracts and do not bring small debt claims to the Magistrates Court due to the intimidating level of procedure, time and cost associated.

**Target 3.1 30 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation service**

Measured by: Mediation user statistics and perception surveys.

**Activities**
- Ensure gender is mainstreamed in mediation reform process as set out in Table 5.2 in Chapter 5 including briefing IFC funded Mediation Coordinator
- Undertake outreach to inform business women of availability and appropriateness of court-referred mediation

**Target 3.2 Maintain at least 40 percent female accredited mediators**

Measured by: accreditation records.

**Activities**
- Train and accredit female mediators.

**Target 3.3 Increase by five percent the proportion of Magistrate Court plaintiffs that are women**

Measured by: Court records.

**Activities**
- Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law
- In medium to long term set up small claims function at the Magistrates Court, if there is appropriate demand
- Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court

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

Women in Tonga have extremely limited access to land. They are excluded from traditional systems of land allotment. Leasehold land, which women are legally entitled to own, is difficult and expensive to access. Land is not currently being addressed under the Government’s Regulatory Simplification and Investment Policy and Promotion Program supported by IFC, although there could be future scope to look at improving processes at the property registry.

The ongoing Royal Land Commission may be an opportunity for limited reform. Recommendations include:

- Recruit women to more senior positions in land administration.
- Ensure that women’s voice is heard in ongoing consultations on land reform.
- Improve the Land Registry.
Chapter 1. Economic, social, and cultural framework

Summary
This chapter reviews the roles of men and women in Tonga’s society and economy. Women are highly regarded and contribute to Tonga’s economy in many ways, but a closer look reveals that women entrepreneurs face several constraints that inhibit their full potential for economic growth.

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

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

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

Women are highly regarded in Tonga society
Tonga’s culture is founded on the concept of rank. This cornerstone affects every aspect of Tongan life and sets the tone for all day-to-day interactions and responsibilities. Tonga has a three-tiered hereditary class system made up of: i) royalty, ii) nobles, and iii) commoners. There is a special Tongan language spoken only to the King, another spoken only to the royals and nobles, and ‘regular’ Tongan which is spoken by commoners. Royals can only marry other royals or nobles.

Tonga remains a traditional patrilineal society and the male is head of the household. He is also the decision maker and the breadwinner of the family. Men are ranked higher than women, but within a family, sisters are ranked higher than brothers. Women are highly regarded and the highest ranking woman, the oldest sister in the family, holds a prestigious position. She is the person responsible for running the household and ensuring that children are well behaved and act in a culturally appropriate manner. The oldest sister also has input into community decisions. Financial stability and well mannered and educated children reflect well on the status of the family and community as a whole.

The nation’s greatest Monarch was a woman – Queen Salote – who was, and still is, revered in Tonga by men and women alike as a forward thinking yet culturally sensitive role model. Although women have a traditional role in the home, there is now a greater acceptance in Tonga to women holding positions of authority in the professional sphere. There are more women running for Parliament each election and women have been elected to Parliament. A local businesswoman is a...
member of the Lands Commission currently looking into recommendations to reform the provisions of the Land Act.

The traditional role of women has been based on their status as sisters or aunts, known as ‘fahu.’ The fahu has specific rights and certain privileges over her brothers’ children and maternal uncles’ children (see Box 1.1 below). This role is important in social functions such as weddings, birthdays, and funerals.

**Box 1.1. The importance of fahu for women**

The fahu concept is still an integral part of society but due to increasing financial pressures this concept is being streamlined by some families and some traditional obligations are not being met. For example, traditionally the brother presented his harvest or gifts to his aunt or sister during Christmas or when required by them. In recent times this gift is being presented on a smaller scale or not at all. The aunt and the sister also no longer expect the brother to give such gifts because of the increasing costs of food and gifts. At the same time, the sister and aunt traditionally presented the brother with tapa and Tongan oil. However, this is no longer practiced and such family obligations are now only met when the needs arise.

*Women have equal access to education*

Tonga has an education system that ensures equal access to education at all levels. In general, female school enrolment rates are higher than male enrolment rates. Access to student scholarships is based on merit and in 2007 more women (67 percent) received scholarships than men (33 percent). About 31 percent of the female labor force has received education up to at least the higher levels of secondary schools; the corresponding percentage for males is only 26 percent. Table 1.1 shows the educational level of the labor force in Tonga.

**Table 1.1. Level of education of labor force**

<table>
<thead>
<tr>
<th>Level of schooling</th>
<th>Both sexes</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>No schooling</td>
<td>100</td>
<td>0.3</td>
<td>100</td>
</tr>
<tr>
<td>Primary: less than 6 years</td>
<td>800</td>
<td>2.4</td>
<td>500</td>
</tr>
<tr>
<td>Primary: 6 years or more</td>
<td>3,100</td>
<td>8.6</td>
<td>1,600</td>
</tr>
<tr>
<td>Secondary: less than 6 years</td>
<td>22,100</td>
<td>60.7</td>
<td>13,400</td>
</tr>
<tr>
<td>Secondary: 6 years or more</td>
<td>6,200</td>
<td>17.0</td>
<td>3,300</td>
</tr>
<tr>
<td>Tertiary: less than 3 years</td>
<td>1,100</td>
<td>2.8</td>
<td>600</td>
</tr>
<tr>
<td>Tertiary: 3 years or more</td>
<td>3,000</td>
<td>8.2</td>
<td>1,600</td>
</tr>
<tr>
<td>Total</td>
<td>36,400</td>
<td>100.0</td>
<td>21,100</td>
</tr>
</tbody>
</table>

Source: Tonga Labor Force Survey 2003

*Men and women contribute to Tonga’s economy in different ways*

Agriculture, forestry, and fisheries sector represents the largest part of GDP (24 percent), followed by the industrial and commercial/hospitality sectors (both 16 percent). Remittances from Tongans living overseas (mostly in New Zealand, Australia, and the United States) also play an important role in the economy. In the Tonga Strategic Development Plan it was estimated that remittances were 40 percent of GDP in 2004, and in 2006/07 remittances were estimated at 46 percent of GDP.

The per capita income is one of the higher incomes in the Pacific region at US$2,474 in 2008. The most important income source for households is wages/salaries (43 percent of households), followed by sale of products such as fish, crops, and handicrafts (29 percent), and remittances (20 percent). A small percentage of households (7 percent) relied on income from their own businesses. Women are less likely to work for pay or operate a business than men, but are more likely to rely on subsistence employment (see Table 1.2).

*Ministry of Finance, Budget Statement for the Year Ending June 30, 2009.*
Table 1.2. Employment by type of work

<table>
<thead>
<tr>
<th>Type of work</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work for pay or operating business</td>
<td>15,508</td>
<td>9,818</td>
<td>5,690</td>
</tr>
<tr>
<td></td>
<td>44%</td>
<td>49%</td>
<td>37%</td>
</tr>
<tr>
<td>Farming/fishing/handicrafts mainly for sale</td>
<td>7,930</td>
<td>4,455</td>
<td>3,475</td>
</tr>
<tr>
<td></td>
<td>23%</td>
<td>22%</td>
<td>23%</td>
</tr>
<tr>
<td>Subsistence farming/fishing/mainly for consumption</td>
<td>11,497</td>
<td>5,499</td>
<td>5,998</td>
</tr>
<tr>
<td></td>
<td>32%</td>
<td>28%</td>
<td>39%</td>
</tr>
<tr>
<td>Unspecified</td>
<td>355</td>
<td>184</td>
<td>171</td>
</tr>
<tr>
<td></td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Total</td>
<td>35,290</td>
<td>19,772</td>
<td>15,163</td>
</tr>
</tbody>
</table>

Source: 2006 Census of Population and Housing.

As shown in Table 1.3, the labor force participation rate is higher for men at 64 percent than for women at 49 percent. As expected, the labor force participation rates for both males and females are higher in the rural areas than in the urban area.

Table 1.3. Labor force participation in Tonga

<table>
<thead>
<tr>
<th></th>
<th>Women %</th>
<th>Men %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>49.0</td>
<td>64.2</td>
</tr>
<tr>
<td>Urban sector</td>
<td>43.6</td>
<td>60.3</td>
</tr>
<tr>
<td>Rural sector</td>
<td>50.8</td>
<td>65.4</td>
</tr>
</tbody>
</table>

Source: 2006 Census of Population and Housing

Men and women play different roles in Tonga’s economic life (see Table 1.4). About 30 percent of the total employed population is skilled agricultural and fishery workers, and this industry is heavily dominated by men. In contrast, 30 percent of the total employed population are craft and related trade workers, which are dominated by women. In 2006 there were more women professionals, technicians, clerks, and service and sales workers than men. However, there are still more men than women in managerial roles.

Table 1.4. Employment by gender and occupation (%)

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislations, senior officers, and managers</td>
<td>1.8</td>
<td>2.7</td>
<td>1.0</td>
</tr>
<tr>
<td>Professionals</td>
<td>8.4</td>
<td>8.1</td>
<td>8.8</td>
</tr>
<tr>
<td>Technicians and associated professionals</td>
<td>5.5</td>
<td>5.6</td>
<td>5.8</td>
</tr>
<tr>
<td>Clerks</td>
<td>6.3</td>
<td>2.3</td>
<td>8.9</td>
</tr>
<tr>
<td>Service workers and shop and market sales workers</td>
<td>8.4</td>
<td>7.6</td>
<td>9.7</td>
</tr>
<tr>
<td>Skilled agricultural and fishery workers</td>
<td>29.0</td>
<td>49.4</td>
<td>2.6</td>
</tr>
<tr>
<td>Craft and related trades workers</td>
<td>32.8</td>
<td>12.4</td>
<td>59.9</td>
</tr>
<tr>
<td>Plant and machine operators and assemblers</td>
<td>2.4</td>
<td>4.3</td>
<td>0.3</td>
</tr>
<tr>
<td>Elementary occupations</td>
<td>3.7</td>
<td>4.8</td>
<td>2.7</td>
</tr>
<tr>
<td>Other (including unknown)</td>
<td>1.7</td>
<td>2.8</td>
<td>0.3</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>35,290</td>
<td>19,956</td>
<td>15,334</td>
</tr>
</tbody>
</table>

Source: 2006 Census of Population and Housing

---

8 The labor force is defined to comprise all economically active persons either currently employed or unemployed. The labor force participation rate refers to the proportion of people in the labor force between the ages of 15 to 64 years.
Box 1.2. Case Study: Luseana Aho, CEO of Tonga Post Ltd

Luseana Aho is the CEO of Tonga Post Ltd, the 2008 corporatized postal service. Luseana was one of six candidates who applied for the position of CEO. She concedes In Tonga, the Post Master used to be a man… and some people think it should still be a man. As the role is still relatively new and because people may not know her, Luseana is sometimes thought to be only acting in the CEO role when she attends senior meetings.

Luseana’s key challenge is turning Tonga Post from an annual operating cost of $1 million Tongan pa’anga ($0.5 million) with revenues/turnover of only $400,000–500,000 pa’anga ($200,000–250,000) into a cost-neutral or breakeven position by Year 2.

To do this she speaks of the need for a joint effort with her 23 staff. They are new – recruited on July 1, 2008 and still learning their roles. Luseana says We cannot move forward until the staff are competent in the key services. We can only develop the business at the same pace as staff competency.

She points out that the retrenched Government employed staff at Tonga Post are unable to apply for the new Tonga Post Ltd positions for two years, therefore most staff are new.

Of her staff, 20 work in the main office in Nuku’alofa, and three work in Vava’u (as sub-treasury or acting as agents). Of all these staff there are only four men; Luseana says that the overwhelming majority of applicants were women. She needs more staff and in February 2009 sought a Senior Operations Manager to oversee mail room operations. She is hoping to gain someone who needs little training and is familiar with express post and how to meet UPU standards. She is struggling to find a suitably qualified man or woman for the job.

**Women make a significant contribution to Tonga’s economy**

As Table 1.5 shows, the labor force participation rate has increased over the years from 55 percent in 1990 to 64 percent in 2003. The increase was due entirely to the substantially higher participation of women in the labor force (from 36 percent to 53 percent), though women’s labor force participation is still lower than men’s. This reflects the desire of women to work in the labor market. However, the overall trend has declined in 2006.

<table>
<thead>
<tr>
<th></th>
<th>1990 (%)</th>
<th>1993/4 (%)</th>
<th>2003 (%)</th>
<th>2006 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>55.4</td>
<td>59.5</td>
<td>63.6</td>
<td>56.6</td>
</tr>
<tr>
<td>Men</td>
<td>75.6</td>
<td>74.2</td>
<td>74.6</td>
<td>64.2</td>
</tr>
<tr>
<td>Women</td>
<td>36.1</td>
<td>45.4</td>
<td>52.7</td>
<td>49.0</td>
</tr>
</tbody>
</table>

There is no sex-disaggregated data on business licences available from the Ministry of Labor, Commerce and Industries. However, according to the Chamber of Commerce, it currently has 79 members with 80 businesses of which 35 percent are owned by women and 65 percent are owned by men. Women’s businesses are involved mostly in retail/wholesale, tourism/hospitality, banking, finance and insurance, and accountancy and consultancy services. Men’s businesses are primarily involved in communication, manufacturing, power distribution/generation, construction and building services, and others such as refrigeration/engineering, architecture, accountancy and consultancy services, agriculture/agricultural exports, banking, finance, insurance, and media.

---

Box 1.3. Case Study: Robina Nakao, CEO of Western Union

Robina Nakao introduced Western Union to Tonga in 1994 at the same time that remittances started to become important as a source of income for Tongans.

Robina needed $16,000 pa’anga ($8,500) to start Western Union. She remembers walking around with her father from bank to bank to gain the loan. No one had ever heard of Western Union and selling the concept and viability of the enterprise was a real challenge. They ended up getting the seed loan from ANZ and her father and his business partner registered the business on December 8, 1994. Robina was the CEO.

She says, *We had to be willing to give it a chance… we had humble beginnings.* She began with one assistant and her first desk consisted of two standards with a plank of wood over the top.

She remembers when the first customer came through – *My assistant and I were so scared, we didn’t know what to do – we just rushed to the back room. They had had a crash course from Western Union beforehand. But no one ever dreamed the business would ever grow like it did.*

Now, Robina Nakao is on the Board of Fund Management Ltd and is one of 3 shareholders. She is also the CEO for all five businesses under Fund Management and has 81 staff across Tonga. This includes 50–55 staff in Western Union in six locations across Tongatapu, Vava’u, ‘Eua, and Ha’pai.

The business relies on the pull technique, not push. This means people in Tonga tell their relatives overseas to send money to them. *You have to understand Tongan people, she says. They have an amazing bond… it is a choice of theirs to send the money. Sometimes, she says, people overseas send their whole pay packets home.*

*With Western Union, you’re talking grassroots,* Robina says. She recounts that she would explain to Western Union Headquarters in Europe that in Tonga it is a small island culture, where everyone knows everyone and there is a more personal relationship with customers. This seems to have been the start of her campaign to make Western Union adapt more to the Tongan way. She would explain that they had to adapt.

For example, she explained that Tongans wouldn’t fill in forms like customers in all other countries. Some people are illiterate, or the process would be too formidable and they wouldn’t even walk in. After championing this change, Tonga became the first country in the world where Western Union staff filled out the forms for the customers. *We were the only country in the world where we did it for them… that way their dignity is maintained.*

Last year, she challenged the new Western Union ruling regarding need for client identification. In Tonga, Robina says, people haven’t travelled. *We have had a relationship with customers for years and we can’t just ask them for ID…* Robina had said. She believed the business would halt and clients would be upset. Again, Robina campaigned hard and after 1.5 years Tonga’s Western Union is the only place in the world to have created their own ID card for customers. *Sometimes, she says, it is the only form of ID these people now have.*

In 2008, Robina Nakao won an international Western Union Award for marketing. *I have a passion for people and I enjoy putting it into the business,* she says.

Women are still held back by traditional gender roles…

Traditionally women were expected to be mothers and homemakers. Men do the heavy tasks including farming and fishing. A significant proportion of Tongan women now participate in paid employment, income generating, and community activities and development programs, over and above their household chores. In rural areas women’s groups are active in community projects to improve health, the home environment, and welfare of the family. These activities are additional to the women’s traditional roles.

Consequently two key issues have emerged. First, although women have now entered the work force and are spending more hours in paid employment and at home chores, they still accept that this ‘double workday’ is their responsibility. As shown in Table 1.6, men and women do share the non-economic activities, though women’s non-economic workload is nearly double that of men.
Table 1.6. Average hours spent in various ‘non-economic’ activities per week (averaged across everyone)\textsuperscript{10}

<table>
<thead>
<tr>
<th>Activity</th>
<th>Both sexes</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any/all of these activities</td>
<td>21.8</td>
<td>16.3</td>
<td>27.2</td>
</tr>
<tr>
<td>Cooking/serving food for household</td>
<td>5.1</td>
<td>3.0</td>
<td>7.1</td>
</tr>
<tr>
<td>Cleaning utensils/house</td>
<td>2.9</td>
<td>1.7</td>
<td>4.0</td>
</tr>
<tr>
<td>Minor household repairs</td>
<td>4.0</td>
<td>3.5</td>
<td>4.4</td>
</tr>
<tr>
<td>Shopping for household</td>
<td>1.7</td>
<td>1.5</td>
<td>2.0</td>
</tr>
<tr>
<td>Caring for old/sick/infirm</td>
<td>0.7</td>
<td>0.4</td>
<td>1.1</td>
</tr>
<tr>
<td>Child minding</td>
<td>2.8</td>
<td>1.6</td>
<td>4.1</td>
</tr>
<tr>
<td>Church activities</td>
<td>4.0</td>
<td>4.0</td>
<td>4.0</td>
</tr>
<tr>
<td>Other voluntary/community activities</td>
<td>0.6</td>
<td>0.6</td>
<td>0.6</td>
</tr>
</tbody>
</table>

Women are more involved in cooking and serving food, cleaning utensils and the house, child minding, and caring for the old and sick. However they are both likely to share the work in minor household repairs, shopping for the household, attending to church activities, and carrying out other voluntary or community activities.

Secondly, some women tend to neglect their traditional roles and concentrate on their paid jobs or community projects. This is becoming an increasing problem for some families. Conversely, some women tend not to perform in their paid employment due to the increasing workload at home. This is a challenge for working mothers, especially for young mothers. There is no legislation currently in force which mandates maternity leave or the terms upon which leave is granted. Such leave is a matter of negotiation between the employer and employee within the terms of their contract of employment.

\textit{...and by cultural obligations}

Church and family responsibilities supersede everything else and always take priority over business and work issues for both men and women. This has profound implications for business owners in that funds which may otherwise have been used for business purposes, time that might otherwise be devoted to business activities, and produce that might otherwise have been saved, utilized or sold for a profit, is constantly diverted to fulfilling church and family commitments.\textsuperscript{11} For women in particular, the time associated with cultural obligations such as funerals and family visits is significant. The role of fahu (see Box 1.1) brings particular responsibilities that can divert time and money away from business and work.

The family system of sharing all savings and the cooperative nature of the culture also makes transitioning to capitalism difficult and, as a result, often keeps businesses operating in the informal sector (Box 1.4). In addition, interviewees commented that remittances demotivate work – it is hard to motivate entrepreneurship when a person knows he/she doesn’t need to work. We are not producing surpluses within the existing models.

Box 1.4. Group Dynamics

The group is more important than the individual and all actions must be for the benefit of the group even at the expense of the individual. The tradition is that everything, including money, is to be shared – nothing is to be hoarded or saved for a rainy day. Exchange and bata is very common, as opposed to financial transactions. Money was not part of the traditional Tongan culture so Tongans struggle to come to terms with managing money within the western frame of reference. For example, although numerous credit facilities operate in Tonga, these are reportedly mostly used for consumption (for example school fees) not production. Interviewees reported that medium-term financial planning is not common – once money is earned, it is spent. Interviewees report that using money as a motivator doesn’t work – money is not considered to be that important – people just stop working when they have what they want.


\textsuperscript{11} During the annual church giving in the outer villages, each family’s name is announced from the pulpit with the amount of money that they have donated. To avoid being shamed, Tongans take out loans that they will never be able to repay, to make appropriate donations.
However, the increasing importance of the cash economy (for example, increasing costs of goods and obligations) are affecting the role and functions of families. This in turn affects the role of women in the family, the community, and society. In this context, the idea of women earning income for the family through her business or formal employment is increasingly acceptable in Tongan society.

**Women have extremely limited access to land**

All land in Tonga is owned by the Crown (the Government), the Royal Family, and a group of Noble (or Hereditary) families. Some land has been allotted to Tongan men, and women do not receive such allotments. Land is passed through the eldest son in the family and no female can own land. Widows have use rights to land during their lifetime but they cannot bequeath land to their heirs. However, females can lease land and use it as collateral for loans. A Land Commission is currently deliberating changes to the Land Act in future. Land issues are addressed in more detail in Chapter 6.

**Box 1.5. Interview with Tongan business woman during February ’09 IFC mission**

*Cultural issues are keeping us behind. Land is the big issue and strongly influences women’s participation in the economy. There are many more men in formal business than women. Women tend to play a support role to their husbands. It is especially difficult for unmarried women to deal with the bureaucracy that accompanies business because men are expected to be, and tend to be, the public face of business.*

Collateral requirements sometimes present a particular problem for women borrowers. The Tonga Development Bank requires both spouses to co-sign loan applications, and provides loans to women for their development projects under its Women’s Development Loan program. Lending is primarily directed toward handicrafts. Since 2000, the women’s program has provided loans averaging $1.3 million pa’anga per year ($0.6 million) which represents a small, 2.7 percent share of the bank’s portfolio.

**Women remain in the lower paying jobs…**

In terms of remuneration, the 2003 Labor Force Survey identified that the average weekly earnings for males were $127 pa’anga ($65), higher than the $112 pa’anga ($56) earned by females. This difference in average pay can be explained by the difference in pay rates for different industries. Males predominantly worked in agriculture and fishing, receiving about $5 pa’anga ($2.50) per hour, and those working in service industries were predominantly females, receiving $2 pa’anga ($1) per hour.

**…are poorly represented in Government…**

Women remain poorly represented in public office and decision-making. In the government service decision making is still dominated by males. Today there is only one female Cabinet Minister (the Minister of Information and Communication). She is also the only female in the Legislative Assembly. In the Supreme and Magistrates Courts, the Chief Justice and Judges are all males. The CEOs of all government departments are male, but more than 50 percent of their deputies are females. The only females occupying top positions in government are the Head of Public Service Commission and the Chief Registrar of the Supreme Court. Government is represented in the outer islands by Governors and Representatives, all of whom are male.

**…and have limited voice in political decision-making**

The Constitution provides for Constitutional Government under His Majesty King George Tupou V, his heirs, and successors. Tongan citizens cannot change their Government democratically. Politics and the economy are dominated by the King, 33 hereditary nobles, and a few prominent commoners – through their majority in Parliament and their substantial land holdings.

The composition of Parliament disadvantages women. The Legislative Assembly comprises 32 seats. Of these, 14 are reserved for Cabinet Ministers appointed by the King, nine for Nobles selected by the country’s 33 Nobles and nine elected...
by popular vote. Only men can be nobles, which means that women do not participate in electing the nine nobles in this Assembly (see Box 1.6 below). There are currently two women in the Legislative Assembly. Women do not participate in electing 33 percent of their representatives in Parliament. In a survey 74 percent of respondents stated that there should be more women in Tonga’s Parliament.

**Box 1.6. Appointment to Tonga’s Legislative Assembly**

| Nine Nobles seats – allocated only to men |
| Two Governors seats – allocated only to men |
| Twelve seats reserved for Ministers of the Crown, appointed by the King |
| One seat for Prime Minister, appointed by the King |
| Nine seats for elected representatives |

Women cannot be voted in through the nine noble seats or two governor seats as these aristocratic titles can only be inherited by men. Therefore there are no female nobles in Tonga.

The King appoints his Cabinet without election and they serve at his pleasure. The King also appoints the prime minister who can be removed at his sole discretion. He also presides over the Privy Council which makes major policy decisions. Any laws passed in the Legislative Assembly must be ratified by Privy Council and assented to by the King before they become law.

Reform proposals being considered currently by the Constitutional and Electoral Commission include changing the composition of Cabinet to consist of 12–14 members, with at least two thirds of Cabinet being from the elected members of the Legislative Assembly and with one third of Cabinet being independent appointments by the King.

**Box 1.7. Case Study: Papiloa Foliaki, Tonga’s first female Parliamentarian**

To start her first business, Papiloa Foliaki recalls saving 88 Tongan pa’anga per fortnight from raising pigs to sell and from growing and selling taro from her garden. She used the savings to renovate a bus and buy further buses. At its peak she had 38 buses and taxis. This bus business began on September 20, 1971 – she remembers because she was still in hospital – it was the day after the birth of her fourth child. Later when, she registered it, she did so under the name Five golden diamonds (for her five children).

After getting married, having children, and starting her first business, Papiloa became the first woman to be elected to Parliament in Tonga in 1978. She sat for one term of three years. She ran again for Government a further three times but was unsuccessful.

After her time in Parliament, Papiloa has returned to her roots as a business woman, now running the Friendly Islander Hotel which accommodates up to 80 people.

*Now the recession is coming*, Papiloa says, her fall-back plan is to go back to her transportation and bus business roots. She would open a garage – drawing upon one of her full time staff’s motor mechanic skills. She is attracted by the lower petrol prices in Tonga which makes it easier to re-enter that segment – they dropped from $3 pa’anga ($1.50) per litre in mid 2008 to $0.60 pa’anga ($0.30) per litre in February 2009.

*Whether it’s a business or family business, it’s a business for everybody … Learning how to save and yet how to meet and support family needs is important*, Papiloa says.

13 Section 60 of the Constitution.

Chapter 2. Legal and policy framework

Summary

This chapter reviews Tonga’s international commitments and Constitutional guarantees in relation to gender equality. It considers the conflict between gender equality, and customary law, and how the Courts have addressed this issue. The chapter goes on to review statute laws in Tonga that discriminate against women particularly in relation to property rights, vital for women’s economic empowerment. Finally, the chapter considers Tonga’s policies and the institutions responsible for taking forward Government’s commitments to gender equality.

The broader legal and policy context is vital for ‘gendered’ investment climate reform

Legal and regulatory reforms designed to improve the investment climate will have limited impact on women if more fundamental legal constraints limit their full participation in economic life. A key issue is whether women enjoy property rights, including rights to land, on the same basis as their male counterparts. An understanding of the broader legal framework for gender equality is therefore key in designing effective investment climate reforms. Provisions that discriminate against women analysed in this chapter will be addressed in the context of the public private dialogue on investment climate reform discussed in Chapter 3.

Tonga has entered into international human rights obligations, but has not signed the most important covenant on gender equality

Tonga has committed itself to women through a number of regional and international commitments including the Beijing Platform for Action and the Commonwealth Plan of Action for Gender Equality (see Box 2.1 below).

Box 2.1. Tonga’s key international commitments

- International Covenant on Economic Social and Cultural Rights
- Beijing Platform for Action
- The Millennium Development Goals
- The Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005–2010

By committing itself to the Millennium Development Goals, Tonga has agreed to MDG3 – promoting gender equality and empowering women. However, Tonga is not a signatory to the key international convention on gender equality – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Indeed Cabinet has recently decided not to ratify the Treaty. CEDAW requires Governments to pursue by all appropriate means and without delay a policy of eliminating discrimination against women15 and to take all appropriate measures to eliminate discrimination against women in the political and public life of the country.16 CEDAW is the second most ratified Convention, after the Convention on the Rights of the Child, in the Pacific.

16 Article 7 Convention on the Elimination of All Forms of Discrimination Against Women.
There is considerable support within Tonga for the country to sign CEDAW\(^1\) (see Box 2.2 below). For example the recently formed Women in Law Association intends to advocate for CEDAW ratification. But, on the other hand, it is also argued that it is inappropriate or unnecessary. It is suggested that women’s rights in Tonga are embedded in the cultural fabric of the nation and are promoted by Government making CEDAW unnecessary or irrelevant. A Tongan Government official reported, *The mindset of men is that women are born privileged in this society, so what more do women want? This may be the explanation for Tonga not signing up to CEDAW.*\(^1\) It has also been argued that all focus on reform in Tonga should currently be on introducing full democracy, which will also enhance women’s rights.\(^1\)

**Box 2.2. Support for ratifying CEDAW in Tonga**

---

**Tonga National Centre for Women and Children – Press Statement**

--- September 17, 2009

Cabinet has decided not to ratify CEDAW. CEDAW is often referred to as a ‘Bill of Rights’ for women. It is the only international instrument that comprehensively addresses women’s rights within political, civil, cultural, economic, and social life.

**Ratifying (or accepting) CEDAW is the first step in making legislation that accounts for women’s human rights. It will make Tonga accountable on an international level and show the world that we take women’s rights seriously.**

However it is not the same as passing legislation.

And we here at the Tonga National Centre for Women and Children are gravely concerned about our Government’s lack of commitment to creating a legal system that supports women’s rights.

The National Centre for Women and Children of Tonga is committed to the elimination of violence against women and children – and a big part of that is ratifying CEDAW, as it is the beginning of making legislation that can empower women.

The Centre’s mission statement is based on the principles of Human Rights with special focus on women’s human’s rights, the Convention of the Rights of the Child (CRC) and CEDAW.

**Please find the TNCWC’s responses to the reasons cabinet have provided below:**

**MYTH #1:** ratification of CEDAW would give too much power to the international community with the provisions of the Convention superseding the Constitution and national laws of Tonga.

**FACT:** Treaties adopted in Tonga are not ‘self-executing.’ This means that legislation to implement any treaty provision would come before the Cabinet in the same way any other bill does. As with many international agreements, countries can express ‘reservations, understandings and declarations’ in cases where there are discrepancies between the international convention or treaty and domestic law. Where differences do exist, the convention calls on states to take appropriate measures to progressively promote the principle of nondiscrimination. Such language upholds Tongan sovereignty and grants no enforcement authority to the United Nations.

There has been a legislative comparative analysis undertaken in Tonga regarding CEDAW however this has been ignored. There are already parts of the Tonga law which generally comply with the requirements of CEDAW and the Treaty is compatible with the principles of the Tongan Constitution. Have a look at the report here.

**MYTH #2:** ratification of CEDAW supports abortion through its promotion of access to ‘family planning’.

**FACT:** CEDAW does not address the matter of abortion. The U.S. State Department has officially stated that CEDAW is ‘abortion neutral’. Many countries in which abortion is illegal – such as Ireland, Burkina Faso, and Rwanda – have ratified the Convention.

**MYTH #3:** ratification of CEDAW might be used to sanction same-sex marriages.

---


\(^{18}\) Interview with Tongan Government official during February 2009 IFC mission.

\(^{19}\) Honourable Minister for Education, Women’s Affairs and Culture, Rev Dr Tevita Palefau, Opening Address for the Sub-Regional Workshop on CEDAW Ratification for Non-Ratified Countries, 5 - 7 November 2008.
FACT: There is no provision in the CEDAW Treaty that would compel the Tonga cabinet to pass same-sex marriage laws in order to comply. The CEDAW Treaty makes clear that it is not aimed at all sex-based discrimination, but only at discrimination that is directed specifically against women. A same-sex marriage claim would refer to discrimination against men and women, and be handled under a completely different section of human rights declarations. Many of the countries who have ratified CEDAW do not sanction same-sex marriage.

MYTH #4: many other countries have not ratified CEDAW

FACT: As of 2008, 185 countries have ratified the convention of countries who are members of the United Nations. That means that 95 percent of UN members have already ratified CEDAW.

Only eight countries have refused to ratify CEDAW: the United States, Iran, Sudan, Somalia, Qatar, Nauru, Palau, and Tonga.

The most high profile country not to ratify CEDAW is the US – who is a signatory, but has not yet ratified the convention. CEDAW’s provisions are consistent with U.S. law and include rights that many American women take for granted. These rights include as access to education, legal redress against domestic violence, and access to health care.

Lack of U.S. ratification has dampened the country’s leadership in promoting human rights, democracy, and the rule of law. During Senate hearings in 2002, Yale Law School Dean Hongju Koh noted that lack of U.S. ratification has hindered their role as a human rights leader, damaged their diplomatic relations, and reduced their international standing.

Interestingly, the Courts in Tonga have demonstrated a willingness to apply international treaties despite Tonga being a non-signatory. In R v Vola the Supreme Court did not hesitate to apply article 6(1) of the International Covenant on Civil and Political Rights which protects every human being’s inherent right to life, and did not apply the death penalty in a murder case, even though Tonga was not a signatory to this treaty.20 Tonga is moving towards recognizing women’s rights in a number of areas including citizenship and family law.

Customary law is not recognized by Tonga’s Constitution

Unlike many of Pacific countries, the Tongan Constitution does not give any recognition to the application of customary laws. However local Government is uniquely designed to accommodate the application of customary laws.

Each of the five main islands in Tonga is divided into districts and within each district there is a Town Officer (similar to a Mayor) who resides in, and is appointed to, administer his District. As a resident of the District over which he presides, the Town Officer is often personally known to every family within his district. He is an older, well-respected member of the community who has a solid knowledge of customary law and is often called upon by villagers, on an informal basis, to mediate disputes regarding matters of customary law and tradition. Often, village disputes are resolved by a Town Officer simply by bringing the parties together face to face and asking them to apologize or make amends to one another. Although Town Officers are not Judges, and villagers who seek their assistance are not legally bound by their decisions, in practice the majority of village disputes are resolved this way to the satisfaction of all parties concerned.

At the next level up from the Town Officers are the Judges of the Magistrates Courts. They are called upon to a lesser extent than the Town Officers to decide on issues relating to customary law because they are required to work within the framework of existing written laws.21 A Magistrates Court Judge who makes an error in the application of written law is liable to have his judgment appealed to the Supreme Court.

As a result of the structure of local Government and the participation of the Town Officers and, to a lesser extent, the Magistrate Courts Judges, it is rare for the Supreme Court to be involved in the application of customary laws. In the rare cases that customary law is considered in the Supreme Court, it must still be taken into account within the existing legislative framework.22 The case in Box 2.3 below illustrates the written law over-riding customary law in a land dispute.

21 So, for example, in the case of a person whose pigs escape from his property, cause damage to his neighbor’s crops and are shot by the neighbor as a result, a Town Officer would probably resolve the matter by requiring the parties to meet, apologize to one another and perhaps give food as a conciliatory offering – whereas a Magistrate would be required to rule in accordance with section 4 of Village Regulation Acts Act Cap 3A which permits the neighbor to kill the pig once it is found trespassing.
22 Although there is clear authority for the principle that that principle that the Supreme Court has jurisdiction to apply principles of equity where they do not conflict with the Constitution cap 2 or the Land Act cap 132 – O.G. Sanft v. Tonga Tourist & Development Co. Ltd [1981-88] TLR 26.
Box 2.3. Customary law takes into account existing legislative framework


This land case involved a claim by the occupants of a piece of land to a prior right to occupy it based on their assertion that it had been allocated to their family by way of gift in the customary way from the original allotment holder who had since died. They had lived on and worked the land for a number of years in reliance on the promise made by the original allotment holder but had never attended to formal registration of lease in terms of the Land Act. The Defendant was the heir and registered holder of the allotment under the Land Act. The Court held that rather than an enforceable promise, the original allotment holder had simply made a request of the families that they live together on the land in peace. The original allotment holder had not intended for the arrangement to be binding on future generations and the Defendant, who had complied with all of the terms of the Land Act to legally register himself as the owner of the land, was entitled to deal with it as he pleased.

Provision for equality in the Constitution has limited effect

The Constitution provides for equality, stating that there shall be one law for chiefs and commoners and for Tongans and non-Tongans (see Box 2.4 below). However, it does not include a specific prohibition against discrimination on the basis of gender, nor does the equality provision apply to land holding, which is reserved for men (see Chapter 6).

Box 2.4. Constitutional provision on equality

There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land (section 4).

Table 2.2 at the end of this chapter summarizes key statute laws in Tonga that discriminate against women. Some of the key issues are described in the paragraphs below.

Citizenship laws have been reformed to remove discrimination against women...

Until 2007, under Tongan citizenship laws a child born outside of Tonga to a Tongan woman could not claim Tongan citizenship. Citizenship could however be claimed through the father.23 The amended Nationality Act now recognizes the ability of a Tongan woman to pass Tongan citizenship to her children born overseas, although there is still confusion over whether the Act applies to persons born prior to the 2007 Amendment.

...but women's property rights in relation to divorce and succession are weak

Women’s property rights on divorce

Tonga is a religious country in which monogamous relationships predominate. Divorce can be obtained on the basis of fault or non-fault.24 There are many examples of fault including adultery or desertion by a spouse. The only non-fault basis is separation for a continuous period of two years.25

The Divorce Act provides that, on divorce, women retain assets they bring into the marriage.26 The Act is silent on how the property that has been accumulated by the couple during the marriage will be divided: this is left to the Court to decide. In theory therefore, a woman who uses her husband’s allotment land27 to build a shop on it during the marriage must remove or relocate that shop at the end of the marriage or otherwise forfeit it to her husband (see Box 2.5 below).

---

23 Under section 4 of the Nationality Act a Tongan woman who married a citizen of another country and exercised her right to acquire the citizenship of her husband were deemed to have ceased to be Tongan subjects. This right was only reserved to children born overseas of a Tongan father.
24 Section 3 of the Divorce Act 1988.
25 Section 3 Divorce Act.
27 i.e. land allotted to him. Women have very restricted access to land (see Chapter 5).
Box 2.5. Women retain assets they bring into marriage

Nakao v Afeaki, 2002

The wife was the lessee of a property on which a house was built in which she lived. Subsequently, her de facto husband came to live in the house with her, after which the house was renovated. The couple then married.

There was no challenge to the fact that the land and house were the property of the wife however the husband claimed that he had financed the renovations and had done some of the work himself and as such he was entitled to retrieve the money he put in. In the end, the Court found that it was unnecessary to determine the issue of division of matrimonial property because the majority of the renovations to the house had taken place when the parties were living together and prior to their marriage. The work done before the marriage was contemplated and did not become part of the husband’s contribution by him to the matrimonial home simply by virtue of the intervening marriage.

It is encouraging to note the indication in the Nakao case that the Courts will take an equitable approach to division of matrimonial property. This gives some comfort to a woman business owner who may have set up her own business on her husband’s land. However, as has been suggested by the Court of Appeal (see Box 2.6 below), the best course would be for Parliament to legislate on the division of matrimonial property in the event of divorce.

Box 2.6. Call for reform of the Divorce Act

The Court of Appeal in the case of Halapua v Tonga stated:

…it is our recommendation that the legislature should consider whether there should be legislative provisions relating to the division of matrimonial property on the breakdown of the marriage, appropriate to the social and economic conditions in Tonga. Without any such provisions there remains the distinct possibility that one party to the marriage, usually the wife, may be disadvantaged.

Women’s Property Rights on Widowhood

On the death of their husbands women are particularly vulnerable, especially if their husband has not written a will. The Probate and Administration Act, which has codified customary law, contains a number of discriminatory provisions (see Box 2.7 below).

Box 2.7. Discriminatory provisions in the event of intestacy

- Where a women dies leaving behind the husband and children – the husband inherits the estate.
- Where a man dies leaving behind the wife and children – the widow inherits one-third of the estate and two thirds goes to the children in equal shares.
- Where a person dies leaving behind the father, brother, and sister – the father inherits the estate.
- Where a person dies leaving behind the mother, brother, and sister – the estate is divided equally between them.

Women cannot inherit land. Widows can obtain a life interest in their husband’s land upon his death, but this is terminated upon a widow’s remarriage, or in event of her committing adultery (see Table 2.1 below).

28 TOSC 37.

29 Statistics provided by the Supreme Court registry show that in 2008, there was one will registered and in 2006, two wills were registered. The figures of wills registered in 2003 (53 wills), 2004 (99 wills), 2005 (34 wills) and 2007 (42 wills) are indicative of the numbers of Tongan peacekeeping forces sent to the Solomon Islands and Iraq during those years.

30 [Cap 16].

31 See the Schedule to the Probate and Administration Act.
Table 2.1. A widow’s right to husband’s interest in land

<table>
<thead>
<tr>
<th>Husband’s interest in land</th>
<th>Widow’s rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hereditary estate</td>
<td>A widow does not have automatic right to her husband’s land and has to make an application to the Minister of Land within 12 months of husband’s death.33</td>
</tr>
<tr>
<td>Traditional (tax or town) allotment34</td>
<td>On the death of the lawful male holder of any tax or town allotment his widow shall be entitled to a life estate in such allotment which estate shall terminate on her re-marriage or upon proof in legal proceedings… of her having committed fornication or adultery.35</td>
</tr>
<tr>
<td>Lease</td>
<td>If the lease is in the husband’s name, the lease cannot be taken up by his widow as this is specifically prohibited by law.36</td>
</tr>
</tbody>
</table>

Women have no statutory protection in the workplace

There are no employment laws in Tonga. Issues faced by working women, including maternity leave, provision for nursing mothers, and workplace discrimination laws, are not addressed by legislation. Anecdotal evidence suggests that while some businesses do provide maternity leave to valued employees, there are many women who lose their jobs when they fall pregnant. Many women in Government employment use their casual/annual leave for maternity leave purposes.

Government has committed in its National Strategic Plan to pass and implement a new Employment Bill.

Box 2.8. Case study: Dianne Warner, CEO of Skips Custom Joinery Ltd

Dianne Warner is CEO of Skips Custom Joinery Ltd, a timber furniture and carpentry business with 14 staff. For Dianne, taking ownership and managing the business since her husband passed away in 1999 has been challenging.

Pre 1999 the business operated in their backyard on rented land. Now Skips Joinery is a formally registered business, a Tongan company and owns the business land and building, having purchased the land from Government in 2000 through a tender process.

She needed the business as an income stream and a going concern for her and her children but there was so much to be done at the time. We needed systems, processes, documentation. I wanted to create a business that wouldn’t fall over… was self-sufficient with good supply chains. She now deals directly with suppliers.

Dianne has built up staff – six of these are production staff (all men), an estimator, an accounts and sales/admin staff (women), the General Manager (woman), and CEO (herself). A big issue in Tonga, Dianne says, is the lack of skilled workers and staff with good work ethics. Her next step is to up-skill her current workers, ideally through formal training. TAFE training and St Joseph’s Business School provides only basic business administration graduates.

As there is no Employment Law in Tonga, Dianne wants to establish good practice labor standards which she and her staff abide by.

Tonga has policies for women’s economic empowerment, but implementation is weak

Government has put in place policies to promote the interests of women. The National Policy on Gender and Development was approved by the Government in 2001. It aims to achieve the following vision: Gender Equity by 2025: That all men, women, children, and the family as a whole achieve equal access to economic, social, political, and religious opportunities and benefits. The strategy for achievement of the vision is: Promoting universal and free participation and partnership of men and women in all spheres of life, religion, society, politics, economics, and culture.

32 See Section 111 of the Constitution.
33 See Chapter 5 for discussion on allotments of land.
34 Section 80 of the Land Act.
35 Section 89 of the Land Act.
The Action Plan for the Gender and Development Policy identifies ten areas for examination, including Gender and the Private Sector. This area deals with gender equity in terms of access to business opportunities through provision of business advisory services and by way of monitoring access by women to formal credit and informal microcredit.

The Government’s Eighth Strategic Development Plan identifies key gender-focused priorities for the Ministry of Education, Women’s Affairs and Culture:

• Promoting access and participation of women in decision-making and politics
• Continuing research on the implications of possible ratification of CEDAW
• Implementation of an action plan promoting the economic and social development of women through NGOs and community groups
• Promoting the collection and analysis of gender disaggregated data and the production of gender specific development indicators.

The Strategic Development Plan also states that one of its goals is to ensure equitable distribution of the benefits of growth and that the target is to have monitoring systems for identifying and measuring problems faced by vulnerable groups in place and being used by Government to target resources. Addressing gender dimensions of vulnerability in this context is especially important.

The Office of Women in the Ministry of Education, Women’s Affairs and Culture is the key Government agency charged with promoting the interests of women. Its activities include providing cultural development workshops for village women in rural and outer islands, especially the preparation of mats and tapa for traditional customary activities and celebrations. It has also provided training on certain traditional crafts which are not ‘indigenous’ to some of the outer islands, for instance the production of tapa cloth in the Niuas where traditionally people are weavers.

Although the Office of Women is charged with the administration of the Government’s Action Plan for its Gender and Development Policy, the Office has no resources to implement it; has no specific targets for women’s economic empowerment; and its current focus is on women in decision-making (in preparation for the 2010 elections).\(^\text{36}\)
Table 2.1. Key statute law in Tonga that hinder women's full economic participation

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Statutory provision</th>
<th>The practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional rights:</td>
<td></td>
<td>No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land. However women's rights to own land is restricted and there is no guarantee of equal treatment in the Constitution.</td>
</tr>
<tr>
<td>Equality</td>
<td>The Constitution, Section 4 provides that there shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans.</td>
<td></td>
</tr>
<tr>
<td>Property rights:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land ownership</td>
<td>The Land Act 1988 outlines land rights and allotments.</td>
<td>Only men are entitled to allotments. Women cannot own land and are not able to have access to an essential form of collateral for business borrowing. As a woman cannot own a town or tax allotment, she must obtain her husband's consent to any mortgage of such interest. There is currently a review of Tonga's land system by the Royal Land Commission and this may be an opportunity to reconsider women's access to land in Tonga.</td>
</tr>
<tr>
<td>Divorce</td>
<td>The Divorce Act 1988 provides that a woman can take the property she brought to the marriage.</td>
<td>However it is silent on the property that has been accumulated during the marriage. Women do not usually keep clear records of what they have brought to the marriage and find it difficult to establish how they have contributed to the accumulation of property during marriage and are disadvantaged.</td>
</tr>
<tr>
<td>Inheritance – in the absence of a will</td>
<td></td>
<td>A lease that is in the husband's name cannot be taken up by his widow as this is specifically prohibited by the Land Act. Widows in the case of hereditary estates have to apply for Ministerial approval while widows in the case of allotments gain life estate and widows of leaseholders cannot get the lease registered in their name. Widows are eligible to hold the allotment of their deceased husband for life in trust for their oldest son. This right terminates on her re-marriage or where she is proven to have committed adultery. Other property gives limited rights to women.</td>
</tr>
<tr>
<td>By wives</td>
<td>The Land Act 1988 (Section 82) provides for inheritance of allotments and the Constitution (Section 111) provides for estates. Schedule to the Probate and Administration Act provides for inheritance of other property.</td>
<td></td>
</tr>
<tr>
<td>Inheritance – in the absence of a will</td>
<td></td>
<td>Hereditary land and allotted land goes to the male heir in preference to the female. In the case of other property preference is given to men. According to the Constitution, the eldest daughter of the holder of a hereditary estate may only succeed if the estate holder dies leaving no sons.</td>
</tr>
<tr>
<td>By daughters</td>
<td>The Land Act 1988 (Sections 41 and 111) provides for inheritance of allotments. Schedule to the Probate and Administration Act provides for inheritance of other property.</td>
<td></td>
</tr>
<tr>
<td>Employment rights:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non discrimination</td>
<td>No legislation in this area</td>
<td>There is scope for women to be treated unfairly by employers.</td>
</tr>
<tr>
<td>Maternity leave provisions</td>
<td>No legislation in this area</td>
<td>As there are no maternity leave provisions, there is the possibility for pregnant women to be dismissed and not reemployed which is discriminatory.</td>
</tr>
</tbody>
</table>
Chapter 3. Public private dialogue

Summary

There is no formal organization in Tonga that represents the interests of the vast majority of business women in the country. Women’s voice is therefore not currently effectively represented in national public private dialogue (PPD) processes, and the significant legal and regulatory impediments that relate specifically to women’s economic empowerment are not satisfactorily addressed. In addition, training and business networking opportunities for business women in Tonga are limited.

Targets for incorporation in the PPD component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program to improve the policy environment and support network for business women are:

- Improved policy dialogue on investment climate reform for women’s economic empowerment
- Improved training and networking for business women in Tonga, and
- Improved legal framework for women’s businesses.

This chapter sets out the activities to take place to achieve each of these targets, and provides the analysis to justify them.

Figure 3.1. Public Private Dialogue: goals and targets

Goal: improved policy environment and support network for business women

TARGET 1.1: Improved policy dialogue on investment climate reform for women’s economic empowerment.

TARGET 1.2: Improved legal framework for women’s businesses.

TARGET 1.3: Improved training and networking for business women in Tonga.
This section reviews the existing mechanisms for policy dialogue on investment climate reform, and highlights how Target 1.1 and its associated activities would give women a greater voice in public private dialogue. Figure 3.2 below lists two activities to achieve the target, along with tools in support (Tools can be found at the end of the Report).

**Figure 3.2. Target 1.1 Activities and Tools**

**Target 1.1:**
Improved policy dialogue on investment climate reform for women’s economic empowerment

**Activity 1.1.1:**
Ensure appropriate representation of women’s interests in existing PPD structures (RRTF and Working Groups). If necessary revise ToRs.

**Responsibility:**
Regulatory Reform Task Force (RRTF)

**Activity 1.1.2:**
Form new Gender Working Group (high level representation of public and private sector with 4-8 members) if the existing PPD structure (RRTF and Working Groups) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

**Responsibility:**
IFC Office

**Tool 1:**
Gender Working Group ToRs.

**Tool 2:**
Investment Climate Gender Consultant: ToRs and initial work plan.

**Baseline:**
Number of policy papers featuring women’s economic empowerment considered by Cabinet.

**Means Of Verification:**
ToRs, membership lists and minutes of meetings; Cabinet Office, Task Force Minutes.

**Public Private Dialogue structures are relatively new in Tonga…**

Consultative Government is a relatively new phenomenon in Tonga. Experience in Tonga suggests that interaction between the private and public sectors has been limited somewhat due to Tonga’s unique political structure, but the Government has taken strides in the past decade to expand the scope of public consultations and involve businesses in policy-making. With support from IFC, the Government has institutionalized public private dialogue through the Task Force on Regulatory Reform and its Working Groups, which are comprised of both public and private sector representatives. These fora present a chance for the private sector to contribute to business environment issues and help to improve the investment climate in the country; in particular, the Working Group on Starting a Business is attended by representatives of the private sector, both male and female, who put forth vigorous proposals in support of private sector development in Tonga.
The Taskforce was established in January 2006, overseeing four public private Working Groups: Starting a Business; Licenses and Permits; Fishing (tax focus); and Immigration. The membership of the Taskforce is comprised of four Ministers and four senior private sector representatives, and it aims to improve regulations and streamline procedures affecting private sector investment and activity focused on specific reform areas of starting a business, licenses, permits and inspections, immigration, and fishing. The structure of Working Groups is evolving; the Licenses and Permits Working Group has been folded into the Starting a Business Working Group and additional Working Groups may be established.

Under its Regulatory Simplification and Investment Policy and Promotion Program the Government supported by IFC is proposing to set up additional PPD structures in Tonga. These will comprise additional Working Groups such as an Access to Finance Working Group and Tourism Working Group to consider specific issues in depth (see Figure 3.3 following). These new structures present an opportunity to bring business women’s voice into Tonga’s policy making and planning process for investment climate reform.

Activity 1.1.1: ensuring appropriate representation of women’s interests in existing PPD structures.

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

As discussed in Chapter 2 above, the Office of Women in the Ministry of Education, Women’s Affairs and Culture is the key Government agency charged with promoting the interests of women, but lacks resources and has no specific targets for women’s economic empowerment. At present neither the Ministry of Finance nor the Ministry of Labor, Commerce and Industry has a gender policy or supports any specific programs targeted at women’s economic empowerment.

The Prime Minister’s National Economic Development Council (NEDC) takes a similar approach in involving private sector actors in policymaking, but from a sectoral (for instance tourism, fisheries, agricultural), rather than cross-cutting, approach (as with the Working Groups). The NEDC’s umbrella organizations are private sector-driven and are a way for the Government to funnel money for various PSD projects directly to the industries themselves, based on the premise that the sector organizations are more aware of their needs and potential projects than the Government.

Outside of these Governmental apparati, a number of private groups are also active in dialoguing with the Government. The Tonga Chamber of Commerce and Industry (TCCI), the leading organization representing the private sector in Tonga, has representatives on both the Task Force and the NEDC umbrella organizations and is engaged in dialogue with Government on a range of topics. In particular, TCCI undertakes surveys among its members on issues and obstacles the members face, and communicates these concerns to Government Ministries (most notably MLCI) via a number of channels. TCCI also maintains a fortnightly newsletter that communicates policy changes and things of note to the private sector while soliciting information that can be transmitted to the Government.
Other, smaller-scale private sector organizations work to engage the Government in dialogue, including the Tongan Grower’s Association, the Tongan–New Zealand Business Association, and the Fishing Industry Association of Tonga. Each of these is prominent in the periodic consultations the Government has carried out (including, for example, in comments on the amended Company Act and the Personal Property Security Act) while also working through the NEDC and Task Force to represent the interests of its members. The main institutions and mechanisms for this are summarized in Table 3.1.

Table 3.1. Institutions Engaged in Public Private Dialogue in Tonga

<table>
<thead>
<tr>
<th>Name</th>
<th>Member-ship (#)</th>
<th>Men* (#)</th>
<th>Women* (#)</th>
<th>Main Purpose</th>
<th>Women’s Participation in Dialogue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task Force on Regulatory Reform</td>
<td>12</td>
<td>11</td>
<td>1</td>
<td>Investment climate policy analysis and formulation</td>
<td>Local consultant for the project</td>
</tr>
<tr>
<td>Starting a Business Working Group</td>
<td>13</td>
<td>6</td>
<td>7</td>
<td>Reform of business start up process, Company Act, Company Registry</td>
<td>Women are driving forces of this WG</td>
</tr>
<tr>
<td>Chamber of Commerce and Industry</td>
<td>15</td>
<td>10</td>
<td>5</td>
<td>Lobby and advocacy for business interests and investment promotion</td>
<td>Including presidents for the umbrella organizations, such as Tourism and Fisheries</td>
</tr>
</tbody>
</table>
Name Member-ship (#) Men* (#) Women* (#) Main Purpose Women’s Participation in Dialogue

Tonga–New Zealand Business Association 100 40 60 Advocacy for business interests, especially foreign investors Promote trade with NZ, and women active in trading handicrafts

National Economic Development Council (Chair by PM) 8 7 1 High Level of PPD on matters relate to PSD. Also manage government fund for PSD. (some of these members are also in Task Force) Representing tourism sector in this high level consultation

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

...and women are not effectively represented in private sector policy development

While women do participate in the PPD institutions listed above, there is no formal mechanism for them to express their business issues and concerns.

Tonga has a newly formed National Women’s Association which has registered over 400 members since its recent inception. The association’s main objective is to protect women’s rights. The association is also involved in promoting women in business and undertakes some activities to promote small business to bolster family income. The Tonga National Women’s Association campaigns on women’s rights but is not engaged in PPD structures around private sector development.

Additionally, a Women in Law Association has recently commenced which has formed to engage in advocacy to encourage Tonga’s ratification of the Convention Against the Elimination of Discrimination against Women. However, there is no formal national private sector organization in Tonga that represents the interests of the vast majority of business women in the country.

Feedback from the Women in Business forum held in Tonga does suggest that holding a forum for business women, and giving them an opportunity to articulate their concerns and priorities, constitutes in itself an important contribution to ‘enlarging the reform space’ for investment climate reform and engaging with a broader spectrum of stakeholders. The principal findings and conclusions of the forum are summarized in Box 3.1.

Box 3.1. Dialogue with Women in Business

During the IFC diagnostic mission to Tonga in February 2009, a Women’s Business Forum was organized by IFC staff and brought together 36 participants in an afternoon session.

The format of the forum was informal. It was made clear that the purpose was for women in business to exchange ideas about the constraints they faced on a number of investment climate issues and to identify success factors for their businesses, with a view to strengthening the ways in which the Regulatory Simplification and Investment Policy and Promotion Program can address gender issues more effectively. Networking and forming relationships came out as key positives.

Issues raised at the women-in-business forum included simplifying business registration through proactive outreach to women, improving trade logistics, and promoting trade and tourism. To offset women’s more limited access to the justice system, participants also supported giving consideration to establishing a small claims mechanism to handle, inter alia, debt disputes and enforcement, and to building up mediation processes and capacity. Improving access to finance, including through land lease arrangements, would require further strengthening of the institutional framework (credit bureau, secured transactions). Here too, giving consideration to launching a PPD process, which is explicitly inclusive of women and enables issues facing women in business to be addressed, was suggested by forum participants.
Work to support advocacy on issues of relevance for women in business needs to be undertaken in conjunction with the Government’s efforts to implement its gender equality commitments articulated in the Beijing Platform for Action, in the Millennium Development Goals, and in Tonga’s adherence to the *Revised Pacific Platform for Action on Advancement of Women and Gender Equality 2005–2015*, as outlined in Chapter 3 of this Report.

As well as ensuring proper representation for business women’s interests on Working Groups considering investment climate issues (such as business entry), it is proposed to form a new Gender Working Group (GWG). This initiative will focus on taking forward reforms to the legal and regulatory framework that impact on women – for example, the issues relating to property rights and employment law discussed in Chapter 2 above. Box 3.2 below sets out the key features of the proposed GWG.

**Box 3.2. Gender Working Group**

If the existing PPD structures (RRTF and Working Groups) are assessed to have inadequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance, a Gender Working Group will be established. The Gender Working Group would be a policy dialogue body within Tonga’s public private dialogue structures. It will comprise four public and four private sector representatives and will be supported by the Government’s PPD Secretariat. Its key mandate will be to ensure that women’s voice is effectively heard in PPD; to develop policies to promote women’s economic empowerment; and to ensure that business women’s concerns are taken on board in the investment climate reform process.

**Activity 1.1.2:** the formation of a Gender Working Group supported by technical assistance – will improve women’s representation in private sector policy development. **Activity 1.1.2:** if necessary, the formation of a Gender Working Group supported by technical assistance – could supplement existing PPD mechanisms to improve women’s representation in private sector policy development.
**Target 1.2:**  
Improved legal framework for women’s businesses

This section notes key issues in Tonga’s legal framework for female businesses and highlights how Target 1.2 and its associated activities would address this. Figure 3.4 below lists three activities to achieve this target along with tools in support (Tools can be found at the end of the Report).

**Figure 3.4. Target 1.2 Activities and Tools**

**The Legal Framework discriminates against women**

As discussed in Chapter 2: (Legal and Policy Framework) above, a number of statute laws in Tonga discriminate against women or do not adequately protect their interests – see Table 2.1. A key task of the Gender Working Group or existing PPD structures will be to develop proposals for policy reform in these areas.

**Activities 1.2.1, 1.2.2 and 1.2.3:** the development of Cabinet policy papers on reforms to eliminate discrimination, and taking forward reforms through the enactment and implementation of new laws – will improve the legal framework within which women-headed businesses operate in Tonga.
Target 1.3: Improved training and networking for business women

This section reviews opportunities for training and networking for business women in Tonga and highlights how Target 1.3 and its associated activities would increase these opportunities. Figure 3.5 below lists two activities to achieve this target, along with tools in support (Tools can be found at the end of the Report).

Figure 3.5. Target 1.3: Activities and Tools

TARGET 1.3: Improved training and networking for business women

Activity 1.3.1: Continue regular Tonga Business Women’s Forums, (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in February 2009, in partnership with local organizations and existing business women’s associations.

Responsibility: IFC (local consultant), Gender Working Group, Business Women’s Forum.

Activity 1.3.2: Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum, including regional networking across Pacific to share lessons and experiences.

Responsibility: IFC (local consultant), Gender Working Group.

Tool 2: Business Women’s Forum ToRs.

Tool 3: Investment Climate Gender Consultant ToRs and initial workplan.

Tool 11: Women’s Consultation / Training Checklist.

Tool 5: Business Women’s Perception Questionnaire.

Baseline: Business women’s perception of training and networking.

Means Of Verification: Perception surveys.

Baseline:
Business women’s perception of training and networking.

Means Of Verification:
Perception surveys.
Business women have limited networking and training opportunities

There are no women’s business associations in Tonga and thus women have limited networking and training opportunities. Feedback from the Women in Business forum also suggested institutionalizing the forum that could lead a training and networking agenda for women entrepreneurs. The Business Women’s Forum would provide support and training for women to assist them to formalize their businesses as well as provide a mechanism to share information and knowledge.

In order to strengthen business women’s networking and training opportunities IFC intends to support the development of a network of business women in Tonga – the Tonga Business Women’s Forum. Box 3.3 below sets out the key features of this initiative.

Box 3.3. Business Women’s Forum

ICF facilitated a first Business Women’s Forum meeting in February 2009. The meeting was an opportunity for business women to network and to discuss common concerns. The intention is now to strengthen and institutionalize this initiative.

The BWF will comprise a network of women entrepreneurs, both formal and informal, who will meet on a monthly basis for networking and to receive training on business issues, particularly related to business formalization.

The intention is that the BWF will be supported by, and linked to, existing business women’s associations and other relevant groups such as microfinance institutions. The aim is for about 50 women to be targeted to attend each training/networking meeting. The Forum will develop its own governance structures (for example a small board) and this will, during the pilot phase, be supported by an IFC funded consultant who will be locally recruited. If there is ongoing appetite among business women for such a forum, the aim is for it to continue on a self-financing basis after the initial pilot period.

The key aims of the BWF will be to provide support and training to business women; to share information and knowledge; and to develop linkages with regional and international organizations with similar aims. Where the BWF identifies investment climate constraints for business women, these will be fed across the GWG to consider and, if appropriate, take forward reform.

In partnership with existing business associations and training providers, and using international/regional resources where appropriate, IFC could assist the Business Women’s Forum to develop, promote and undertake training for business women focusing on ‘Running a Formal Business’. The objective of the training would be to address investment climate constraints that women face. It is noted that throughout the report, although women are not constrained by the law or its application, they lack the information to understand investment climate processes and can be intimidated by such processes. By providing the information that they currently lack, women will be empowered to undertake official formal processes. As several women repeated during a Business Women’s Forum held in Papua New Guinea, “Knowledge is Power”. Possible topics for training that address some of the constraints identified in this report and gender and investment climate constraints more broadly are covered in Tool 2 in the Annex, and could include:

- How to balance family, custom, and business
- Financial literacy, basic book-keeping, developing business plans
- Graduating to the formal sector. Why and how.
- Which business form is right for you? (including training on basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
- Licensed to operate. How and why to license your business

Activity 1.3.1: the launching of a Tonga Business Women’s Forum, and Activity 1.3.2: undertaking networking and training – will assist women to develop their skills and support each other.
• Dealing with clients: the basics of contracts
• Small Debt Claims. What are your options to see that money again? (including training on mediation)
• Confronting corruption. What should you do when asked to pay a bribe?
• Setting up shop. How to register a property transfer. Your rights when leasing
• Microfinance institutions and banks tell you how they can support your business.
• Trading across borders. The ins and outs of customs.
Chapter 4. Starting and licensing a business

Summary

Women in Tonga have the highest level of formal participation in business out of all six Pacific countries analyzed. Of the women who do register their businesses, it is usually as sole traders. Rural and market women tend to not formalize their businesses. There is scope to simplify company registration processes, and simplified processes have the potential to be of particular benefit to all women. The complex and totally unsatisfactory business licensing regime needs urgent reform.

Targets for incorporation in the business entry and operations component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program to enhance the ability of women to start and run businesses are:

- Increase by 5 percentage points proportion of (a) registered companies and (b) partnerships that are female-headed and retain strong levels (50 percent) of female sole traders
- Improved legal framework for women’s business entry
- Reduced regulatory compliance cost on female-headed businesses, and
- Increase by 5 percentage points proportion of female-headed businesses that hold appropriate sectoral licenses.

Figure 4.1. Starting and licensing a business: goals and targets

Goal: enhanced ability of women to start and run businesses

TARGET 2.1: Increase by five percentage points the proportion of (a) registered companies and (b) partnerships that are female-headed and retain strong levels (50 percent) of female sole traders

TARGET 2.2: Improved legal framework for women’s business entry

TARGET 2.3: Reduced regulatory compliance costs on female-headed businesses.

TARGET 2.4: Increased number of female-headed businesses have appropriate sectoral licenses.
This section reviews existing barriers for women wishing to do business in the formal sector, and highlights how Target 2.1 and its associated activities would help to lower these barriers. Figure 4.2 below lists three activities to achieve this target, along with tools in support (Tools can be found at the end of the Report).

Figure 4.2 Target 2.1 Activities and Tools

**Target 2.1:**
Increase by five percentage points the proportion of (a) registered companies and (b) partnerships that are female-headed, and retain strong levels (50 percent) of female sole traders.
Few women register their businesses as companies

For both male and female entrepreneurs, formalizing a business brings with it advantages including the potential for growth, access to credit, and investment. When a woman grows her businesses, not only her but also her household benefits: there is international evidence that resources in the hands of women do more for family welfare (for example improving health, nutrition, and education levels) than if they are controlled by men. But some women may prefer to run microenterprises and remain informal. This may be because of disincentives operating on women which mean that they are more likely than men to keep their businesses in the informal sector. Intra-household resource allocation may mean that a woman will not see the benefit of any additional income that business growth and formalization may bring, and so the incentive to formalize is low. Or the prevailing culture may mean that women’s sphere is considered to be restricted to low level economic activity and the domestic environment.

Overall, while informal enterprises may provide a short-term solution to a household's livelihood needs, creating an economy with a higher proportion of formal enterprises and jobs is important to long-term welfare creation, stability, and poverty reduction. This Report does not recommend that all businesses should formalize without consideration of the business’ nature, potential, and goals, but it does recommend that for female-headed businesses that are ready to graduate from the informal sector to the formal sector, it should be just as easy for female-headed businesses as it is for male-headed. As the case studies in this Report show, there are women in Tonga running enterprises that are, or have the potential to be, growth-orientated. This Report suggests that men and women face different barriers to formalization. It is therefore sensible for investment climate reforms designed to facilitate business formalization to address the barriers faced by women, as well as those faced by men.

Women’s businesses in Tonga tend to be small-scale and run on an informal basis. Some 94 percent of registered businesses in Tonga are micro-businesses and 77 percent of these are owned and managed by women. On the other hand, the majority of medium to large sized businesses are registered and owned by men. In March 2009, 68 businesses were registered, 47 as sole traders (the simplest and smallest form of business) of which 24 were owned by males and 23 by females. There were 21 limited liability companies registered (the optimum business form), mostly owned by males, four by business groups and one by a church association.

Tool 6 in the annex of this Report provides guidance on how to use business registry data to ascertain the percentage of businesses that are female-headed. In using registry data, one will be able to ascertain to what degree women own businesses. However, it could be the case that although businesses are owned by men, they are managed day to day by women. Tool 7 provides guidance on conducting surveys to ascertain both female ownership and management. It would be interesting to undertake a management survey of all the businesses in the registry to assess if there are more or less women in management than in ownership, or if figures are similar.

Women in Tonga are registering their businesses in their own name (as sole proprietors), and are not choosing to register them as limited liability companies despite the business advantages this business form offers (including limited liability status; a share structure that facilitates investment; and a legal identity for the business separate from its owner). The clear distinction between business and household income that a separate corporate form offers could be of particular advantage to women.

Even though the large majority of Tongan limited liability companies are registered by men, anecdotal evidence suggests that a proportion may in reality be family businesses, with women running them day-to-day. Some women may not understand the added benefits of setting up a family business as a limited liability company or partnership so their role in the business is legally recognized.

Table 4.3 at the end of the chapter considers the different business forms available in Tonga from a gender perspective.

Registration of a limited liability company is relatively straightforward in Tonga as reflected in Tonga’s Doing Business ratings for the time and cost of starting a limited liability company (see Table 4.1 below), although there is room for improved administrative procedures to speed the process up especially in comparison to the best performing country in the Pacific region, New Zealand.
Table 4.1. Starting a business – benchmarking in Doing Business index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Tonga</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>4</td>
<td>1</td>
<td>8.1</td>
<td>5.7</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>25</td>
<td>1</td>
<td>41.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Cost (% of income per capita)</td>
<td>8</td>
<td>0.4</td>
<td>25.8</td>
<td>4.7</td>
</tr>
<tr>
<td>Paid in minimum share capital (% of GNI per capita)</td>
<td>0</td>
<td>0</td>
<td>21.3</td>
<td>15.5</td>
</tr>
</tbody>
</table>

The Companies Act 1995 is based on the New Zealand Companies Act of 1993. The Tongan Companies Act has recently been updated and simplified by the government, assisted by IFC and Asian Development Bank. As part of this, a new electronic company registry has been implemented to replace the former, paper-based registry that was destroyed in the riots of November 2006.

The Government has also launched initiatives to support business start-up for women entrepreneurs (see Box 4.1 below).

Box 4.1. Building Women’s Entrepreneurial Capacity

The Department of Women’s Affairs in the Ministry of Education, Women and Culture and donor agencies have supported the involvement of women in business through implementation of the department’s Annual Management Plan for 2007. Two trainings were conducted. First, the Micro-Business Training for Women in Tonga. The aim was to empower women in the communities and NGOs who are planning to start up businesses by assessing their competencies as entrepreneurs. Second, the Training of Entrepreneurs in the South Pacific Region, which was to promote the shared visions and goals of donors to promote entrepreneurial activities and skills throughout the region.

Activity 2.1.1: ensuring gender sensitive operations of Companies Registry, and Activity 2.1.2: which includes developing a Women’s Help Desk at the Companies Registry – will ensure that women find the new Companies Registry as facilitative as their male counterparts.

Activity 2.1.2: undertaking outreach activities in respect of business women’s formalization, and Activity 2.1.3: ensuring all information on registering a business is equally accessible to men and women, and the production of a business entry handbook – will also assist in lessening some of the barriers discouraging women from registering their companies.

38 A major advantage of Tonga’s Companies Act having being closely modeled on that of New Zealand, is that the New Zealand legislation provides a strong foundation of case law that is continually being updated, and is a source of guidance for updating and modifying Tongan legislation.
39 In October 2008, Tonga made an official request to the New Zealand Ministry of Economic Development and the New Zealand Companies Office for assistance in developing and implementing into MLCI, an electronic company and business license registry. NZMED has developed and operates a companies/business registry; a registry of interests in moveable property; bankruptcy, disqualified directors and other data bases for use in New Zealand. The idea is that each system in Tonga will be developed separately and will not be integrated, but may have some links to some shared data. Both companies and business license registers will be able to be searched via the web, and New Zealand will hold an electronic back up of the registry data.
This section reviews the legal framework for women’s businesses in Tonga, and highlights how Target 2.2 and its associated activities would make it easier for women to formalize their businesses. Figure 4.3 below lists two activities to achieve this target, along with tools in support (Tools can be found at the end of the Report).

**Figure 4.3. Target 2.2 – Activities and Tools**

**TARGET 2.2:**
Improved legal framework for women’s business entry

**Baseline:**
Number of reforms undertaken

**Means Of Verification:**
Task Force minutes

**Activity 2.2.1:**
Review Companies legislation to ensure best practice legal framework for facilitation of women businesses registering as companies.

**Responsibility:**

**Tool 12:**
Companies Act Checklist

**Activity 2.2:**
Develop and promulgate basic partnership agreement partnership with civil society and business organisations.

**Responsibility:**

**Tool 13:**
Basic Partnership Agreement
The new Companies Act will dramatically simplify company formation

Company formation and operation will become much simpler in Tonga once the Companies (Amendment) Bill 2009 becomes operational. Company formation will take place by way of a simple form, rather than by filing a lengthy memorandum and articles of association and other documents. Model rules will be provided rather than companies having to file (memorandum and) articles of association, and a very low flat fee will be charged for registration (rather than the current complex fee structure based on a company's nominal capital). The new Act has introduced the one shareholder company making it easier for smaller businesses to take advantage of limited liability. As the analysis in Table 4.3 at the end of the chapter shows, the new Act is in line with international best practice.

Making it quicker and easier to form a company, and in particular making it unnecessary to consult a lawyer or other professional to assist with the process, may make this business form more available to women who, as described in Chapter 1 above, are likely to have less time than their male counterparts to deal with complex processes. With their small, informal businesses women may be less well placed than men to obtain professional assistance with the process. The fact that 50 percent of sole proprietorships are registered in the name of women, suggests that women do not have a problem with the concept of registration per se, but are choosing the simplest business form.

Activity 2.2.1: a review of the Companies Act to ensure best practice legal framework for facilitation of women businesses registering as companies will assist in creating a more enabling legal framework for women entrepreneurs.

Partnerships may provide an alternative route for women

Two or more people can also conduct business in a partnership. There are a number of advantages to partnerships. No legalities are required to set them up and no requirements exist for annual public filing of documents. In the absence of a written partnership agreement the arrangements between the partners may be unclear. It is therefore prudent for partners to draw up a partnership agreement setting out the arrangements between them. Partnership agreements can be lengthy and complex. When women are in business partnerships with their husbands they are unlikely to enter into a partnership agreement. Anecdotal evidence suggests that husbands often set up their business as a sole trader, but their wives undertake all day to day management of the family business. If a partnership agreement is not in place, women have little protection on divorce or separation as it is difficult to prove their contribution to the partnership.

Activity 2.2.2: the development of a basic partnership agreement will facilitate women protecting their business interests.
Target 2.3:
Reduced regulatory compliance cost on female-headed businesses

This section reviews the impact of Tonga’s business registration and licensing regime on female-headed businesses, and highlights how Target 2.3 and its associated activities would reduce the regulatory impact on women. Figure 4.4 lists two activities to achieve this target, along with tools in support (tools can be found in Annex E.).

Figure 4.4. Target 2.3: Tools and Activities
Tonga’s business licensing regime is complex and opaque

One of the most costly aspects of doing business in Tonga is meeting the licensing requirements contained in the Business Licences Act 2002 and the Business Licences Regulations of 2007. The Business Licences Act requires that everyone carrying out any business activity for the purposes of generating revenue in trade, commerce or industry in Tonga, except for the hawking or selling of fish, agricultural produce or native articles, must hold a valid Business Licence. Interestingly however, the Mission was informed by a senior official from Ministry of Labor, Commerce and Industry that every business, including those involving handicrafts, fishing, and farming, does require a business licence from MLCI to operate.

It appears to be fairly common practice for some officials in Government departments to impose on local businesses requirements and procedures that have no basis in existing laws or regulations, simply on the basis that this is the way we have always done things here. In many cases regulations that have been repealed or amended are still enforced by Government departments. Often procedures are not documented, making compliance with current practices complicated and costly. Such unwritten rules, which can depend on the whim of an official, tend to be more burdensome than the written rules because their application is inconsistent and their requirements are unknown.

A total of 3,200 licenses were granted in 2008. It is not known how many to women and how many to men. All licenses are valid until the 31st December of the year in which they are granted and are renewable on application. The cost of the initial Business Licence is $75 pa‘anga ($35) and renewals cost $65 pa‘anga ($30). With the substantial reduction in fees introduced last year it is clear that revenue now plays an insignificant role in the process.

Key problems with the business licensing regime include:

- A separate license is required for each physical location
- The Business Licences Regulations list 126 different activities with a separate license being required for each activity. Because licenses are issued on an activity rather than on a business basis, every business needs to obtain and renew multiple licenses.
- Officials in the Ministry of Labor, Commerce and Industry (responsible for administering the licensing regime) are often unsure of how the license approvals process actually works. The Regulations provide for high levels of discretion (see Box 4.2 below).

Box 4.2. Discretionary powers of business licensing officers under Business Licences Regulations 2007

In determining an application for a business licence, the Business Licensing Officer may, in his discretion:

(a) accept an application containing more than one related business activity
(b) issue one license that covers more than one related business activity
(c) impose conditions on a license issued for a business activity specified in Schedule 2, and
(d) waive any requirement for an application in respect of an activity that is not carried out by a business person in the course of trade, industry, or commerce.

---

40 Section 4 Business Licenses Act states, ‘Subject to this Act, every business person in the Kingdom carrying on a business activity shall hold a valid business license. Section 3 of the same Act defines ‘business activity’ as meaning ‘any activity carried on by a business person but does not include the hawking or selling of — (a) fish; (b) agricultural produce, (c) native articles, which are the produce of, or articles of Tonga. S 19 provides that any person who carries on a business activity without a business license commits an offence, and is liable upon conviction to a fine not exceeding T$ 1000 (US $ 535 approx) and in default of payment to imprisonment for a period not exceeding 18 months.

41 Form 1 (application for a business license) requires information relating to anticipated numbers and status of employees by gender, but this information is not recorded on the Business Register. Form 1 does not require the gender of the business owner/manager to be stated.

42 unless the license fails specify a place or premises at which the licensee shall carry on its business activity, in which case the licensee may carry on his/her business activity in any part of the Kingdom, section 15, Business Licenses Act.

43 2007, Schedule 2.
• There is no time limit within which a decision must be made, which means that ministry officials have a high degree of control over how quickly or slowly they process applications (although renewals have to be processed within seven working days).

• Various behind-the-scenes directives are given to Ministry staff regarding what is required of business applicants in order for their applications to be approved, but this information is not published or made readily available.

• The application process is bureaucratic. Applications for licenses need to be accompanied by copies of: (i) passport or birth certificate if a sole proprietor or a partnership, (ii) Partnership Agreement if a partnership, (iii) the Company Registration Certificate if a company, (iv) the Foreign Investment Registration Certificate if a foreign investor. Additional statistical information on the anticipated turnover and number of employees by categories is required of all applicants. If the application is for ‘importing’, details of the expected goods to be imported and the countries of origin is also to be provided. In addition, Letters of support are required from the ministries concerned – investors say that getting a letter from our ministry is problematic. Some ministries have the process and criteria written down, but others do not.

• Approval is required from several officials. Again, discretionary powers seem to be important. The Minister can, and from time to time does, impose whatever conditions he sees fit. An example is the recent ministerial directive that real estate license holders will no longer be able to deal in brokering leases and their activities will be confined to dealing in house rentals only. The effect of this directive is that people who have been granted licenses to provide the full range of real estate services now have their activities restricted and contracts that were entered into prior to the directive cannot be fulfilled and finalized.

• The Minister himself must sign each license. This tortuous process with its delays and lack of clarity imposes unnecessary cost on businesses. And this ordeal must be repeated either annually or biannually.

Complex business licensing systems can help to keep women in informal low marginal return businesses that produce poor rewards for their time and efforts

Problems associated with poor quality licensing regimes tend to be more severe for women entrepreneurs that for their male counterparts. Women's greater family and domestic responsibilities leave them with less time to devote to business matters, so it is likely that they will perceive the burden of regulation to be greater than their male counterparts. Also, women may (i) be more likely to suffer from harassment from regulatory officials, (ii) have less exposure to and confidence in dealing with officialdom and less sophisticated networks for obtaining permits and licenses, and (iii) have less access to information about permits and licenses than their male counterparts.

With a view to developing a more streamlined and sustainable regulatory regime, the Minister for Labor, Commerce and Industry in 2008 agreed to conduct a review of the Business Licences Act and subsidiary regulations, beginning with process mapping of the various license categories by the ‘Starting a Business’ Working Group. An assessment of the transactional costs of establishing and operating a licensed business, and an evaluation process undertaken against the criteria of purpose, legal basis, practicality, and efficiency were also to be included in the review. The intention was that this review would take into account the necessary policy, legal and institutional reforms, and international best practice principles, and that recommendations for reform would be submitted to the Taskforce for the Implementation of Regulatory Reform and the Ministry of Labor, Commerce, and Industry for consideration and approval. Although the review process has taken considerably longer than expected, both public sector representatives and the private sector representation of the Working Group have expressed a strong interest in business licensing reform. The whole regime clearly required fundamental redesign, and it is vital that business women's views are included in this process.

---

44 We were informed that there is no evidence to suggest that ministry officials apply their discretion to the detriment of female applicants. Indeed, the Ministry is staffed wholly by women (except for the 2 highest positions) and staff are described as being competent and helpful, and somewhat uncomfortable with the potential for discretionary decision-making that is built into the process.


46 Interview with MLCI official during IFC Feb 2009 Mission.

47 MLCI officials informed the Mission that due to a perceived problem of local Tongans selling or leasing their land to foreigners, there has been a directive received from the Ministry of Lands and Survey to the effect that any applications for the conduct of real estate activity must be held up, and not granted unless and until there has been a direction to the contrary from the new Commissioner for Lands. The seemingly arbitrarily imposed directive effectively interferes with the ability of pre-existing license holders to fulfill contracts already entered into, continue in business, and earn a living.

48 Although the Deputy Minister can sign in the place of the Minister in the event of the latter’s absence, except if the applicant is a corporate.

49 See IFC, Practitioner’s Guide for Integrating Gender into Investment Climate Programs (forthcoming).
After selling all of their possessions, Lee Miller and her husband left New Zealand’s shores 16 years ago to sail around the world. The couple spent all of their life savings to buy the yacht, bringing only their most treasured possessions onboard with them. Not long after sailing into Tonga’s seas, Lee and her husband were met with a hurricane and were shipwrecked off the island of Eta’Ta. After losing everything they decided to stay in Tonga to try and rebuild their lives. Today, the couple now runs four businesses, including a mechanical workshop, car rental, waste management, and organic farming business and happily call Tonga home.

Lee reports that the process to obtain a license was much easier when they first started their business than it is now. In 2005 a new business licensing act came into force. The act required a license for all parts of the business. Certain business sectors were also reserved for local citizens. This meant that foreign business people could not participate in those business sectors and that foreign investors had to acquire a Foreign Investment Certificate.

Initially, Lee lobbied the government in protest against the reserve list as the car rental business she owns is on the list. During the public consultations she requested that the clause not be retroactive.

However, the government made the reserve list retroactive meaning that Lee has had to operate her business illegally; a practice the government allows Lee to undertake while maintaining that they need to change the law.

Another obstacle Lee faces in doing business is the new Nationality Act which requires that she undertake a difficult language test to gain a visa. Without the necessary language skills, Lee is fixed into a two-year business visa, as she is still a citizen of New Zealand. It is very difficult to run a business on a two-year visa, she says. To get a longer visa, you need to beg a Minister.

Lee also does not have a Foreign Investment Certificate, a situation that further complicates her precarious situation. This has meant that Lee and her husband must rent their property for their organic farming business on a monthly basis, rather than buying the land.

In running a business in Tonga, I meet with more problems being a foreigner than being a woman, Lee admits. We are making enough money to get by and Tonga is our home, so we are committed to making our business work here.
This section considers the extent to which female-headed businesses hold sectoral licenses, and highlights how Target 2.4 and its associated activities would facilitate compliance with sectoral licensing requirements. Figure 4.5 below lists four suggested activities to achieve this target, along with tools in support (Tools can be found in Annex E.)

**Figure 4.5. Target 2.4: Activities and Tools**

**TARGET 2.4: Increased number of female-headed businesses having appropriate sectoral licenses**

**Baseline:** Sex disaggregated data on holders of sectoral licenses.

**Means Of Verification:**
- Appropriate sectoral licensing authority,
- Business Owners Survey,
- Focus group discussions.

**Activity 2.4.1:** Identify sectors that are relevant to female-headed businesses.

**Tool 7:** Business Owners survey

**Activity 2.4.2:** Undertake training for women on sectoral licensing.

**Tool 11:** Women’s Consultation / Training Checklist

**Activity 2.4.3:** Introduce mechanism to sex disaggregate sectoral licensing data.

**Tool 16:** Mechanism to sex disaggregate data on holders of Sectoral Licenses

**Activity 2.4.4:** Sex disaggregate data in private enterprise surveys (for example time and cost compliance analysis).

**Tool 14:** Mainstreaming Gender in Regulatory Compliance Cost Tools
Obtaining a sector-specific license can also be highly problematic

In addition, to apply for a Business Licence it is necessary first to obtain a sector-specific permit from the relevant ministry if operating in certain sectors (see Table 4.2).

Table 4.2. Sector specific permits

<table>
<thead>
<tr>
<th>Sector</th>
<th>Permit / Ministry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism related businesses, including accommodation,</td>
<td>Tourism License</td>
</tr>
<tr>
<td>restaurants, tour operators, travel agents, bars and</td>
<td></td>
</tr>
<tr>
<td>similar</td>
<td></td>
</tr>
<tr>
<td>Liquor outlets</td>
<td>Liquor License</td>
</tr>
<tr>
<td>Fish and marine product related businesses</td>
<td>Fishing License</td>
</tr>
<tr>
<td>Restaurants and food related businesses</td>
<td>Health Certificate and Tourism license</td>
</tr>
<tr>
<td>Wholesale and retail outlets</td>
<td>Health Certificate and Tourism license</td>
</tr>
<tr>
<td>Technical trades and professions</td>
<td>Qualification documents or practicing certificates specific to each trade or profession; Law Practitioners Practicing Certificate; Health Practitioners Certificate</td>
</tr>
<tr>
<td>Foreign exchange and international money transfer services</td>
<td>Letter of approval from the Reserve Bank of Tonga</td>
</tr>
<tr>
<td>Electrical services</td>
<td>Letter of approval from Tonga Power Board.</td>
</tr>
<tr>
<td>Construction services</td>
<td>Letter of approval from Ministry of Works</td>
</tr>
<tr>
<td>Taxi services</td>
<td>Vehicle registration</td>
</tr>
<tr>
<td>Therapeutic goods outlets</td>
<td>Letter of approval from Ministry of Health</td>
</tr>
<tr>
<td>Flammable goods outlets</td>
<td>Letter of approval from Fire Department</td>
</tr>
<tr>
<td>Services involving the use of gases</td>
<td>Letter of approval from Department of Environment</td>
</tr>
<tr>
<td>Businesses involving the export of native plants</td>
<td>Letter of approval from Ministry of Agriculture, Food, Forestry &amp; Fisheries</td>
</tr>
</tbody>
</table>

Obtaining a sector-specific license can also be highly problematic (see example of tourism license in Box 4.4 below).

Box 4.4. Obtaining a tourism license

The Tourist Act 1976 sets out general parameters of how the Ministry is to conduct its affairs, but the Minister of Tourism is given a near unfettered discretion to act so there is no guarantee of consistency in how tourism licensing requirements are applied. Added to this are the confusing ‘guidelines’ provided by the staff at Tourism to applicants for a tourism license, one of which requires the applicant to provide evidence of the registration of a business entity with the Ministry of Labor and Commerce ‘in partnership with local counterparts’ even though there is no requirement in the Act that a foreign investor must have equity partners in a Tongan business.

Activity 2.4.1: identifying sectors that are relevant to female-headed businesses;
Activity 2.4.2: undertaking training for women on sectoral licensing;
Activity 2.4.3: introducing a mechanism to sex disaggregate sectoral licensing data; and Activity 2.4.4: sex disaggregating data in private enterprise surveys — will assist in establishing the extent to which women-headed businesses currently hold sectoral licenses, identify constraints, and encourage compliance with licensing requirements.
Table 4.3. Business forms in Tonga

<table>
<thead>
<tr>
<th>Type of business entity</th>
<th>Definition of entity</th>
<th>Applicable laws</th>
<th>Compliance requirements</th>
<th>Special implications for women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Proprietor</td>
<td>A person who enters into business with all profits, losses, and expenses borne by them personally.</td>
<td>Must obtain a Business Licence for the type of business activity being conducted and any specific ancillary approvals depending on the activity, for example evidence of trade or professional qualifications.</td>
<td>A female sole trader may find it difficult to separate her assets from those of her husband/family.</td>
<td></td>
</tr>
<tr>
<td>Partnership or unincorporated joint venture</td>
<td>A cooperative business arrangement between 2 or more persons in which each partner is liable for all partnership debts and obligations regardless of the amount of the each individual partners capital contribution.</td>
<td>Common law partnership principles apply</td>
<td>As above and a Foreign Investment Registration certificate will be required if a person who is not a Tongan subject controls more than 25 percent of the investment. When women are in business partnerships with their husbands, they are unlikely to enter into a partnership agreement. Where there is no clear evidence of a partnership agreement, on divorce or separation it may be difficult to make out a case that the married couple has participated equally in the business particularly where the man was the face of the business and the woman was involved in the behind the scenes work such as accounting and management.</td>
<td></td>
</tr>
<tr>
<td>Company</td>
<td>An entity registered pursuant to the Companies Act and in which the liability of its members is limited to the amount of their uncalled and unpaid share capital.</td>
<td>Companies Act 1995 Must comply with registration requirements of the Companies Act. Business Licence compliance is also required as noted above. Foreign Investment Registration certificate is required where a person who is not a Tongan subject controls more than 25 percent of the company's voting shares.</td>
<td>Enables women to separate their business assets from personal/family assets. If the enterprise is a family one, the share structure specifies the proportions held by each family member.</td>
<td></td>
</tr>
<tr>
<td>Cooperative</td>
<td>A business organization owned and operated and democratically controlled by a group of individuals for their mutual benefit.</td>
<td>Cooperatives Act 1973 Must comply with registration requirements of the Cooperatives Act. Business Licence compliance is also required as noted above. Foreign investment registration certificate requirements are the same as for a partnership.</td>
<td>Intended as grass-roots, community-based business form run on democratic lines. Potentially very suitable for business women. Enables women to separate their business assets from personal/family assets.</td>
<td></td>
</tr>
</tbody>
</table>
Table 4.4. A comparative review of Tonga’s draft Companies Act against gender equality and good practice principles

<table>
<thead>
<tr>
<th>Best practice indicator</th>
<th>New Zealand</th>
<th>Timor Leste</th>
<th>Vanuatu</th>
<th>Solomon Islands</th>
<th>Tonga</th>
<th>Samoa</th>
<th>Papua New Guinea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simplicity of law:</td>
<td>Yes</td>
<td>Yes – is available in English and Portuguese</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>basic principles and core provisions of the Act can be easily understood by all business people and investors. Can include plain English drafting, transparent structure, and availability in local language.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Streamlined legislation:</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>companies legislation should only contain core company law and should not include insolvency law or securities law.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ease of incorporation:</td>
<td>Yes, but also provides for larger companies given economic context in NZ.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>incorporation can take place on a single, simple form that can be completed without a lawyer.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Focus on small private</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>companies:</td>
<td>Act should be drafted to facilitate business for small private companies with no blanket requirements to hold formal meetings, file formal reports, and no mandatory use of lawyers.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum capital</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>requirement for</td>
<td>abolition of complex requirements of par value shares and nominal capital. Replace with a straightforward solvency test before payments (such as dividends) can be made to shareholders.</td>
<td>No – there are requirements on par value and share capital.</td>
<td>No – the requirements of par value, issue share capital, and nominal capital remain.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>incorporation.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share capital:</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Best practice indicator</td>
<td>New Zealand</td>
<td>Timor Leste</td>
<td>Vanuatu</td>
<td>Solomon Islands</td>
<td>Tonga</td>
<td>Samoa</td>
<td>Papua New Guinea</td>
</tr>
<tr>
<td>------------------------------------------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>---------------</td>
<td>-----------------</td>
<td>-------</td>
<td>-------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>Company secretary:</strong> role of company secretary is optional.</td>
<td>Yes</td>
<td></td>
<td>Mandatory for companies with over ten shareholders.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Civil penalties:</strong></td>
<td>No. Criminal penalties apply.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>civil penalties (fine, late filing fee), not criminal sanctions, are imposed on company office bearers for relatively minor matters (such as failure to file annual return).</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Shareholder remedies:</strong></td>
<td>Yes</td>
<td>Yes – but must be a minimum number of members.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>include remedies that make it easy for shareholders to take directors to Court if their rights are being abused.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Directors’ duties:</strong> clearly state directors’ duties including duties of care and good faith.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes – deals with some duties, particularly conflict of interest and loans but does not clearly deal with care and good faith.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Related party transactions</strong> and minority shareholders:</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>permit shareholders with 10 percent or less of a company’s shares to sue the company for related-party transactions.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Disclosure of related party transactions:</strong> require disclosure of related party transactions to the board of directors and in annual reports.</td>
<td>Yes – disclosure to Board and in interests register.</td>
<td>No specific procedure prescribed.</td>
<td>Yes – disclosure to Board and in interests register.</td>
<td>Yes – disclosure to Board and in interests register only.</td>
<td>Yes – disclosure to Board, interests register, and in annual report.</td>
<td>Yes – disclosure to Board.</td>
<td></td>
</tr>
<tr>
<td><strong>Approval of related party transactions:</strong> require third-party approval for all related-party transactions.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Approval of related party transactions:</strong> appointment of a Government inspector to investigate related-party transactions.</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Transparency of records:</strong> allow company records and documents to be open to shareholder inspection without need to instigate Court proceedings.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Note that the Acts all deal with director’s self interest as the related party, not a related company.
<table>
<thead>
<tr>
<th>Best practice indicator</th>
<th>New Zealand</th>
<th>Timor Leste</th>
<th>Vanuatu</th>
<th>Solomon Islands</th>
<th>Tonga</th>
<th>Samoa</th>
<th>Papua New Guinea</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permission:</strong></td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>do women need permission from a male relative / husband in order to be a company director or shareholder?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, do men require reciprocal permission?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Officeholders:</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Can women be directors and shareholders of companies in the same way as men?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Age:</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>is the age at which women and men can be directors/shareholders the same?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sole person companies:</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>is there provision in the Act for registration of sole directors/shareholder companies?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Method of registration:</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>are women permitted to undertake the registration process without involving a man (for example to accompany them to the registration office)?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Registration process:</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is the company registration process the same for a woman (including married woman) promoter as for a man? For example do women have to file additional documents, answer additional questions, go to a different place, or go through additional procedures? Is it different in any way for widowed, divorced or separated women?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes. The procedure is the same for all people regardless of gender, marital status, age.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Place of registration:</strong></td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is it necessary / usual to travel (such as to a town) in order to register a company? If yes, are there any travel restrictions on women?</td>
<td>No. Companies can be registered online.</td>
<td>Yes. There are no travel restrictions on women.</td>
<td>New hybrid registration process will enable personal registration, registration by post or online</td>
<td>Currently yes, however new Bill contemplates electronic filing.</td>
<td>Yes. There are no travel restrictions on women.</td>
<td>Yes. It is possible to submit by post but then have to travel to Bank of South Pacific to deposit the registration. No official travel restrictions on women.</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 5. Access to justice, the courts and mediation

Summary

Tonga’s formal business women rarely bring claims to the Supreme or Magistrates Courts. When they do they prefer using Court-annexed mediation, especially if the mediator is female. Market and rural women who operate in the informal sphere currently rely on verbal contracts and do not bring small debt claims to the Magistrates Court due to the intimidating level of procedure, time, and cost associated.

The targets for incorporation in the commercial mediation component of the Government’s IFC supported Regulatory Simplification and Investment Policy and Promotion Program to improve access to commercial justice for women in Tonga are:

- 30 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation services.
- Maintain at least 40 percent female accredited mediators
- Increase by five percentage points the proportion of Magistrate Court plaintiffs that are women.

This chapter sets out the activities to take place to achieve this target, and provides the analysis to justify them.

Figure 5.1. Access to justice, the courts and mediation: Program Goals and Targets

Goal: improved access to commercial justice for women

TARGET 3.1: 30 percent of court-referred mediation users are women and 80 percent of female users satisfied with mediation services.

TARGET 3.2: Maintain at least 40 percent female accredited mediators.

TARGET 3.3: Increase by five percentage points the proportion of Magistrate Court plaintiffs that are women.
**Target 3.1:**

30 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation services.

This section considers how to integrate gender within mediation in Tonga, with the target of ensuring both that women use mediation and are satisfied with the experience. Figure 5.2 below lists two activities to achieve this target, along with tools in support (Tools can be found at the end of the Report).

**Figure 5.2. Target 3.1: Activities and Tools**

- **Activity 3.1.1:** Ensure gender is mainstreamed in mediation reform process as per Table 5.2 including briefing IFC-funded Mediation Coordinator.
  - **Responsibility:** ADR Standing Committee, Gender Working Group.

- **Activity 3.1.2:** Undertake outreach to inform business women of availability and appropriateness of mediation.
  - **Responsibility:** ADR Standing Committee, Gender Working Group.

- **Baseline:**
  - % of court-referred mediation users that are women and
  - % of female users satisfied with mediation service.

- **Means Of Verification:**
  - Mediation records / ADR Perception Survey – baseline and follow up.

- **Tool 19:** Mediation Sex Equality Checklist

- **Tool 20:** Methodology for sex disaggregation of ADR users

- **Tool 21:** ADR/ Commercial Justice Users Perception Questionnaire
Mediation appears particularly successful with women

The Supreme Court keeps sex disaggregated records of parties to mediation. Mediation has been found to be particularly successful with women, who found the informal proceedings conducive to reaching a settlement. One mediator reported that, in the mediations undertaken, women played an active role in reaching consensus and finding a solution. The fact that mediation is less formal and more inclusive than the regular civil process has significance for women. Women have reported that they are more likely to embark on mediation in preference to litigation, especially where the dispute involves people they know and have established relationships with. Women have also reported that having a female mediator would enhance the attraction of the process. Table 5.1 on the next page summarizes the possible benefits of mediation for women and Table 5.2 which follows provides recommendations for integrating gender into ADR activities.

Access to justice is difficult in the rural areas and mediation may offer a simple and fast way to settle disputes. The areas of Ha’apai and Vava’u currently do not have any mediators and the community would benefit from having such an avenue for settling disputes. The two Magistrates from Vava’u themselves supported such a program and have called for people to be trained as mediators.

Activity 3.1.1: ensuring that gender is mainstreamed in the IFC support to the mediation process, and Activity 3.1.2: undertaking outreach on mediation to business women will enable women to benefit from these reforms.

Table 5.1. Comparisons between Court litigation and mediation, and advantages of mediation for women

<table>
<thead>
<tr>
<th>Litigation</th>
<th>Mediation</th>
<th>The gender perspective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose is to reach a decision, based on application of law and technical legal principles to proven facts. One of other of the parties may disagree with the Court's decision.</td>
<td>Purpose is to reach a solution that is fair to all parties to the dispute.</td>
<td>Women may be less likely than men to want to involve themselves in a confrontational dispute situation.</td>
</tr>
<tr>
<td>Tends to exacerbate the conflict.</td>
<td>Seeks to minimize conflicts and repair relationships.</td>
<td>As above.</td>
</tr>
<tr>
<td>Antagonistic adversarial system of dispute resolution.</td>
<td>More suitable to Pacific traditional culture.</td>
<td>Women can find the formal setting of a Court and the manner in which proceedings are conducted somewhat intimidating.</td>
</tr>
<tr>
<td>Has a strong focus on fault and punishment, and promotes a 'blaming' approach.</td>
<td>Focuses on repairing damage for wrong done and reuniting offender and victim.</td>
<td>Women may prefer a more 'restorative' approach.</td>
</tr>
<tr>
<td>Governing law is complex.</td>
<td>Fairly simple and uncomplicated.</td>
<td></td>
</tr>
<tr>
<td>Accessibility generally depends on financial ability to pay legal fees and Court costs.</td>
<td>More accessible. Generally less expensive and in simple cases, there is no need for legal representation.</td>
<td>Women may find accessing a lawyer, including accessing the capital necessary to appoint a lawyer, difficult.</td>
</tr>
<tr>
<td>Procedure is adversarial in nature and can be threatening.</td>
<td>Non-adversarial and non-threatening.</td>
<td>Traditional roles played by men and women in Tonga are reflected in the way they act in a Court. Women tend not to be as adversarial as men, and can show reluctance in asserting themselves in a formal Court setting when confronted by male Judges, lawyers, and defendants.</td>
</tr>
<tr>
<td>Can drag on for a long time.</td>
<td>Usually faster than litigation.</td>
<td>Time-poor women have a greater incentive than men to opt for a speedy dispute resolution mechanism.</td>
</tr>
<tr>
<td>Can be very expensive.</td>
<td>Cheaper than litigation.</td>
<td>Women tend to have less access to funds than men.</td>
</tr>
<tr>
<td>Creates a win/lose situation.</td>
<td>Helps parties save face and create a win/win situation.</td>
<td>Women are less likely than men to bring actions against community members in cases of disputes. A process which delivers a win/win solution is likely to be more palatable to women in this situation.</td>
</tr>
</tbody>
</table>

51 Interview with mediator.
52 Interview with lawyer in Tonga in which she reported that a client had specifically told her that, given the choice, she would have preferred a female mediator to a male mediator.
53 Mediation Awareness Raising Workshops, October 2008, 12.
Proceedings are not confidential, and cases are conducted in English which may be a barrier to easy communication.

Encourages both parties to be open and frank since the mediation is confidential, and ‘without prejudice’. Nothing said in the mediation discussions can be disclosed to anyone outside the mediation, or in any Court hearing.

Encourages women to speak up in a situation where they might otherwise shy away from doing so.

Table 5.2. Integrating gender in mediation activities

<table>
<thead>
<tr>
<th>Subject</th>
<th>Activity</th>
<th>Gender aspect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediation Rules and Magistrates Court Act</td>
<td>Completion of the Rules of Mediation, to allow for mediation at the Magistrates Court (and Supreme Court) and also address the issue of mediator fees. Also, a review of the Magistrates Court Act to see if any amendments need to be made to provide for mediation, to be supported by IFC.</td>
<td>Review to ensure no sex discrimination in rules</td>
</tr>
<tr>
<td>Mediation Coordinator</td>
<td>Appoint a mediation coordinator – IFC to invest in the professional development of person selected.</td>
<td>Need to ensure mediator is trained in gender issues</td>
</tr>
<tr>
<td>Mediator Fees</td>
<td>Introduce a consistent and transparent system whereby the Court charges a flat rate for all mediators, paid into the Court by the parties on election to proceed to mediation. Subsidization by IFC is possible.</td>
<td>All mediators to be trained in gender issues</td>
</tr>
<tr>
<td>Professional development of mediators</td>
<td>All mediators to be given professional development training when appropriate, with the Mediation Coordinator being given the opportunity to shadow learn from Australian mediators. IFC to support this.</td>
<td>All mediators to be trained in gender issues</td>
</tr>
<tr>
<td>Pilot in the Magistrates Court</td>
<td>Magistrates to commence Court referred mediation from February 2010.</td>
<td>Ensure evaluation of pilot includes sex disaggregated information</td>
</tr>
<tr>
<td>Outer islands</td>
<td>Mediators need to be trained in Vava’u and Ha’apai.</td>
<td>At least 40 percent female</td>
</tr>
<tr>
<td>Public awareness campaigns</td>
<td>Public awareness campaign to be undertaken to launch mediation at the Magistrates Court, including in Vava’u and Ha’apai.</td>
<td>Work with women’s organizations to ensure women are aware of mediation and see it as applicable to them</td>
</tr>
<tr>
<td>Government as a party to mediation</td>
<td>Train CEOs / Permanent Secretaries and other Government officials on the benefits (including cost benefits) of mediation. When a Judge/magistrate makes an order for mediation, he/she must stipulate that the parties attending must have authority to settle a case.</td>
<td></td>
</tr>
<tr>
<td>Practice Direction on Costs</td>
<td>Review the current practice direction on costs to include a standard cost if a case goes to mediation.</td>
<td></td>
</tr>
<tr>
<td>Costs Orders against ‘no shows’</td>
<td>If a party does not show up to a mediation, a costs order should be made against that party, unless there is a justifiable reason for non-attendance.</td>
<td></td>
</tr>
<tr>
<td>Mediation Guidelines</td>
<td>Guidelines on the contents of a mediation agreement should be provided to the mediators as well as the Law Society to distribute amongst practitioners.</td>
<td></td>
</tr>
<tr>
<td>Mediator Code of Ethics</td>
<td>Develop a Mediator Code of Ethics.</td>
<td>This should include gender issues</td>
</tr>
<tr>
<td>Communication between the Courts and Lawyers on Mediation</td>
<td>The Court liaison committee is available for communication between the Court and law society on mediation (and other matters).</td>
<td>Ensure all parties are briefed on the applicability of mediation for women</td>
</tr>
</tbody>
</table>
**Target 3.2:**
Maintain at least 40 percent female accredited mediators.

This section considers mediation in Tonga, and highlights how Target 3.2 and its associated activity of training female mediators would help to open up the justice system to women. Figure 5.3 shows the relevant target, activity and tool. (Tools can be found at the end of the Report).

**Figure 5.3. Target 3.2: Activities and Tools**

**Mediation has many benefits for the private sector...**

IFC has provided assistance to Tonga to establish and enhance court-referred mediation at the Supreme and Magistrates Courts, as a simple, time and cost efficient method to resolve commercial disputes. Mediation can benefit the private sector in the following ways:

- Lowering the costs for both of the parties in resolving the dispute
- Shortening the time and simplifying the process involved in resolving the dispute
- Creating value for both parties through an amicable way of resolving the dispute, as opposed to a litigious way of resolving it
Gender and Investment Climate Reform Assessment

- Ensuring confidentiality
- Ensuring an informal process compared to the formal process of litigation
- Releasing funds or assets that are in dispute. Although only one of the parties will benefit from the release of funds or assets, even for the party that is releasing the assets the process could produce positive outcomes such as, for instance, the improvement of business relationships with the other party, and maintaining its commercial reputation, and
- Creating greater control over the process by the parties.

Mediation is becoming well established in Tonga

Tonga has recently taken a number of steps to encourage mediation in Tonga:

- Mediation training and awareness: This has been gradually developed in Tonga since 2007. To date 11 mediators have been trained, including six males and five females, although one female has now departed to pursue a law degree in Vanuatu (see Table 5.3 below). Mediation was extended to the Magistrates Court level in October 2009. The mediators in Nuku'alofa undertake mediations at both the Supreme and Magistrates Court level, whereas the mediators in Ha'apai and Vava'u undertake mediations at the local Magistrates Court. As part of the public awareness campaign to launch mediation at the Magistrates Court level in the outer islands of Ha'apai and Vava'u, specific outreach was undertaken to ensure women attended the public workshop explaining mediation. Data is also being collected to understand how many women choose to refer their cases to mediation, whether they have a preference for a male or female mediator, and their level of satisfaction with the mediation process.

Table 5.3. Number of mediators by region and gender

<table>
<thead>
<tr>
<th>Region</th>
<th>Female mediators</th>
<th>Male mediators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nuku'alofa</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Ha'apai</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Vava'u</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

- Mediation information: There are currently two general information brochures on mediation in Tonga. The Court will combine information from both to prepare a new brochure to include information about mediation in the Magistrates Court. The media in Tonga has promoted the mediation concept, given it useful publicity, and indicated its enthusiasm for further coverage. Coverage has included a mediation drama aired on television, which included a female party to the dispute, and talk back radio on mediation in Nuku'alofa, Ha'apai, and Vava'u.

- New Supreme Court Rules: Tonga's new Supreme Court Rules, which came into effect in April 2007, included a new Order 45 which encourages Court-annexed mediation (see Box 5.1 below). The Chief Justice has confirmed that all contested civil matters will now proceed to mediation before they are heard in the Supreme Court.

Activity 3.2.1: training and accrediting female mediators at the Supreme and Magistrates Court levels will encourage women to make use of mediation systems.

---


56 Interview with Chief Justice during IFC Mission.
Box 5.1. New Supreme Court Rules on mediation

The Order provides that, subject to their being a suitably qualified mediator available, the Court may, at any stage of a proceeding, with the consent of all parties, order the proceedings or any part thereof be referred to mediation. In such circumstances the Court is to stipulate the timeframe within which mediation should be progressed and be finalized.

The Order provides that the function of the mediator is to endeavor to assist the parties to reach a settlement of the proceeding. The mediator is required to report to the Court regularly on the progress of mediation and, when completed, on the nature of the outcome. Where there is no agreement, the mediator is required to report on the reasons for the lack of agreement. The Order sets out various procedures for the conduct of the process and empowers the Court to determine payment for the mediator and the liability of each of the parties to pay this.57

• Mediation in the Magistrates Court: The Chief Justice has encouraged Magistrates to take up mediation as a means of assisting litigants in the civil jurisdictions.58 Magistrates who at first were apprehensive about the process have, following the delivery of training workshops,59 acknowledged the usefulness of mediation in improving the efficiency of case disposal and confirmed that almost all contested civil cases in the Magistrates Courts would be suitable to mediation. Magistrates have also designed a process for mediation which is to be implemented uniformly by all Magistrates.

The Supreme Court mediation program is well accepted and has proved highly successful (see Box 5.2 below).

Box 5.2. Achievements of Supreme Court mediation program

• 27 mediation cases have been dealt with of which 21 have been settled.
• The average civil case hearing time is 3–4 days and most mediations took 3–4 hours.
• The saving in time and effort to the Court and litigants has been substantial.60

57 Rule 6 provides that where the Court is satisfied that a party's unreasonableness has led to no agreement, the Court may order that party to pay the costs of the other party or parties on an indemnity basis.
58 Interview with the Chief Justice during IFC Mission.
59 IFC, Mediation Awareness Raising Workshops, October 2008, 5: The most recent mediation workshops held in Sep/Oct 2008 were attended by 30 lawyers and 8 Magistrates.
**Target 3.3:**
Increase by five percentage points the proportion of Magistrate Court plaintiffs that are women.

This section reviews the commercial justice environment for women in Tonga and highlights how Target 3.3 and its associated activities would improve business women's ability to access commercial justice. Figure 5.4 below lists three activities to achieve this target, along with tools in support (Tools can be found in Annex E.)

**Figure 5.4. Target 3.3: Activities and Tools**

**TARGET 3.3:**
Increase by five percentage points
The proportion of magistrate court plaintiffs that are women

**Activity 3.3.1:**
Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law.

**Responsibility:**
Gender Working Group, Business Women's Forum.

**Activity 3.3.2:**
In medium to long term, set up small claims function at the Magistrates Court if there is appropriate demand.

**Responsibility:**
Judiciary

**Activity 3.3.3:**
Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court.

**Responsibility:**
Mediation Coordinator, Gender Working Group, Business Women's Forum.

**Tool 18:**
Outline of Basic Contract

**Tool 21:**
ADR / Commercial Justice Users Perception Questionnaire

**Baseline:**
Percentage of Magistrate Court plaintiffs that are women.

**Means Of Verification:**
Court records
The commercial law framework is weak…

Effective commercial law, contract enforcement, and dispute resolution mechanisms together with accessibility of the justice system are key elements of the investment climate agenda for emerging market economies. It is becoming increasingly common for business dealings in Tonga, as in other Pacific Island countries, to take place between strangers over long distances as international trade and commerce expands. In such circumstances, it is important to be able to make agreements with confidence. This requires reliable institutions for contracting and dispute resolution. Tonga does not have a sufficiently robust legal framework for commercial dispute resolution. The laws affecting commercial contracts are outdated, contract law is unclear, and an efficient insolvency regime which is key to effective contract enforcement is absent. This creates risk and uncertainty around entering into contractual relationships.

Activity 3.3.1: the development of a simple contract for use in common commercial transactions will increase women’s knowledge of the law and their rights.

…but the time and cost of proceedings has improved

Findings relating to delays in accessing civil justice contained in the Doing Business Report 2007 (510 days from filing in the Supreme Court through to receipt of payment) catalyzed the introduction of a number of important reforms to improve contract enforcement. The introduction of a computerized case management system that tracks cases as they travel through the Court system, and emphasizing a much greater use of mediation as a means of freeing up valuable Court time, have had a profoundly positive impact.

The average period for resolving commercial lawsuits dropped to 350 days and the cost of proceedings fell from 47 percent of the actual claim in 2007 to 30 percent of the claim in 2008. Tonga’s performance in terms of the Doing Business Enforcing Contracts indicator was lifted by 26 places in the 2008 Report to 58th in the world, and Tonga emerged as the top reformer globally for this indicator (see Table 5.4 below). This improvement reflects the high level of local commitment to improving access to justice and augurs well for the success of future reform efforts.

Table 5.4. Enforcing contracts – benchmarking in 2010 Doing Business index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Tonga</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>37</td>
<td>30</td>
<td>37.2</td>
<td>30.6</td>
</tr>
<tr>
<td>Duration (days)</td>
<td>350</td>
<td>216</td>
<td>538.1</td>
<td>462.4</td>
</tr>
<tr>
<td>Cost (% of claim)</td>
<td>30.5</td>
<td>22.4</td>
<td>48.5</td>
<td>19.2</td>
</tr>
</tbody>
</table>

Women report that they find contracts difficult to understand…

Apart from the cost and delays that have characterized dispute resolution in the past, business women interviewed during the mission reported that they often feel vulnerable entering into contracts, in the sense that they often do not understand well what they are signing up to. This reservation applies to simple contracts for the supply of goods to more complex contracts such as those relating to borrowing money and leasing property. Many women expressed a desire for training in basic contract law and on how to read and understand the implications of basic contracts.

Women who run small businesses, both formally and informally, often rely on verbal contracts. They do not understand what should be in a contract and at the Women in Business Forum requested training on the contents of a basic contract of sale.

---

61 Since English statutes and common law no longer apply in Tonga.
...and make limited use of the formal Court system

Civil (including commercial) cases are heard in Tonga’s Supreme Court or in the Magistrates Court (see Box 5.3 below). The Supreme Court is the preferred option for civil litigants with 78 percent of contract disputes going to it in the first instance.\(^\text{64}\) The Magistrates Courts have, since their jurisdiction was increased from $1,000–$10,000 pa‘anga ($535–$5,350), become considerably overloaded, and the expectation is that the caseload burden will continue to increase.\(^\text{65}\) About 60 percent of the cases before Magistrates are civil cases involving small sums of money.\(^\text{66}\)

Box 5.3. Tonga’s Court system

The **Supreme Court** which comprises the Chief Justice and one other Judge, has jurisdiction to hear all civil disputes over $500 pa‘anga ($270), appeals from a civil judgment or order of a Magistrate, and other cases except those dealing with land.\(^\text{67}\)

There are seven **Magistrates Courts** in Tonga. The jurisdiction of the Magistrates Courts includes criminal and family law cases, and civil actions where the defendant resides in the relevant District up to an amount of $10,000 pa‘anga ($5,350).\(^\text{68}\)

There is also a **Land Court** which addresses disputes relating to questions of title or interests in land. The UK Privy Council has jurisdiction to hear appeals from the Land Court in relation to hereditary estates and titles.\(^\text{69}\)

Introducing a Small Claims process at the Magistrates Court would provide a simple, low cost remedy for minor civil disputes involving small sums of money. Such a process could be incorporated into the existing Court structure. It may be possible for the Registrar of the Supreme Court to handle such disputes. This would have the advantage of easing the burden on the Court and delivering timely resolution to commercial disputes. Support for such a proposition has been expressed by the Chief Justice and among a wide section of the legal fraternity.

Activity 3.3.2: to provide training to women on basic contract law to increase women’s understanding and use of contracts in their businesses.

Activity 3.3.3: undertaking outreach on the small claims function to business women will encourage women to make use of formal Court system.

---

\(^\text{64}\) Tonga, Mediation/Support Project September, 2007, p 13.

\(^\text{65}\) See IFC Report: Mediation Awareness Raising Workshops Tongatapu, Kingdom of Tonga, October 2008: ‘Excluding the outer islands, there were 322 new cases being filed from January to September 2008.’ This has put pressure on a number of the Magistrates who have reported in sick for over a month at a time and thus exacerbated the delays in these Courts.

\(^\text{66}\) Interview with lawyers.

\(^\text{67}\) Section 90, Constitution.

\(^\text{68}\) This amount was increased from $10,000 pa‘anga ($535) on January 3, 2007.

\(^\text{69}\) Section 50 Constitution: The Privy Council is a body appointed by the King and comprised of the King and the members of the Cabinet. It functions more as an advisory body than as a Court, although it does have jurisdiction to determine criminal and civil appeals from the Supreme Court.
Chapter 6. Access to land enforcement of rights over registered land

Summary

Women in Tonga have extremely limited access to land. They are excluded from traditional systems of land allotment. Leasehold land, which women are legally entitled to own, is difficult and expensive to access. The ongoing Royal Land Commission may be an opportunity for limited reform. Land is not currently being addressed under the Government’s Regulatory Simplification and Investment Policy and Promotion Program supported by IFC, although there could be future scope to look at improving processes at the property registry.

Land has been allotted to men only

All land in Tonga is owned by the Crown (the Government); the Royal Family; and a group of Noble (or Hereditary) families.70 This land has been allotted to Tongan men, each of whom is by law entitled to receive a portion of land.71 An allotment is a permanent right of use that amounts to ownership. Women do not receive such allotments.

Men’s right to allotments of land stems from Tonga’s traditional system but is now enshrined in the Land Act72 (see Box 6.1 below).

Box 6.1. The allotment system

Noble families were allocated large estates of land comprising one or several villages and were responsible for allocating allotments to Tongan males of age in those villages upon request.73 The ‘payment’ for a land allotment from a Noble was traditionally made by an initial gift of food (usually pigs) and an understanding that the Noble and his family would be sustained by the villagers from time to time with donations of crops harvested from the allocated allotment.

With the enactment of the Land Act, villagers now apply through the Minister of Lands for an allotment and the Minister is then responsible for consulting with the Noble as to which portion of the Noble’s estate should be allocated as an allotment. Allotment holders now pay an annual rent (usually minimal) rather than donations of food, but in some of the more remote locations and outer islands the system of food in payment for land allotments still exists despite the Land Act.

Every Tongan male is by birth (and upon attaining the age of majority,16, and applying to the Minister of Lands) entitled to receive two land grants – a ‘town’ allotment or api kolo and a ‘tax’ allotment or api uta.74 Those allotments are granted by the Crown, Nobles, or Government, generally depending on where the applicant lives.

Allotments are made for the life of the applicant and when he dies the Land Act prescribes that the land passes to the deceased’s eldest legitimate son.

The result of the allotment grant system is that Tongan families feel a very close connection to their land. In many cases this is because of the hereditary aspect of the allotments – the piece of land that a Tongan male and his family occupy and

70 There are 31 Noble families in Tonga and like land, the title of Hereditary noble is passed down through the eldest male in each family.
71 Due to land shortage they have not been made for several decades.
72 Dating from 1927, although subsequently amended.
73 Schedule 1 of the Land Act specifically sets out the description and location of the estates allocated to each Hereditary land holder.
74 The theory behind the grant of a town and a tax allotment is that the town allotment is smaller and intended to be used as a residence for the allotment holder and his family while the tax allotment is usually an area of 8 acres in a rural area which is supposed to be used for the purpose of growing crops to sustain the allotment holder’s family. Essentially, the town and tax allotments are intended to be the way that the Crown, Nobles and Government ensure that each family is self sufficient by providing them a home and means of sustaining themselves.
farm today is likely to have been the very same property that his grandfather or great-grandfather lived on, planted, and farmed generations before – and in some cases family members are buried on the allotments which further reinforces the connection. The right to landholding is one of the most fundamental rights given to Tongan males and in contrast to many other aspects of Tongan society where rank and class is strictly observed, the right to receive allotments of land is available to every Tongan male regardless of social status.

No one can hold more than one town and tax allotment, so if a Tongan man already owns an allotment and receives another by way of gift or inheritance, he must elect to surrender either one or the other. No caveat can be lodged against a hereditary estate or a tax or town allotment, making it difficult to protect a disputed interest in such land, although in practice the Ministry of Lands and Survey will not deal with a parcel of land they know is subject to an ongoing dispute unless the Minister or the Land Court has made a ruling on that dispute.

Women are only legally entitled to be registered as the holder of a tax or town allotment in Tonga in one instance – where they are the widow of an allotment holder who has died. In such circumstances, they are entitled to hold the town or tax allotment of their deceased husband for the remainder of their life, and as trustee for their eldest legitimate son. The Land Act is very clear that widows cannot deal with the land themselves since their only function is to hold the land as trustee (although they do have rights to bring proceedings in Court in relation to the land – see Box 6.2 below). A widow may surrender her holding during her lifetime to her eldest legitimate son if he wishes to take succession to the land before his mother dies.75 A widow loses her life interest in her deceased husband’s allotments upon her remarriage, or upon proof in legal proceedings in the Land Court that she has ‘committed fornication or adultery’.76 Conversely, ‘fornication and adultery’ can never result in the forfeiture of a male allotment holder’s land interests – although only persons born in wedlock are entitled to succeed under the rules of succession to allotments.77

Box 6.2. Widows have limited rights to allotments

Maka v Kainga, 200678

Widows of allotment holders have only a life interest in their deceased husband’s land and are strictly prohibited from leasing or otherwise dealing with the land during their tenure as title holder. But widows do have standing in all other respects to bring proceedings in the Land Court for determination of disputes involving the land while they hold title to it.

The Land Act prohibits the buying and selling of these rights of use, however there is an active market in informal land transactions because land rights can be ‘gifted’ – the person with the right to use the land can give this right away. While there is not supposed to be a sale, in practice an exchange of rights is brought about through a ‘gift exchange’, in which the right to use a piece of land is exchanged for a ‘gift’ equivalent to the value of the quasi-lease.79

Women may purchase leases...

In contrast to the issue of allotments, there is no legal barrier to women obtaining registered leases of land. Tax and town allotments may be leased to any person or legal entity, subject to approval by the Minister of Lands and Cabinet.80 Leases of 50 years or longer require the approval of the Privy Council (see Table 6.1 following).

Although the ability to purchase leaseholds gives women some access to land in Tonga, in practice the benefits are limited:

- **Leases are short**: The Land Act prohibits registered leases of tax allotments for periods of more than 20 years to ensure that, in the event that the landholder dies during the term of the lease, the successor to the land – although bound by the lease – will not be deprived of the land for an inordinate period of time. A town allotment can be leased out for up to...
50 years. Uncertainty about what land is available for lease and what the requirements for securing a lease are once land is identified makes it difficult for investors to secure leases within a reasonable period of time.81

- **There is no right of renewal:** To be registered (and thus fully enforceable) leases must be in a standard, prescribed form, which contains no right of renewal at the end of the lease (see Box 6.3 below).

**Box 6.3. Standard form leases**

To be enforceable against all claimants a Lease must be registered under the terms of the Land Act, and to be registered the Lease must be in the form prescribed by the Land Act. This cannot be amended or varied without the approval of the Minister of Lands. Amendments or variations are rare. The prescribed form of Lease is quite simple and basically provides that, so long as the annual rent is paid and the lessee is complying with the purpose for which the land was leased, the lessee is free to do whatever he/she wishes with the land provided the use is not illegal.

The standard lease also provides that the annual rent must be subject to review every five years with the rent to be set by the lessor, subject to a lessee’s right of appeal to Cabinet. Increases have typically been reasonable, at around the five percent level.82 A lease can be assigned or transferred, subject to payment of Stamp Duty and Consumption Tax (except in the case of residential use), which is payable by the transferee and typically adds 25 percent to the acquisition cost.

The standard lease form does not provide for a right of renewal to the lessee. This can be problematic for investors, particularly if the original lessor has died and the lessee is dealing with an heir who may be of a different mindset to his predecessor. For this reason Government Leases are generally considered to be the safest for long term tenure and renewal.

**Table 6.1. Summary of steps involved in formally leasing land**

<table>
<thead>
<tr>
<th>Steps</th>
<th>Practical Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identification of a potential property which is capable of being leased</td>
<td>If required, the Ministry of Land, Survey and Natural Resources (MLSNR) can assist in identifying vacant plots and other areas available for leasing, and facilitating an introduction. However, there is no central source of information where landholders can advertise their land available for lease and MLSNR has recently put a prohibition on the issue of business licences to real estate agents operating outside of the residential rental market. As a result, available land for the conduct of potential business activities is difficult to identify.</td>
</tr>
<tr>
<td>2. Ensure there are no legal impediments to obtaining a registered lease</td>
<td>As discussed above, a potential lessee must be assured that the land in question is not held in the name of a widow, and that there are no mortgages or caveats lodged against the land which would prevent Cabinet approval being granted. This information must be obtained through the Ministry of Lands.</td>
</tr>
<tr>
<td>3. Negotiation of lease terms and conditions</td>
<td>Negotiation of the terms and conditions of the lease is a private matter between the registered landholder (lessor, represented by the King) and the investor (lessee). In the case of Government land the Valuation Division, MLSNR is required to value the land.</td>
</tr>
<tr>
<td>4. Preparation and submission of application to register a lease</td>
<td>Once the land is clearly identified as capable of being leased and confirmed free of encumbrances, and the terms and conditions of the lease have been agreed on, the two parties obtain an application (Form L-9) from MLSNR, or in the case of Vav’au and Ha’apai at the Governor’s office. The lease application is lodged.</td>
</tr>
<tr>
<td>5. Application assessment</td>
<td>On Tongatapu, the Valuation Division, MLSNR, assesses the application. On Vava’u and Ha’apai, staff at the Governor’s office complete this task. If the criteria are met, the application is submitted to the Minister of Lands in Nuku’alofa for approval and signature. If approved by the Minister, the application is submitted to Cabinet for signature. If the application fails to meet any of the above criteria MLSNR will notify the applicant whose responsibility it is to consult the landowner and resolve any outstanding issues.</td>
</tr>
<tr>
<td>6. Cabinet approval</td>
<td>This is generally a rubber stamp once the application has been approved by the Minister of Lands.</td>
</tr>
<tr>
<td>7. Notification of decision</td>
<td>Once the application has been signed by Cabinet, MLSNR will notify the applicant (lessee) of the approval and initiate the surveying and mapping of the property.</td>
</tr>
</tbody>
</table>

81 See ADB Report Transforming Tonga: A Private Sector Assessment 2008–the 20 year time limit is also a significant deterrent for larger investors wishing make substantial capital investments in order to get a return from the land.

82 Based on anecdotal experience from commercial lawyers and real estate agents. There is no appeal from the decision of Cabinet on a rent increase and this poses some risk for a lessee.
8. Survey required where only a portion of an allotment holder’s land is being leased

In the case where only a portion of an allotment holder’s land is being leased, a survey must be conducted to formally define the boundaries of the area to be leased. A survey is not necessary where the entire allotment is being leased. Fees for conducting a survey and preparing a map of the property are stipulated in Schedule IV of the Land Act and are payable to MLSNR or the Governor’s office at the time the application is submitted.

9. Conduct of survey and preparation of Deed of Lease and map of property

The approved application is forwarded to the Mapping & Drafting Division, MLSNR who prepare a sketch plan of the property based on MLSNR records. The sketch plan is then forwarded to the Survey Division, MLSNR who conduct a field survey of the property. The results of the survey are then sent back to the Mapping & Drafting Division for preparation of the Deed of Lease and map of the property. The survey can be done by a private surveyor rather than MLSNR. MLSNR contacts the applicant (investor) once the Deed of Lease and map have been completed. The applicant is required to pay MLSNR a registration fee to obtain the Deed of Lease and map. The Deed of Lease requires the lessee to submit a letter to the Minister of Lands seeking permission to make any changes to the stated purpose, period or rate. Written permission must also be obtained from the Ministry of Lands for any buildings or structures constructed on the property.

10. Deed of Lease is issued

Proof of payment of stamp duty must be provided and the first year’s annual rent due under the lease paid to the Ministry of Lands before the formal lease document is issued.

- **If unregistered, title is insecure:** Residential and commercial leases are frequently entered into in a form and/or upon terms different to the prescribed lease format under the Land Act. This is not illegal, but such leases cannot be registered under the Land Act and are therefore enforceable only as a contract between the lessor and lessee. Such a lease will not be binding upon an heir unless he has specifically or perhaps tacitly assented to it. This can pose obvious pitfalls for a lessee under such a lease in the event of the death of their lessor. Buildings and other structures in Tonga are legally considered to be chattels (personal moveable property) and can be removed from the land by the lessee if he/she is the legal owner.

- **Availability of leasehold land is constrained:** The Land Act prohibits Nobles from leasing more than 5 percent of their total hereditary estate. This is to ensure that there is sufficient land available for allotment allocations into the future.

- **Leases are expensive:** Leases must be purchased from the allotment holder and are usually expensive. Men are at an advantage in raising finance, being able to use their allotment land as security for finance. Leases can be used as collateral for securing finance but, in practice, the banks impose strict conditions on what leases they will take as security, for example the lease must have a substantial term of years remaining on it and the property has to be in a desirable location so that the bank’s chances of realizing it (if necessary) are maximized.

- **The process of securing a lease is arduous:** The steps involved in leasing land are set out in Table 6.1 above. According to the World Bank’s Doing Business indicators, it takes an average of 108 days to register property, as compared with two days in top ranking New Zealand (see Table 6.2 below). Where a mortgage is involved, the process is even lengthier with the Land Act requiring the Minister of Lands approval for all mortgages.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Tonga</th>
<th>New Zealand</th>
<th>East Asia and Pacific</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedures (number)</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>4.7</td>
</tr>
<tr>
<td>Duration</td>
<td>108</td>
<td>2</td>
<td>97.5</td>
<td>25</td>
</tr>
<tr>
<td>Cost (% of property value)</td>
<td>10.2</td>
<td>0.1</td>
<td>3.9</td>
<td>4.6</td>
</tr>
</tbody>
</table>

…but most leases are held by men…

The only way a woman can acquire rights over land is to lease it, but the Ministry of Lands & Survey believes that only a small number of registered leases are in women’s names.

---

83 Section 33(2).
85 Given that registration of the lease is necessary in order to secure a legally enforceable right.
...and in practice women’s limited access to land is through men

Table 6.3 at the end of the chapter summarizes the problems that women face in accessing land. In practice, and particularly in rural areas, women’s access to land is almost exclusively through men (see Box 6.4 below for example).

Box 6.4. Impact of women’s limited land rights

When Esteta, a 40 year old woman in Tonga, and a group of her friends in the same village decided to grow vegetables to sell they had to ‘borrow’ land from a male relative to do so. But this land is far away from their village and, since it is not theirs, they are not sure how much time and effort to invest into the land. For example, they would also like to grow fruit to sell but fruit trees take some years to mature and they do not know if they will still have the land when the trees begin to bear fruit.

Land law review may offer an opportunity for some reform

The ongoing review of Tonga’s land system by the Royal Land Commission may be an opportunity to re-consider women’s access to land in Tonga. The Commission acknowledges that among the key issues in Tonga’s land system that are probably due for review is the right of women to inherit land. On the other hand, the Commission’s remit is not to change the basic land tenure of Tonga (see Box 6.5 below).

Box 6.5. The Royal Land Commission

The Royal Land Commission, an initiative by His Majesty George Tupou V, has been established to enquire into all matters concerning the land laws and practices in Tonga, and invite the public or any organizations to provide written submissions on their opinions and views on the existing land laws and practices and how it may be improved. The aim is to provide an improved, practical, and efficient land management system. Of the three Commissioners one is a woman and the Secretary of the Commission is also female.

The Royal Land Commission will conduct its work over a period of three years in phases beginning with a review of the Ministry of Lands, Survey, Natural Resources and Environment to identify issues of concern, problems faced in the execution of the Ministry’s duties, and how they may be improved. During this Phase a crucial consideration will be the improvement of the Land Registration system to make it user-friendly, speedy, and accessible to the public. The work of the Commission is not to change the basic land tenure of Tonga but to ascertain the prevailing practices and consensus of opinion, legal or otherwise, in order to recommend changes that will provide a more effective and efficient application of land laws and practices.

In addition to inviting written submissions from the public the Royal Land Commission will consult widely and publicly during its inquiry. Public forums will be held throughout Tonga on dates to be notified to allow direct dialogue with Commissioners on land-related issues of concern.

Recommended Reforms

The reform recommendations set out below are currently outside the scope of the IFC supported Regulatory Simplification and Investment Policy and Promotion Program. But they should be considered in the context of public private dialogue (see recommendations to integrate gender issues in PPD in Chapter 3) and in the context of the Royal Land Commission.

- Given that there are no women in senior staff positions at the Ministry of Lands, promoting or recruiting women into such positions would be a good first step to indicate an inclusive attitude towards the participation of women in the administration of the country’s land laws.

- It is imperative that, in making recommendations for changes to the present system, it will provide a more effective and efficient application of land laws and practices, and that the views of local women’s groups are sought directly, or that support is provided to enable policy briefs for such organizations to be written and submitted to the Land Commission.

demonstrating how equal land rights for men and women ensures better functioning credit markets and, as a result, increased economic activity and growth.

- Improve the Land Registry. Although land transactions are taking place in Tonga, there is an urgent need to centralize them in a formal way so investors can know what is available and what the terms and various costs are. For women, for whom the only way to acquire rights over land is to lease it, the urgency of streamlining and modernizing the leasehold system and its administration is profound. Formalizing the process would greatly reduce the time delays and costs that arise from lack of information and uncertainty.

Table 6.3. Summary of constraints faced by women accessing registered land

<table>
<thead>
<tr>
<th>Issue</th>
<th>Constraints for women</th>
<th>Relevant law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hereditary estate</td>
<td>The eldest daughter of the holder of a hereditary estate may only succeed to the hereditary estate if the estate holder dies leaving no sons, or all male heirs and their male children have pre-deceased the eldest daughter.</td>
<td>Constitution, Traditional Law and the Land Act</td>
</tr>
<tr>
<td>Allotments</td>
<td>Women are not entitled to the grant of a town or tax allotment in Tonga – with one exception – where they are the widow of an allotment holder who has died, they can hold the allotment of their deceased husband for life in trust for their oldest son. But this right terminates on the widow’s re-marriage or upon proof in legal proceedings... of her having committed fornication or adultery. Widows are strictly forbidden from leasing or otherwise dealing with the town or tax allotment they hold as trustee.</td>
<td>Traditional law and Land Act</td>
</tr>
<tr>
<td>Accessing Leasehold land</td>
<td>There is no restriction on women purchasing leases. But because they do not have allotments of land to pledge as security for the loan, they need to find another way to raise funds. The lease in a man’s name cannot be inherited by his widow.</td>
<td>Land Act</td>
</tr>
<tr>
<td>Mortgaging land</td>
<td>It is not possible for a woman to mortgage a town or tax allotment since women are not entitled to the grant of such allotments (see ‘Allotments’ above) and as such, cannot exercise ownership rights in relation thereto.</td>
<td>Traditional Law and the Land Act</td>
</tr>
<tr>
<td>Rights to use of land during marriage</td>
<td>Women have no automatic entitlement to the use of their husband’s land during marriage – a wife’s use of the land during marriage is at the pleasure of her husband.</td>
<td>Traditional Law and the Land Act</td>
</tr>
<tr>
<td>Rights to matrimonial property (land) on marriage breakdown</td>
<td>On dissolution of marriage, each party retains his own property so land will always revert to husband.</td>
<td>Divorce Act</td>
</tr>
<tr>
<td>Access to Land Dispute Resolution</td>
<td>Women tend not to want to be involved in confrontational dispute situations and may not have financial resources to be able to afford legal representation in the Land Court.</td>
<td></td>
</tr>
</tbody>
</table>


88 That is, Land granted by the King to nobles.
## Annex A: Tonga Planning Matrix

### Tonga: Gender And Investment Climate Reform Planning Matrix

**Planning period: 3 years**

<table>
<thead>
<tr>
<th>GOAL 1: IMPROVED POLICY ENVIRONMENT AND SUPPORT NETWORK FOR BUSINESS WOMEN</th>
<th>Targets</th>
<th>Baseline</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
</table>
| **1.1** Improved policy dialogue on investment climate reform for women’s economic empowerment | Proportion of members representing business women’s interests on PPD Task Force and Working Groups. Number of policy papers featuring women’s economic empowerment considered by Cabinet. | ToRs, membership lists and minutes of meetings Cabinet Office Task Force minutes. | 1.1.1 Ensure appropriate representation of women’s interests in existing PPD structures (RRTF and Working Groups). If necessary revise ToRs.  
1.1.2 Form new Gender Working Group (high level representation of public and private sector with 4–8 members) if the existing PPD structure (RRTF and Working Groups) does not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance. | Regulatory Reform Task Force  
IFC Office | TOOL 1: Gender Working Group ToRs  
TOOL 3: Investment Climate Gender Consultant ToRs and initial work plan. |

| **1.2** Improved legal framework for women’s businesses. | Number of reforms to improve the investment climate for women enacted and implemented. | Tonga Gazette Task Force minutes Gender Working Group minutes. | 1.2.1 PPD structures (RRTF and Working Groups) and/or Gender Working Group to develop policy papers for Cabinet on proposed reforms.  
1.2.2 Introduce law reforms to Parliament including those recommended in Table 2.1.  
1.2.3 Enact and implement new laws. | Gender Working Group Regulatory Reform Task Force Government of Tonga | TOOL 4: List of Discriminatory Laws |

| **1.3** Improved training and networking for business women in Tonga. | Business women’s perception of training and networking. | Perception surveys. | 1.3.1 Continue regular Tonga Business Women’s Forums (with open invitation to business women ranging from the informal sector through to big business) as commenced by IFC in February 2009, if partnership with local organizations and existing business women’s associations.  
1.3.2 Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum, including regional networking across Pacific to share lessons and experiences. | IFC (local consultant)  
Business Women’s Forum | TOOL 2: Business Women’s Forum ToRs  
TOOL 3: Investment Climate Gender Consultant ToRs and initial work plan.  
TOOL 11: Women’s Consultation / Training Checklist  
TOOL 5: Business Women’s Perception Questionnaire |

---

89 (Or Method to Obtain Baseline).  
90 Lead entity is listed first.  
91 According to international best practices outlined in CEDAW, recommended that 30 percent of members of the Task Force and Working Groups are women.
## GOAL 2: ENHANCED ABILITY OF WOMEN TO START AND RUN BUSINESSES

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline92</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility93</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Increase by five percentage points the proportion of (a) registered companies, and (b) partnerships that are female-headed</td>
<td>Number of female- and male-headed companies, partnerships, and sole traders: currently 50 percent of sole traders are female-headed</td>
<td>Company registers Business Owners Survey</td>
<td>2.1.1 Ensure operations of new Companies Registry are gender sensitive. 2.1.2 Undertake outreach activities in respect of business women’s formalization focused on the benefits of the limited liability company form (for example mobile registration units, staff training, develop Women’s Help Desk at new Companies Registry), and how to set up a partnership. 2.1.3 Ensure all information on registering a business is equally accessible to men and women, and produce a gender sensitive business entry handbook.</td>
<td>Starting a Business Working Group / Gender Working Group. Business Women’s Forum. Companies Registry.</td>
<td>TOOL 8: Business Registry Sex Equality Checklist  TOOL 5: Business Women’s Perception Questionnaire  TOOL 10: Women’s Help Desk draft ToRs  TOOL 9: How to Undertake Outreach on Formalization for Business Women  TOOL 11: Women’s Consultation / Training Checklist (for handbook development)  TOOL 6: Using Business Registry Data to Establish % of Registered Companies Headed by Women  TOOL 7: Business Owners’ Survey</td>
</tr>
<tr>
<td>2.2 Improved legal framework for women’s businesses.</td>
<td>Number of reforms undertaken.</td>
<td>Task Force minutes</td>
<td>2.2.1 Review Companies legislation to ensure best practice legal framework for facilitation of women businesses registering as companies. 2.2.2 Develop and promulgate basic partnership agreement in partnership with civil society and business organizations.</td>
<td>Starting a Business Working Group. Gender Working Group. Business Women’s Forum.</td>
<td>TOOL 12: Companies Act Checklist  TOOL 13: Basic Partnership Agreement</td>
</tr>
<tr>
<td>2.3 Reduced regulatory compliance cost on female-headed businesses.</td>
<td>Sex disaggregated time and cost compliance assessment.</td>
<td>Gender Working Group minutes. Women’s focus groups.</td>
<td>2.3.1 Conduct women’s focus group discussion on the license process maps developed by IFC to assess: a) which licenses women most commonly obtain, b) if women identify steps different/additional to official process map. 2.3.2 Simplify other procedures that have an adverse impact on female-headed businesses (revealed in time and cost compliance analysis).</td>
<td>Starting a Business Working Group. Gender Working Group.</td>
<td>TOOL 11: Women’s Consultation / Training Checklist  TOOL 5: Business Women’s Perception Questionnaire  TOOL 14: Mainstreaming Gender in Regulatory Compliance Cost Tools</td>
</tr>
</tbody>
</table>
### GOAL 2: ENHANCED ABILITY OF WOMEN TO START AND RUN BUSINESSES

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline&lt;sup&gt;94&lt;/sup&gt;</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility&lt;sup&gt;94&lt;/sup&gt;</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4 Increased number of female-headed businesses having appropriate sectoral licenses.</td>
<td>Sex disaggregated data on holders of sectoral licenses.</td>
<td>Appropriate sectoral licensing authority. Business Owners Survey. Focus group discussions.</td>
<td>Identify sectors that are relevant to female-headed businesses. Undertake training for women on sectoral licensing. Introduce mechanism to sex disaggregate sectoral licensing data. Sex disaggregate data in private enterprise surveys, such as time and cost compliance analysis.</td>
<td>Starting a Business Working Group.</td>
<td>TOOL 7: Business Owners survey&lt;br&gt;TOOL 11: Women’s Consultation / Training Checklist&lt;br&gt;TOOL 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses&lt;br&gt;TOOL 14: Mainstreaming of Gender in Regulatory Compliance Cost Tools</td>
</tr>
</tbody>
</table>

### GOAL 3: IMPROVED ACCESS TO COMMERCIAL JUSTICE FOR WOMEN

<table>
<thead>
<tr>
<th>Targets</th>
<th>Baseline&lt;sup&gt;95&lt;/sup&gt;</th>
<th>Means of Verification</th>
<th>Activities</th>
<th>Responsibility&lt;sup&gt;94&lt;/sup&gt;</th>
<th>Tools to support activities / baseline</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 30 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation service.</td>
<td>% of court-referred users that are women. % of female users satisfied with mediation service.</td>
<td>Mediation records. ADR Users Perception Survey – baseline and follow up.</td>
<td>3.1.1 Ensure gender is mainstreamed in Mediation reform process as per Table 5.2 in Chapter 5 including briefing IFC-funded Mediation Coordinator. 3.1.2 Undertake outreach to inform business women of availability and appropriateness of court-referred mediation.</td>
<td>Mediation Coordinator. Gender Working Group.</td>
<td>TOOL 19: Mediation Sex Equality Checklist&lt;br&gt;TOOL 20: Methodology for sex disaggregation of ADR users&lt;br&gt;TOOL 21: ADR / Commercial Justice Users Perception Questionnaire</td>
</tr>
<tr>
<td>3.2 At least 40 percent accredited mediators are women.</td>
<td>40 percent of accredited mediators are women.</td>
<td>Accreditation records.</td>
<td>3.2.1 Train and accredit female mediators at the Supreme and Magistrates Court level.</td>
<td>Mediation Coordinator. Gender Working Group.</td>
<td>TOOL 19: Mediation Sex Equality Checklist</td>
</tr>
<tr>
<td>3.3 Increase by five percentage points the proportion of Magistrate Court plaintiffs that are women.</td>
<td>% of Magistrate Court plaintiffs that are women.</td>
<td>Court records.</td>
<td>3.3.1 Develop and promulgate simple contract for use in common commercial transactions for women and provide training to women on basic contract law. 3.3.2 In the medium to long term set up small claims function at the Magistrates Court, if there is appropriate demand. 3.3.3 Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court.</td>
<td>Mediation Coordinator. Gender Working Group. Business Women’s Forum.</td>
<td>TOOL 18: Outline of Basic Contract&lt;br&gt;TOOL 21: ADR / Commercial Justice Users Perception Questionnaire</td>
</tr>
</tbody>
</table>

<sup>94</sup> (Or Method to Obtain Baseline).<br>
<sup>95</sup> Lead entity is listed first.
Annex B: People Met

Alexis Georgeff, Business and organizational advisor to the Women Affairs Division, Ministry of Education, Women Affairs & Culture, US Peace Corps

Anthony Ford, Chief Justice, Supreme Court of Tonga

Anthony Coker, Tourist Officer, Licensing Unit, Ministry of Tourism

Aminiasi Kefu, President, Tonga Law Society

Catherine Harris, Tonga Chamber of Commerce and Industry

Christine ‘Uta’atu, Proprietor, ‘Uta’atu and Associates

Dominic Walton-France, Chief Justice, NZAid

Emily MacGruder, Employment Consultant, Ministry of Training, Youth and Sports

Faiva Tuifu, Mediator

Foto Mausia, Supervising public health inspector, Ministry of Health

Hasiloni Fungavai, Deputy Managing Director – Finance, Tonga Development Bank

Iofa L. Masila, Senior Executive Officer, Women Affairs Division, Ministry of Education, Women Affairs & Culture

John Bath, Manager – Risk Management and Board Advisor, Tonga Development Bank

Jeffrey Cornish, Peace Corps Country Director, and Peace Corps volunteers, United States Peace Corps

Lesieli Tufui Faletau, Deputy Secretary for Finance – Economic, Social Policy and Planning Division, Ministry of Finance

Leta Kami, Deputy Managing Director, Operations, Tonga Development Bank

Lilika Fusimalohi, Women Affairs Division, Ministry of Education, Women Affairs & Culture

Malia Maiasi, Accountant, Department of Cooperatives, Ministry of Labor, Commerce and Industry

Natalia Palu, Principal Economist, Aid Management Division, Ministry of Finance

Paula Taumoepeau, Tonga Chamber of Commerce and Industry

Polotu Paunga, Deputy Director and Head of Women Affairs, Women Affairs Division, Ministry of Education, Women Affairs & Culture

Siaosi Hakeai, Cooperatives Promotion Officer, Department of Cooperatives, Ministry of Labor, Commerce and Industry

Sione Taione, Mediation Coordinator, Supreme Court of Tonga

Simione Sefanaia, Managing Director, Tonga Development Bank
Annex C: Notes from Business Women’s Forum

The 36 attendees in Nuku’alofa, Tonga at the Business Women’s Forum included three men and were representative of business women, civil society, Government, and volunteer workers with business women. There is no established Business Women’s Association in Tonga although the Chamber of Commerce and Tonga-NZ Business Associations are active.

IFC/AusAID Pacific Gender Mainstreaming Program
TONGA
BUSINESS WOMEN’S FORUM
MON, FEB 9, 2009
1–5pm Basilica, Nuku’alofa

Agenda

Intro:
Chris Hartwell, IFC Tonga

Overview:
Sonali Hedditch, IFC

Team intros:
Mark Blackden, Fiona MacCulloch, Tamara Haig, Vijaya Nagarajan, Dana Stephenson, Meleiseini Lomu

Split 5 groups:

For introductions (name, business, description, successes, challenges) then speed date on gender-based constraints around the following topics:

1. Sonali – Access to Justice / Alternative Dispute Resolution
2. Mark, Meleiseini – Import/export
3. Dana, Vij – Access to Registered Property
4. Fiona, Anthony – Company Registration, Licensing
5. Tamara – Business Development Skills and Marketing

Afternoon Tea:
2.30–3pm

Return to the Group:

Agree on key recommendations for each topic, answer questions, and conclude on IFC deliverables.
Pacific Gender Mainstreaming Program

Sonali Bishop
Investment Policy Officer

We want to hear:

- Your name
- Your business name
- What is your business?
- When you started your business and why - what motivated you to start your business?
- What has been your biggest success? What do you enjoy most about being in business?
- What has been your biggest challenge/constraint? If you've overcome it, how did you overcome it?
Speed Dating!

- You get to go on dates with Fiona, Vij, Sonali, Tamara and Mark
- It will be a group date-
- On each date you will get to discuss a certain topic:
  - Fiona: Business Start Up/Licensing
  - Mark: Trading Across Borders - importing and exporting
  - Vij: Access to Property for your business, Access to Finance
  - Tamara: Business skills development, Marketing
  - Sonali: Access to Justice, Alternative Dispute Resolution
- Each date will be 15 minutes so don’t be shy!

Your Recommendations

If we could do just one thing to better support business women in Tonga, what would it be?
Gender and Investment Climate Reform Assessment

Tonga

Business Skills Development & Marketing

Issues re business skills:

• ‘Koletakone’ system – pay up to people above (they won’t pay back) – how is it possible to get ahead?

• Typical businesses could be coffin making by women or catering business.

• Who funds training for these micro-businesses? Tonga Trust; Tongan National Youth Congress (grant given but earnings are spent on other things); Tongan Foundation (Tapa wallets made); Tongan Development Bank (had some successes including with basic book-keeping in Va’va’u); Tongan Family Health Association (young mother’s program with some life skills training); St Joseph’s Business College (admin, basic computer).

• Women are interested in providing for the family. They need very basic budgeting and skills in, for example, handicrafts.

• Useful to note that ‘falekaloas’ (small shops) in Tonga are all run by women. The family can take anything they want from the store.

• Alternatively, women have a business / work from home. Or women grow kava for example and sell at the market to feed their families.

• On ‘Eua, there are cooperatives of 2 or 3 villages. As a way of access to finance, women spend 4 or 5 months making tapa together. Note – women often make orders out of trust (that they’ll get paid).

• ‘There’s a joke in Tonga – how do you make $1 million pa’anga in Tonga? ($0.5 million) A: Bring in $2 million pa’anga ($1 million).

• People in Tonga don’t live for the long-term, they live for the ‘here and now’. People see a palangi and add zeros on to a rental price + women should be able to own land.

What do we hope to achieve this week in Tonga?

To enable women’s greater participation in ‘doing business’ by:

• Analysing gender-based barriers in the business enabling environment
  • We’ll identify the legal, policy, administrative and institutional constraints for women to:
    • Start a business
    • Deal with licenses
    • Access Justice, including ADR
    • Access and enforce rights over registered land

• We will make recommendations and design solutions to address the constraints identified

• We will celebrate women’s successes in business, and discuss their challenges in case studies

• We will host a Pacific Women’s Business Forum so women from around the Pacific can share their stories, and network
• Tongan landlord can hold a leaseholder – can throw them out or just say, I have a family and need an extra $5,000 pa’anga ($2,500) this month. Even with a contract, difficult to argue. Tonga is a small place.

• Employees lack skills, need help from book-keeping to trial balance. Put some staff through journalism training 2.5–3 year course (need night courses). At Tonga Institute of Higher Education.

• When sub-contracting to others, still end up doing most of the work. Recently business action made Government change it from 15 days to 30 days to lodge CTs (consumption taxes). Previously if didn’t comply, were charged $400 pa’anga ($200). And yet, businesses only get 10–15 percent back of what they are owed.

• Important to have basic finance and acquittals training. Some organizations have been relying on volunteers for 12 years in this type of role. Tongan counterparts only want very basic review of money in, money out – not how to save for the 5 photocopiers we need in two months’ time.

• Need training on how to save money, put it in the bank, earn interest.

• Would be good to have some basic skills on how to pay Consumption Tax (CT). 50 percent of people in business do not keep records. If do, are constantly barraged by the Inland Revenue. If don’t, then others go for a ride / aren’t followed up. Need to educate people on tax.

• Registered property: If have finance, can get a 20/50 year leave on workspace.

• ADB has separately put together good pamphlets and booklets – they tried but it ‘didn’t work’ (unclear why).

• Business skills: Recommend 1 year training for CEOs – for example mentoring, business networking, marketing, customer service, financial service. That is, a support network of business owners and CEOs to keep going. The Pacific Cooperation Foundation (Lee Miller heading up via Tonga NZ Business Association) did a survey to support this – showed that there is a desperate need for high level support. These CEOs have done the basics, they need to know how to expand/grow/ continue the business. Lee currently putting together a proposal to NZAID and AusAID for small business training.

• Tonga Development Bank has provided Business Advisory Services free in the past. For example 10 workshops in T’tapu, and 3–4 workshops elsewhere in Tonga.

• Chamber of Commerce has held 2 writing basic contracts courses in 2 years – quite good.

• Record keeping, business plan, debtor collection, managing stock levels are all important topics.

• MLCI – IT training in T’tapu for 1 week (in February 09) – for women who want to market their handicraft via Association, such as Vava’u Handicraft Association. Will be conducted in Tongatapu working with the Ministry of Women’s Affairs.

Attendee’s individual hand-written recommendations:

One thing to better support business women

• Basic book-keeping would be very helpful (Tongan Development Bank used to provide this – TDB has had some success stories, for example in Vava’u).

• Training on how to spend money, savings to put in the bank, and earn interest.

• Provide for women access to information and education regarding microenterprises and basic business management.

• Develop a local network of women business owners.

• Provide more awareness workshops.

• Networking – start Craigslist Tonga.

• The idea of having a business is a foreign concept to many. There needs to be a boost in encouraging industry as a whole. Too much is being imported, for example eggs are imported for consumption from New Zealand.

• Business training: accounting, requirements for working with Government, marketing, advertising.

• When attempting to address youth or young women and their role in the workplace, the role of the family must be addressed. Decisions made about ones future are family decisions, not just individual ones.
• Awareness programs brought by current business women to network the challenges of doing business and to share the solutions and find a way to communicate those answers.

• List of business training available to address business weaknesses.

Trading Across Borders

<table>
<thead>
<tr>
<th>No.</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Increase markets for exports. This would encourage local production and the need to better provide services.</td>
</tr>
<tr>
<td>2</td>
<td>Fumigation chamber! Used to have one – broke down 5 yrs ago.</td>
</tr>
<tr>
<td>3</td>
<td>Get more information on rates.</td>
</tr>
<tr>
<td>4</td>
<td>Recommendation: What made IFC picked ‘Women in Business’ as their project – This may not be an issue in Tonga.</td>
</tr>
<tr>
<td>5</td>
<td>More transparency in procedures.</td>
</tr>
<tr>
<td>6</td>
<td>One Stop Shop for Women’s information in export and import information. Help desk for women’s business.</td>
</tr>
</tbody>
</table>

In Tonga’s BWF – I discussed the ACCESS TO LAND ISSUE. My brief here excluded looking at women’s land rights – I was asked to look at access to land in relation to how women could access it for business purposes (which meant using it as collateral or acquiring it as work space). However many of the comments in the groups went back to land rights by women (in recommendations).

Business run by women and accessing land

Women run different types of businesses:

• small informal ones (stall in markets) – where women have to pay for the stall and also have access to land for preparation or growing of the produce, and

• formal businesses – which were in the main family owned business run on family property/land.

Barriers – in Accessing Land (for office space)

There are also Constitutional barriers to women owning land – and women cannot use land as collateral as they do not own it. However family businesses rely on the man’s rights.

Women can have access to land for businesses where it is family owned land – land of husbands or fathers.

Women can obtain leases as a way of accessing land – however:

• leases are very expensive

• few leases are available

• the process to get a lease is very complicated and not worth doing

• it is difficult to obtain finance to get a lease even if this was available as such rights are not commonly recognized by banks.

Attitudes against foreigner – the limits on getting short term visas make investment by expats risky and they have added barriers to getting access to leases.
**Recommendations**

(this is where the groups returned to the issues of women’s constitutional rights to own land – all 4 recommendations concerned this)

- Change the law to allow women to own land in Tonga
- Allow women to hold title to and own land
- Land ownership must be changed to include females
- Revise the land law to allow equal access to land or men and women.

**Access to Justice/Alternative Dispute Resolution**

Many Tongan women don’t understand the Court system. Mediation is more culturally appropriate.

There is a major debt issue in Tonga. Debts aren’t being paid. And it costs more to take things to Court so women don’t pursue this option, especially when they don’t understand what going to Court will involve. The Government is the biggest culprit in not paying debts. Overall there is an attitude of mutual respect and people try to not take things to Court. People do have access to small law firms. It takes a lot of will power to speak about a confrontation.

Normally women are more vocal, the men are prepared to lose and keep quiet. Women are prepared to keep quiet about domestic violence. Not reported much.

Magistrates Courts so overwhelmed, and not always legally sound decisions.

Recommendations:

- Community based mediation
- Small claims tribunal before a registrar
- Training on how to write a basic contract.
### Tonga's Women in Business: Opportunities and Challenges

Monday 9 February, 2009 (1pm to 5pm)

Basilica, Nuku'alofa, Tonga

Funded by IFC–AusAID

Business Women attendee list

With thanks to attendees from facilitators:

Sonali Hedditich, Chris Hartwell (IFC, Tonga), Mark Blackden, Fiona MacCulloch, Vijaya Nagarajan, Tamara Haig.

Also Meleseini Lomu, Dana Stephenson.

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alexis Georef</td>
<td>Peace Corps – Business/Organization Adviser</td>
</tr>
<tr>
<td>Alice Duzevich</td>
<td>AYAD – Women, Food and Community Development. Ministry of Agriculture (MAFFF)</td>
</tr>
<tr>
<td>Alicia Bumpus</td>
<td>Peace Corps – Primary school teaching, Tongan community work</td>
</tr>
<tr>
<td>Barbara Traferro</td>
<td>Teacher</td>
</tr>
<tr>
<td>Bronwyn Hall</td>
<td>Ministry of Health, Tonga</td>
</tr>
<tr>
<td>Bruglia Bruno</td>
<td>Webmaster, poet</td>
</tr>
<tr>
<td>Catherine Harris</td>
<td>Tonga Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>Christine M. 'Uta'atu</td>
<td>Uta'atu &amp; Associates</td>
</tr>
<tr>
<td>Corinna Eddy</td>
<td>Peace Corps / Community Education Program</td>
</tr>
<tr>
<td>Dana Stephenson</td>
<td>Lawyer, Stephenson Associates</td>
</tr>
<tr>
<td>Fiona Mulhearn</td>
<td>Aid Management Division, Ministry of Finance and National Planning</td>
</tr>
<tr>
<td>Fiona Tavefuna</td>
<td>Consultant – Management, marketing, services</td>
</tr>
<tr>
<td>Iofa L. Masila</td>
<td>Women Affairs Division, Ministry of Education, Women Affairs &amp; Culture</td>
</tr>
<tr>
<td>Jason Schneider</td>
<td>Peace Corps – Eua, Business &amp; Org Development</td>
</tr>
<tr>
<td>Jenny Nishi</td>
<td>Nishi Trading Co Ltd &amp; Tonga–New Zealand Business Association (TNZBA)</td>
</tr>
<tr>
<td>Kalesita Fifita</td>
<td>Ministry of Health, Tonga</td>
</tr>
<tr>
<td>Lee Miller</td>
<td>Secretary – TongaNZ Business Assoc, Waste Management, FAB Rentals</td>
</tr>
<tr>
<td>Leta Havea-Kami</td>
<td>Tonga Development Bank</td>
</tr>
<tr>
<td>Lilika Fusimalohi</td>
<td>Women Affairs Division, Ministry of Education, Women Affairs &amp; Culture</td>
</tr>
<tr>
<td>Liza Wallis</td>
<td>Ministry of Health, Tonga</td>
</tr>
<tr>
<td>Luseane 'Aho</td>
<td>CEO, Tonga Post Ltd.</td>
</tr>
<tr>
<td>Mary Lyn Fonua</td>
<td>Vava'u Press Ltd, Matangi Tonga Online</td>
</tr>
<tr>
<td>Melelua Langi / Lanai</td>
<td>NZAID</td>
</tr>
<tr>
<td>Meleupe Vuovola / Vunipola</td>
<td>NZAID Community Development</td>
</tr>
<tr>
<td>Michelle Nunn</td>
<td>AYAD – Health Promotion Unit, Ministry of Health</td>
</tr>
<tr>
<td>Mikala Pacifique</td>
<td>Peace Corps – English primary teaching</td>
</tr>
<tr>
<td>Monalisa Palu</td>
<td>Professional PR</td>
</tr>
<tr>
<td>Seim Morete / Movete</td>
<td>Tonga Development Bank</td>
</tr>
<tr>
<td>Siosi Lutu</td>
<td>Women, Food and Community Development. Ministry of Agriculture (MAFFF)</td>
</tr>
<tr>
<td>Stephanie Hubbard</td>
<td>Tonga Women's International Social Club (TWSC) President</td>
</tr>
<tr>
<td>Tongila’ele Vakamelalo /</td>
<td>Women, Food and Community Development. Ministry of Agriculture (MAFFF)</td>
</tr>
<tr>
<td>Vaimoana Taukolo</td>
<td>Ministry of Labor Commerce and Industry</td>
</tr>
<tr>
<td>Vi`ka Fusimalohi</td>
<td>Ministry of Labor Commerce and Industry</td>
</tr>
</tbody>
</table>
Annex D: Bibliography

ADB, Transforming Tonga: A Private Sector Assessment, 2008
African Development Bank, Gender, Law, and Policy in ADB Operations: A Toolkit, (no date)
Commonwealth Secretariat/World Bank, Joint Task Force on Small States Small States: Meeting Challenges In the Global Economy, 2002
Dasgupta, P., Human Well-Being and the Environment, OUP, 2001
Heritage Foundation, Index of Economic Freedom, 2009
IFC, Gender Equal Land Laws: Driving Businesses Forward Gender Entrepreneurship Markets Quick Notes, Washington DC, 2005
IFC Report: Mediation Awareness Raising Workshops Tongatapu, Kingdom of Tonga, October 2008
International Centre for Research on Women, Toward Achieving Gender Equality and Empowering Women, 2005
Irvin, A., Gender and Reproductive Health and Rights in the National Development Plans of Ten Pacific Island Countries, June 2008
Markell, B. & Boyd, W., International Comparative Perspectives on Indonesia’s New Draft Bankruptcy Law, School of Law, University of Nevada, Las Vegas
Ministry of Finance, Budget Statement for the Year Ending June 30, 2009
Nieri, N., Gender and SSR Toolkit, Justice Reform and Gender: Practice Note no. 4,
Pacific News, Nuku a’lofa, March 31, 2009


Annex E: Tools

Tool 1: Gender Working Group: Terms of Reference

Introduction
Women comprise half the population of Tonga and make a significant (although frequently unrecognized) contribution to Tonga’s economy. Many female-headed businesses are micro or small. Business ownership and management in the formal sector is dominated by men.

The Tonga Gender and Investment Climate Reform Assessment, funded by IFC and AusAID undertook a review of Tonga’s investment climate with a gender lens. The Assessment concluded that Tonga’s legal and regulatory framework for private sector development discriminates against women and makes it more difficult for them to start and grow businesses, particularly in the formal sector, than it is for their male counterparts.

In response to this finding, the Government of Tonga proposes that if the existing PPD structures in Tonga (including the Regulatory Reform Task Force and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints, then a new Gender Working Group be formed to address these issues (see structure in diagram below). This initiative is taking place under the IFC funded Regulatory Simplification and Investment Policy and Promotion Project.

Regulatory Simplification and Investment Policy and Promotion Program: PPD Structure
**Composition**
If the government decides to form a Gender Working Group (GWG), it could comprise of (up to) four public and four private sector representatives including:

- The Ministry leading the investment climate reform process (Chair)
- The Ministry responsible for women
- The Ministry/agency responsible for small business development
- The Ministry responsible for Justice
- The National Council of Women
- Business women’s organizations
- NGO’s / donor projects working with business women at the grass roots level (if appropriate, two representatives).

**Secretariat**
The work of the GWG will be supported by an IFC funded local consultant who provides technical the secretariat for the GWG.

**Mandate**
The overall role of the GWG is to ensure that women’s voice is effectively heard in PPD, and that business women’s concerns are taken on board in the investment climate reform process. Specifically the GWG will:

**General**
- Work with other groups in the PPD structure charged with driving forward reforms in specific areas (for example business entry) to ensure that gender is mainstreamed in these reform efforts, and that the recommendations made in the Gender and Investment Climate Reform Assessment are taken on board.
- Review terms of reference of other PPD groups in light of need to mainstream gender within their make-up and operations and propose amendments if necessary.

**Business Women’s Forum**
- Support the development and launching of a Business Women’s Forum to facilitate networking and training opportunities for women.
- Work with the Business Women’s Forum to assist them to develop appropriate networking and training schedule and activities.

**Reform of general legal framework**
- Develop policy papers for Cabinet on reforms required to the legal framework to facilitate women’s business entry and operations. These will include reform of the discriminatory laws listed in Tool 4.
- Advocate for reform of legal framework in accordance with policy papers.

**Business entry and licensing**
- Work with Business Registry to ensure its operations are gender sensitive [see Tools 6 - 12]
- Work with Business Registry to undertake outreach activities in respect of business women’s formalization in accordance with recommendations in Gender and Investment Climate Reform Assessment, working in partnership with other groups (such as NGOs) where appropriate.
- Work with [NAME OF RELEVANT ORGANISATION] to develop a Women’s Help Desk.
- Produce business women’s handbook aimed specifically at women.
• Work with the Regulatory Reform Task Force to review business entry legislation to ensure that women can benefit from proposed reforms on the same basis as their male counterparts. In particular ensure that reforms facilitate women’s informal business and community groups formalizing their businesses and registering them as companies.

• Develop a basic partnership agreement and deliver training to Business Women’s Forum on the partnership agreement and distribute amongst broader women’s networks.

• Oversee conduct of women’s focus group discussions on business licensing to identify key constraints for women.

• Work with the Regulatory Reform Task Force to simplify business licensing procedures that have an adverse impact on female-headed businesses.

• Work with the Regulatory Reform Task Force to review sectoral business licensing with a gender lens, in particular identifying sectors that require licenses in which female-headed firms operate; developing sex disaggregation of sectoral licensing data; and sex disaggregation of tools to analyze time and cost of compliance with sectoral licensing requirements.

• Work with Business Women’s Forum to deliver training on sectoral licensing for women.

**Commercial justice / ADR**

• Work with the Business Women’s Forum to develop and provide training for women on basic contract law; and to develop and promulgate a simple contract for use in common commercial transactions for women.

• Work with the Courts and Mediation Coordinator to ensure gender is mainstreamed in ADR process as recommended in the Gender and Investment Climate Reform Assessment.

• Work with the Business Women’s Forum to assist them to develop appropriate outreach to women on availability and appropriateness of ADR and the small claims function in the Magistrates Court.

• Work with the Courts and Mediation Coordinator to ensure that female mediators are trained and accredited.
Tool 2: Business Women’s Forum: Terms of Reference

Indicative outline Terms of Reference

[Terms of reference should be developed at initial meeting of the Forum in a participatory manner to ensure buy in and ownership from members. The outline below is provided by way of pointers, for fleshing out to develop fully fledged ToRs.]

Forum aims
a) To provide support and training for business women to assist them in the legal, regulatory, and administrative interactions required to run a formal business

b) To share information and knowledge

c) To develop linkages with regional and international organizations with similar aims

Membership
Open to all women in business – those trading formally and informally. Initial focus on capital city, but with the intention of expanding country-wide.

[Members should be actively sought through for example Business Women’s Associations, NGOs operating at grass roots, MFIs (could their clients automatically be members), markets, National Council of Women, church groups.]

Support
Initial support for launching and development of Forum to be provided by IFC. IFC will partner with local organizations and draw on local expertise to deliver trainings.

Governance
A small board comprising:

• Representatives of groups working with grass roots business women (such as NGOs, donor projects, church groups, National Council of Women)

• If possible, a formal private sector sponsor

• Individual business women

[If possible, an inspirational chairwoman should be found to head up the board: someone who has succeeded in business. Candidates may be drawn from the case studies undertaken as part of the Pacific Gender Mainstreaming Program.]

Funding
[Costs should be kept to minimum. Sponsorship of training events could be provided by the local organizations that deliver the trainings. In the longer term, as part of their corporate social responsibility, funding could be sought from major private sector operators.]

Meetings
Say once a month for training / advocacy discussion as appropriate.

[Need to consider the best time, place and format for such meetings. Women operating small-scale businesses are likely to be:

• time poor – running businesses and dealing with domestic/ family demands

• unused to speaking in public, particularly in formal situations, and

• have family demands / cultural norms that may make it difficult for them to travel. Ask women what would suit them best.]

Activities
In partnership with existing business associations and training providers, and using international/regional resources where appropriate, develop, promote, and undertake training for business women focusing on Running a Formal Business. Possible topics for training could include:

- How to balance family, custom, and business (including the wantok system)
- How to deal with harassment from public officials
- Self defense
- Financial literacy, basic book-keeping, developing business plans
- Graduating to the formal sector. Why and how.
- Which business form is right for you? (including training on basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
- Licensed to operate. How and why to license your business
- Dealing with clients: the basics of contracts
- Small Debt Claims. What are your options to see that money again? (including training on ADR)
- Confronting corruption. What should you do when asked to pay a bribe?
- Setting up shop. How to register a property transfer. Your rights when leasing
- Microfinance institutions and banks tell you how they can support your business.
- Trading across borders. The ins and outs of customs.

• Undertake training for front line public sector staff dealing with business women, for example in Business Registry, licensing authorities.
• Provide forum for business women to network and give support to each other, for example through mentoring.
• Explore and develop regional networking opportunities for a Pacific Business Women’s Forum.
• Develop a networking website for information and support [but consider the extent to which women have access to computers].

Launch
• Major launch event in an appropriate place (such as in a market) building on Business Women’s Forum.
Tool 3: Investment Climate Gender Consultant: Terms of Reference and Initial Work Plan

Terms of Reference

Introduction
Women comprise half the population of Tonga and make a significant (although frequently unrecognized) contribution to Tonga’s economy. Many female-headed businesses are micro or small. Business ownership and management in the formal sector is dominated by men.

The Tonga Gender and Investment Climate Reform Assessment (GICRA), funded by IFC and AusAID undertook a review was of Tonga’s investment climate with a gender lens.

The Assessment concluded that Tonga’s legal and regulatory framework for private sector development discriminates against women and makes it more difficult for them to start and grow businesses, particularly in the formal sector, than it is for their male counterparts.

Role
The key role of the Investment Climate Gender Consultant will be to drive forward implementation of the reforms recommended in the Gender and Investment Climate Reform Assessment. In particular, the Consultant will undertake the activities in the GICRA to achieve the targets, which focus on three key areas:

• Public private dialogue
• Business start up and licensing
• Access to justice and alternative dispute resolution.

The Consultant will work closely and collaboratively with other IFC funded technical advisors on the Regulatory Simplification and Investment Policy and Promotion Project to ensure that the gender activities align with IFC’s broader investment climate reform program.

In particular the Consultant will support the delivery of the targets and activities detailed below:

Public Private Dialogue

Target 1.1 Improved policy dialogue on investment climate reform for women’s economic empowerment
Measured by: the proportion of members representing business women’s interests on Regulatory Reform Task Force and Working Groups; and the number of papers featuring women’s economic empowerment considered by Cabinet.

Activities
• Ensure appropriate representation of women’s interests in existing PPD structures (Regulatory Reform Task Force and Working Groups). If necessary revise ToRs.
• Form new Gender Working Group (high level representation of public and private sector with 4–8 members) if the existing PPD structures (Regulatory Reform Task Force and Working Groups) do not have adequate capacity to address the identified regulatory and policy level gender constraints and provide technical assistance.

Target 1.2 Improved legal framework for women’s businesses
Measured by: the number of reforms to improve the investment climate for women enacted and implemented.

Activities
• PPD structures (Regulatory Reform Task Force and Working Groups and/or Gender Working Group) to develop policy papers for Cabinet on proposed reforms
• Introduce law reforms to Parliament, including those recommended in Table 2.1
• Enact and implement new laws
Gender dialogue, and potentially the Gender Working Group (GWG), will form a key part of the Public Private Dialogue (PPD) structure developed by the Government of Tonga with support from the IFC to enable the Government more effectively to take forward investment climate reform to facilitate private sector development. If formed, the GWG will:

- comprise (up to) four public and four private sector high level representatives
- develop policy papers for Cabinet on reforms required to the legal framework to facilitate women’s business entry and operations, and engage in advocacy for gender sensitive legal, regulatory, and administrative reform of the investment climate
- work with other groups in the PPD structure charged with driving forward reforms in specific investment climate areas (for example business entry) to ensure that gender is mainstreamed in these reform efforts, and that the recommendations made in the Gender and Investment Climate Reform Assessment are taken on board.

The Investment Climate Gender Consultant’s role in undertaking activities to support Targets 1.1 and 1.2 will be to:

- Drive forward the formation of the GWG: agree with Government its appropriate composition and mandate; liaise with key private sector organizations and with relevant NGOs to ensure appropriate membership
- Provide advisory support to the secretariat of the GWG: that is, to call meetings, develop and coordinate the agenda, take minutes and highlight action points, and proactively ensuring follow up of action points
- Ensure that the agenda of the GWG drives forward the reforms recommended in the Gender and Investment Climate Reform Assessment
- Establish working relationships between the GWG and other key PPD groups (in particular those dealing with business entry, licensing, the informal sector97, and commercial justice). Ensure that the GWG is positioned to influence the deliberations of such other groups
- Review the terms of reference and composition of other key PPD groups to ensure that their mandate includes gender and their composition ensures adequate representation of women's interests. Drive forward changes to current mandates and composition where appropriate
- Provide technical assistance to the GWG, and to the reform process in particular advising on the mainstreaming of gender issues in investment climate reform – for example:
  - reviewing legislation and policy decisions
  - developing policy papers for Cabinet proposing legislative reform of discriminatory laws
  - advising on reform of the operations of the Business Registry, and
  - supporting the development of a Women’s Help Desk in [INSERT NAME OF INSTITUTION].

**Target 1.3 Improved training and networking for business women**

Measured by: business women’s perception of training and networking.

<table>
<thead>
<tr>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Continue regular Tongan Business Women’s Forums (with open invitation to business women attendance ranging from the informal sector through to big business), as commenced by IFC in February 2009, in partnership with local organizations and existing business women’s associations</td>
</tr>
<tr>
<td>• Develop and undertake networking and monthly training on investment climate for the Business Women’s Forum.</td>
</tr>
</tbody>
</table>

---

97 In the case of PNG.
The Business Women’s Forum (BWF) comprises a network of business women and has the mandate of providing support and training for business women to assist them in the legal, regulatory, and administrative interactions required to run a formal business and enabling women to share information on knowledge on business issues, and benefit from mutual support. The BWF will:

✓ be open to all business women – informal and formal SMEs through to big business, and will draw from existing associations, networks, NGOs, and MFIs, as well as invite and include business women who have not been involved in existing associations

✓ offer regular training to business women focusing on Running a Formal Business. Example topics for training include:
  - How to balance family, custom, and business (including the wantok system)
  - Which business form is right for you? (including training on a basic partnership agreement and the benefits and obligations of operating a Limited Liability Company)
  - Dealing with clients: the basics of contracts.

✓ provide a forum for business women to network and give support to each other, for example through mentoring, and possibly regional networking opportunities.

The Investment Climate Gender Consultant’s role in undertaking activities to support Target 1.3 will be to:

• Set up the BWF: identify potential members; identify partner organizations (especially any existing organizations that represent business women’s interests; and donor projects and NGOs supporting business women at the community level).

• Facilitate development of terms of reference for BWF

• Facilitate linkages between the BWF and the GWG – the BWF should feedback investment climate constraints to the GWG to take forward in policy dialogue

• Support the development of a BWF website, possibly linked to similar regional organizations

• Help the BWF to build and develop networks of partner organizations locally and internationally

• Develop and operationalize business women’s networking activities with the BWF in partnership with relevant organizations

• Develop, operationalize and promote training schedule with the BWF in partnership with relevant organizations to include:
  - Business entry, registration, and licensing requirements
  - Partnership agreements
  - Promulgation of basic contract and training on basic contract law
  - Commercial justice and ADR.
Business Entry and Licensing

The Investment Climate Gender Consultant’s role will be to undertake the activities listed below to achieve targets 2.1–2.5.

Target 2.1 Increase by five percentage points the proportion of (a) registered companies and (b) partnerships that are female-headed.

Measured by: companies registry and business owners survey data.

**Activities**
- Ensure operations of the Companies Registry are gender sensitive
- Undertake outreach activities in respect of business women’s formalization, focused on the benefits of the Limited Liability Company form (for example training on the processes for the new Company Act and Company Registry; develop Women’s Help Desk at new Companies Registry), and how to set up a partnership (see Target 2.2)
- Ensure all information on registering a business is equally accessible to men and women, and produce a gender-sensitive business entry handbook

Target 2.2 Improved legal framework for women’s business entry

Measured by: number of reforms undertaken.

**Activities**
- Review companies legislation to ensure best practice legal framework for facilitation of women businesses registering as companies
- Develop and promulgate basic partnership agreement in partnership with civil society and business organizations

Target 2.3 Reduced regulatory compliance cost on female-headed businesses

Measured by: sex disaggregated time and cost compliance assessments.

**Activities**
- Conduct women’s focus group discussion on trade and other license process maps developed by IFC to assess: a) which licenses women most commonly obtain, b) if women identify steps different/additional to official process map
- Simplify procedures that have an adverse impact on female-headed businesses (revealed in focus group discussion and time and cost compliance analysis)

Target 2.4 Increased number of female-headed businesses having appropriate sectoral licenses

Measured by: sex disaggregated data on sectoral business licences.

**Activities**
- Identify sectors that are relevant to female-headed businesses
- Undertake training for women on sectoral licensing
- Introduce mechanism to sex disaggregate sectoral licensing data
- Sex disaggregate data in private enterprise surveys, such as time and cost compliance analysis

Access to Justice, the Courts and Mediation

The Investment Climate Gender Consultant’s role will undertake the activities listed below to achieve targets 3.1–3.3.
Target 3.1 30 percent of court-referred mediation users are women and 80 percent of female users are satisfied with mediation service
Measured by: Mediation user statistics and perception surveys.

<table>
<thead>
<tr>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Ensure gender is mainstreamed in mediation reform process as set out in Table 5.2 in Chapter 5 including briefing IFC funded Mediation Coordinator</td>
</tr>
<tr>
<td>• Undertake outreach to inform business women of availability and appropriateness of court-referred mediation</td>
</tr>
</tbody>
</table>

Target 3.2 Maintain at least 40 percent female accredited mediators
Measured by: accreditation records.

<table>
<thead>
<tr>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Train and accredit female mediators at the Supreme and Magistrates Court level</td>
</tr>
</tbody>
</table>

Target 3.3 Increase by five percent the proportion of Magistrate Court plaintiffs that are women
Measured by: Court records.

<table>
<thead>
<tr>
<th>Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Develop and promulgate simple contract for use in common commercial transactions for women and provide training on contract law</td>
</tr>
<tr>
<td>• In medium to long term, set up small claims function at the Magistrates Court, if there is appropriate demand</td>
</tr>
<tr>
<td>• Undertake outreach to inform business women of availability and appropriateness of small claims function in Magistrates Court</td>
</tr>
</tbody>
</table>

The table below outlines an initial work plan for the first 6 months of a 12 month consultancy.

**Initial Work plan (first 6 months)**

<table>
<thead>
<tr>
<th>Month</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree with Government appropriate composition and mandate of PPD on gender; liaise with key private sector organizations and with relevant NGOs to ensure appropriate membership</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identify and make linkages with potential BWF members and partner organizations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Develop BWF networking and training schedule</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review terms of reference and membership of other PPD groups in light of gender considerations and make recommendations for alteration if appropriate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commence gender dialogue through PPD structure: facilitate first meeting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Launch BWF: major launch event, for instance in a market</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Develop policy paper on reforms to laws that discriminate against women as recommended in Gender and Investment Climate Reform Assessment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilitate focus group discussion with women on business licensing reform</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilitate gender aspect of PPD meetings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilitate BWF training / networking events</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilitate presentation of policy paper to Cabinet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Tool 4: List of Laws that hinder women’s full economic participation

**Key laws and regulations that hinder women’s full economic participation or do not adequately protect their interests**

<table>
<thead>
<tr>
<th>Area of law</th>
<th>Current provision (discrimination or inadequate protection)</th>
<th>Reform required</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Constitutional law</strong></td>
<td>The Constitution provides that there shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. However the restriction on women’s rights to own land is discriminatory.</td>
<td>Strengthen Constitution so that it explicitly provides for gender equality, and application of CEDAW into domestic law. (See Rwanda's Constitution)</td>
</tr>
<tr>
<td>Divorce – division of property</td>
<td>The Divorce Act is silent on the consideration given to non-financial contributions and property accumulated during the marriage is to be divided, which can be discriminatory against women. Due to restrictions in the Land Act, widows can obtain a life interest in their husband's land upon his death but this is terminated upon a widow's remarriage or in event of her committing adultery.</td>
<td>Introduce guidelines into the legislation on the division of the property so that the needs and means of parties, their financial commitments, as well as their respective capacities to earn and the needs of the children, should be taken into account.</td>
</tr>
<tr>
<td>Inheritance – in the absence of a will</td>
<td>The Probate and Administration Act has codified customary law and contains discriminatory provisions including that upon the death of her husband the wife only inherits a third of the estate (as opposed to the man who inherits the whole estate).</td>
<td>Amend the Act to remove discriminatory provisions. (See Ghana Law 111 Intestate Succession Law)</td>
</tr>
<tr>
<td>Employment</td>
<td>No legislation in this area and it is left to the parties which often works against women. There is no anti-discrimination legislation and there is scope for women to be treated unfairly by employers. As there are no maternity leave provisions, there is the possibility for pregnant women to be dismissed and not reemployed which is discriminatory.</td>
<td>Enact employment laws which provide for non-discrimination in the workplace; prohibit sexual harassment; and introduce realistic and affordable provisions for maternity leave and pay.</td>
</tr>
</tbody>
</table>
Tool 5: Business Women’s Perception Questionnaire

The questions below are indicative only for inclusion in a survey on perceptions of aspects of the investment climate and/or for use in focus group discussions.

The questions could be included as part of a more general survey of the business community, or could be used on a stand-alone basis.

The questions are designed to explore the perceptions of business women but ideally should also be asked of business men and results sex disaggregated.

If used as formal means of verification, a survey should be undertaken as a base line at the beginning of the program and then a follow up survey undertaken following program activities.

General
1. What sector does your business operate in?
2. What legal form does your business have (limited liability company / partnership / sole trader / other)?
3. Describe who owns your business?
4. Describe who manages your business?

Networking and training
5. Do you belong to any business associations/networks? If no, please move on to question [7]
6. If yes, which? How do you rate each one in terms of the networking and business training it provides? [Excellent / Good / Satisfactory / Poor]
7. How would you rate your opportunities to network with, and gain support from, other people in business in Tonga / regionally / internationally? [Excellent / Good / No opportunities]
8. Have you had any training opportunities relevant to your business in the past year? If yes, please specify.
9. How many business training sessions have you attended in the past year?
10. How would you rate the business training sessions you have attended? [Excellent / Good / Satisfactory / Poor]

Business registration
11. Is your business registered? If no, please move on to question [14]
12. If yes, please specify what the registration is (such as a company, with a business name) and who you registered with.
13. What was your experience of the registration authority?
   a) Did you suffer any harassment or discrimination?
   b) What was the biggest problem for you in registering your business?
14. If no, why did you decide not to register your business?

Licensing regulatory compliance
15. Does your business have any licenses? If no, please move on to question [21].
16. Please list the licenses that your business holds.
17. For each license, list the steps you need to take to obtain it. How often does each license need to be renewed?
18. [If IFC have undertaken process maps] Please refer to the license process maps developed by the IFC. In your experience of obtaining your license did you have to go through a process that was different from the one described in this annex? Did you have to go through any steps to obtain your license that are not included in the annex? If yes, please describe these steps.

19. For each license list the cost associated with obtaining it (both authorized and unauthorized payments you make / are asked to make).

20. For each license, explain the most burdensome/problematic aspects for you of obtaining it.

21. Are you aware of any licenses that your business should have but does not have? If your business does not hold any license, why doesn’t it?

Harassment

22. In the last year, have you / your business suffered any harassment by public officials? If no, please move on to question [27].

23. Who harassed you?

24. Why do you think you were harassed?

25. What form did the harassment take?

26. Do you think the situation was made worse because you are a man / woman?

27. Are you concerned that you might suffer harassment from a public official in the future? If yes, which organization is most likely to cause you problems?

Commercial justice

28. Have you had a dispute / legal problem associated with your business in the past 5 years? If no, please move on to question [31].

29. If yes, how was it resolved?

30. How would you rate the dispute resolution method you used [Excellent / Good / Satisfactory / Poor]

31. What do you consider to be the best option for resolving legal disputes / problems associated with your business (assuming you can’t sort it out yourself)?

32. Do you think that your business has access to good and affordable methods for dealing with legal disputes / problems? [Yes / No / Don’t know]
Tool 6: Using Business Registry Data to Establish Percentage of Registered Companies Headed by Women

1. Introduction

Ascertaining how many female-headed businesses there are (or what proportion of businesses are headed by women) is not straightforward. Both the UK and US rely on survey data to make estimates (see box below and tool 7 below).

In the US the prime source of information about businesses (including as to whether they are male- or female-headed) comes from the US Census Bureau’s Survey of Business Owners and the Self-Employed (see http://www2.census.gov/econ/sbo/sample_forms/sbo1_2007.pdf).

In the UK estimates are obtained from three principal sources of data: the Labor Force Survey (which focuses on self-employment); the Global Entrepreneurship Monitor (which focuses on founder-owned businesses); and the Annual Small Business Survey.

2. Using Business Registry data: measuring male and female directors and shareholders:

A ‘quick and dirty’ estimate may be obtained by taking sample data of businesses registered over a period of time from the Business Registry. In the case of companies, the number of companies registered with male/female directors/shareholders could be counted over say a month period. But this type of data should be treated with caution because:

- Just because a man or woman is registered as a director or shareholder doesn’t mean that they take a role in the running of the company. For example, in some countries it is necessary to have a minimum of two directors/shareholders in order to register a company. In these cases it is common for man and wife to be joint directors/shareholders, although the business in practice ‘belongs to’ and is run by only one of them.

- Companies may be registered as ‘shelf’ companies by company formation agents with staff as directors/shareholders. When the shelf company is purchased, shareholdings and directorships are transferred.

3. Method

a) Decide if you are measuring ‘stock’ or ‘flow’

<table>
<thead>
<tr>
<th>Stock</th>
<th>Number of existing companies that have male/female directors/shareholders (sample)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flow</td>
<td>Number of new registrations that have male/female directors/shareholders (total number over a period of time)</td>
</tr>
</tbody>
</table>

It is usually more straightforward to measure flow. Many Business Registries will keep a daily register of applications which may contain the required data.

b) Develop simple data collection sheets. For example:

**Number of companies registered with directors who are…**

<table>
<thead>
<tr>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
</table>

**TOTALS**

**Number of companies registered with shareholders who are…**

<table>
<thead>
<tr>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
</table>

**TOTALS**
c) Count – for companies registered over a time period (if measuring flow) or for sample of registered companies (if measuring stock). If registration documents do not require sex of directors/shareholders to be recorded this can usually be deduced from the names.

4. Developing new registration systems

The development of a new companies registry or the modernization of an existing one – for example through the development of an e-registry – offers the opportunity to put in place systems for sex disaggregated data on shareholders and directors. In the company registration forms and forms relating to changes in shareholders and directors, there should be a requirement to tick a box indicating whether each director or shareholder is male or female.
**Tool 7: Business Owners’ Survey**

**Survey purpose**
The purpose of this Survey is to ascertain basic facts about who owns and manages businesses – and in particular the extent to which businesses are owned and managed by men on the one hand and women on the other.

**Background**
In most countries there is no blanket requirement for a business to register. In countries with legal systems derived from the UK, or in part from the UK (for example Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu), all businesses that have incorporated as companies are registered. But these tend to be only fairly large and formal businesses. Partnerships and sole traders only have to register if they are using a business name – and in most cases this outdated mode of controlling business names is not enforced. The business names register is therefore not a reliable source of data about businesses.

In all countries considered in the Gender and Investment Climate Reform Assessments, all businesses are required to hold a trade/business license if they are to operate legally. However the register of businesses holding such licenses cannot be relied on as a source of information about the ownership of businesses because:

- It tends to be only large and quite formal businesses (such as those who have business premises) that hold licenses. Small and informal businesses will not be captured, and
- The license tends to be in the name of the business – rather than the name of the owner – and details about ownership are not help by licensing authorities.

This situation is not unusual. In many developing countries the process to open a business has been liberalized and there is no blanket requirement to register a new business (apart from informing the tax authorities). Both the UK and US rely on survey data to obtain data on business ownership, including on the extent to which businesses are headed by women (see box below and tool 7 below).

In the US the prime source of information about businesses (including as to whether they are male- or female-headed) comes from the US Census Bureau’s Survey of Business Owners and the Self-Employed (see http://www2.census.gov/econ/sbo/sample_forms/sbo1_2007.pdf).

In the UK estimates are obtained from three principal sources of data: the Labor Force Survey (which focuses on self-employment); the Global Entrepreneurship Monitor (which focuses on founder-owned businesses); and the Annual Small Business Survey.

**Definition of ‘female-headed business’**
If a survey is to be undertaken, the starting point is to define what female-headed business is. There are two basic options:

a) to use ownership as the sole criteria. For example, the US 2002 Survey of Business Owners defines women-owned businesses simply in terms of ownership – as firms in which women own 51 percent or more of the interest or stock of the business. http://www.census.gov/econ/sbo/02/womensol.html

b) to consider both ownership and management. For example, The US 1988 Women’s Business Ownership Act defines a female-headed business as one that is:

- at least 51 percent owned by a woman or women, and
- ‘controlled’ by a woman or women (‘control’ in this context means exercising the power to make policy decisions), and
- ‘operated’ by a woman or women (‘operate’ in this context means being actively involved in the day-to-day management). http://www.ilo.org/Public/English/Employment/Gems/Eeo/Law/Usa/L_Wbo.Htm
Survey methodology

Rather than beginning a new survey process, it may be possible to 'piggy back' on an existing survey and insert appropriate questions (for example household survey, labor force survey, enterprise survey). The Government's Statistics authority should be able to advise.

It will be important to ensure that the sample does not include just formal businesses but also encompasses informal businesses. In the countries covered by the Gender and Investment Climate Assessments most women’s businesses are unregistered and operate informally.

Careful thought will need to be given to sampling technique to ensure the survey is completed by a representative sample. When seeking the views of women the checklist in Tool 11: (Women’s Consultation / Training Checklist) should be considered. In particular, if a formal survey instrument is being used it should be borne in mind that women tend to have lower education and literacy levels than their male counterparts. Surveys should be translated into local languages. If surveys are distributed at the household level the male head of the household may fill in the questionnaire even if it is the woman who runs the family business.

If it is desired to gather data about the extent to which female-headed businesses hold appropriate sectoral licenses, an analysis will first need to be undertaken of the sectoral licensing regime and a list drawn up of those sectors which require a sector specific license. The survey sample will then need to be designed so as to include those surveys, and a question included on whether or not the business holds the appropriate license.
**Tool 8: Business Registry Sex Equality Checklist**

**Issues to consider during design of Business Registry**

**Questions to ask women:**
1. What form of registration would be most accessible for you? Personal attendance? Post? Web-based?
2. What opening hours are most convenient for women?
3. When dealing with public officials, who do you find it easier to deal with:
   a. Women
   b. Men
   c. No difference
4. Do you consider women are disadvantaged in any way during the registration process? Is it easier for men to register? If so, how? [Consider taking informal business women to the Registry and seeing how they react to it]
5. What improvements in the registration process would be of greatest assistance to women and make it easier for them to register? [May need to show informal business women the forms and take them through the process]

**Institutional checklist:**
1. Ensure the physical environment one where women would feel comfortable, for example women's desk, washroom facilities
2. Ensure opening hours are convenient for women
3. Ensure customer charters, staff training, and procedures manuals include reference to gender equality issues
4. Ensure the Registry has formal links with groups representing women for consultation and input to policy development, management, and operations. (As most women operate informally, best groups to link with may be NGOs, MFIs, donor community programs)
5. Develop staff training on gender issues. Involve gender experts and NGOs in developing training course. Issues to cover could include: why women's businesses are important and constraints that women face. Approaches to use could include role play on gender roles and drama.
6. Ensure women are employed in the organization, especially at levels where they interact with the public and at decision-making levels.
**Tool 9: How to Undertake Outreach on Formalization for Business Women**

**Partners**

Identify organizations that engage with informal / semi-formal women’s businesses organizations. May include:

- NGOs supporting women’s businesses and income generating activities.
- Microfinance institutions lending to women; donor community-based projects.
- Church-based organizations.
- National Council of Women, and
- Small business training / development organizations.

Identify organizations that have links/networks with grass roots women, for example National Council of Women; NGOs; donor projects.

**Methods**

- Work with partners (such as donor projects, NGOs) to mainstream business formalization within their existing programs / courses / operations which outreach to women. Business entry handbook (to be developed) will be useful source.
- Develop an information campaign on formalization aimed specifically at female entrepreneurs focusing on: a) benefits (including access to finance; facilitation of separation of business and household assets; facilitation of joint enterprises), and b) processes. Radio may be a particularly effective medium as women may have lower literacy rates than men. Drama may be effective at the community level.
- Train registry staff on sensitivity to their female clients (in partnership with NGO’s promoting women’s issues).

**Reach**

- Develop nationwide registration points (even if system is initially manual) using for instance Local Government Offices; Women’s Resource Centers.
- Develop peripatetic registration service. Set up registration desks in market places as a starting point, open during market hours.
- In longer term, in conjunction with development of e-registry, consider registration by mobile phone.

**Tool 10: Women’s Help Desk: Draft Terms of Reference**

- These are indicative outline terms of reference only. Custom-made ToRs should be developed for each country and will depend on precise circumstances including institution that will host the Help Desk, for example in PNG – the Small Business Development Corporation; in Solomon Islands – the new Business Registry.

1. Prime point of contact for women seeking information and assistance with business formalization in particular, registration, licensing, and tax.
2. Co-ordination and dissemination of business entry handbook (to be developed).
3. Prime responsibility for delivering business formalization outreach activities in O?? [This means that the desk will not be static – but peripatetic, for example in market places where the informal sector is.]
**Tool 11: Women’s Consultation / Training Checklist**

**When to use the checklist**
This checklist is for use when:

- developing a resource to be used by women (such as a business entry handbook), to ensure that it is relevant, accessible, and useable by them
- undertaking focus group discussions or interviews with women to ascertain their view on the investment climate issues, for instance business licensing
- holding training / networking events for business women.

**Who to engage with**
- Business women who operate informally including those normally ‘off the radar’, for example market women, petty traders
- Organizations (such as NGOs and MFIs) who work with business women including at the community level, and
- Business women who have formalized their businesses.

**How to engage**
When engaging with women, careful thought needs to be given to the best time, place, and format to do this in view of the likelihood that:

- Women are likely to be time poor – running businesses and dealing with domestic/family demands
- They may be unused to speaking in public, particularly in formal situations
- Family demands / cultural norms may make it difficult for women to travel
- Women often have lower literacy levels (for example for completing survey forms)
- Middle class urban women are not necessarily representative of women generally, and
- Women may not be able to attend meetings, either due to their time poverty and household tasks or it may be socially unacceptable for them to do so, and they may not be permitted by their husbands.
Tool 12: Companies Act Checklist

This tool considers providing a checklist for enabling women's businesses and women's community groups to register as companies.

In general, companies are the optimum business form. Their limited liability status encourages risk taking; their share structure facilitates joint ownership and investment; and their separate legal identity enables the business to continue, even when its owners change. Yet in the countries considered in the Gender and Investment Climate Reform Assessments, few women appear to be company shareholders and directors. Best practice Companies Acts adopt the 'think small first' principle, enabling even the smallest businesses to incorporate and benefit from corporate status.

As well as individual small-scale business women – informal, community-based groups of women engaging in income generating activities could benefit from a formal legal structure. Key benefits include:

- clear governance structure
- clear ownership structure
- makes investing in the group more straightforward (for example buying shares)
- the group would have its own legal identity, separate from its members, which facilitates:
  - the group entering into transactions, for example to own assets such as machinery or land
  - the group borrowing money
  - the group continuing as an entity despite changes in its membership and after the life of its original members.

However, if Companies Acts have complex requirements for registration and ongoing compliance they will not be appropriate for such small enterprises.

Companies Act checklist

- Provision for sole person shareholder and officer (director/secretary). [This enables a woman to set up a business on her own, without the need to involve her husband / male relative as a co-owner or director.]
- Straightforward registration requirements which do not require the services of a lawyer. Ideally registration should be by way of a simple, single form.
- Straightforward registration process which is accessible to women. Provide options other than personal attendance at a single registry in the capital city. [Consider on line registration; postal registration; registration at local government offices; peripatetic registration offices; involving community based organizations including NGOs in outreach]
- Straightforward ongoing filing/oversight requirements, for example a simple annual return form with straightforward instructions for completion which should not require professional advice; requirement for directors to prepare simple annual financial statement.
- Accessible procedures for intervention if something goes wrong – company inspection regime.
- Provision for ownership of company by its members and for them to participate in its governance on a democratic basis.
- In the case of a company with the principal objective of the promotion of community interest (for example the exploitation of a community resource such as land), provision for an ‘asset lock’ prohibiting the disposal of company assets other than in the ordinary course of business or with shareholder approval. [Note: see Solomon Islands Companies Act provisions on community companies for best practice.]
Tool 13: Basic Partnership Agreement

This basic agreement sets out the key terms that may be agreed by the parties before entering into a simple partnership arrangement. It does not require the services of a lawyer to complete, but both parties should ensure that they understand what they are agreeing to. Some of the proposed terms may need altering depending on the precise circumstances of the situation. The partners will need to set up basic books of account for the business in accordance with the terms of this agreement.

The basic agreement should be validated by a local lawyer in the country in which it is to be used, before it is promulgated.

1. Partnership name, business and start date
   a) Names of partners:
   b) Name of partnership:
   c) Purpose of partnership: e.g. to operate a shop / to manufacture a product
   d) Start date of partnership:

2. Partnership books of account
   The partnership will maintain books of account and each partner will, at all times, have access to them.

3. Capital
   a) Each partner will contribute capital in cash to the partnership as follows:

<table>
<thead>
<tr>
<th>Name of partner</th>
<th>Amount of contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   b) A separate capital account shall be maintained in the partnership's books of account for each partner.
   c) Neither partner shall withdraw any part of their capital account.
   d) No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

4. Profit and loss
   a) The net profits of the partnership shall be divided equally between the partners and the net losses shall be borne equally by them.
   b) A separate income account shall be maintained in the partnership's books of account for each partner.
   c) Partnership profits and losses shall be charged or credited to the separate income account of each partner.
   d) If a partner has no credit balance in their income account, losses shall be charged to their capital account.

5. Salaries and withdrawals
   a) Neither partner shall receive any salary for services rendered to the partnership.
   b) Each partner may, from time to time, withdraw the credit balance in their income account.

6. Banking
   a) All funds of the partnership shall be deposited in its name in a bank account or accounts.
   b) All withdrawals from such bank account(s) may be made on authority of one / both partners(s). [Delete as appropriate.]
7. Management duties and restrictions
   a) The partners shall have equal rights in the management of the partnership business, and each partner shall devote their entire time to the conduct of the business.
   b) Without the consent of the other partner, neither partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business.

8. Termination of partnership
   a) The partnership may be terminated at any time by any of the partners, or (subject to paragraph 9 below) by death of any of the partners.
   b) In the event of termination, the assets of the partnership business shall be used and distributed in the following order:
      i) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations
      ii) to replenish any partner’s capital account if the balance is less than the total capital contribution
      iii) to discharge the balance of the capital accounts of the partners
      iv) to equalize the income accounts of the partners, and
      v) to discharge the balance of the income accounts of the partners.

9. Death of a partner
   a) Upon the death of a partner, any surviving partner(s) may purchase the interest of the deceased in the partnership by giving notice to the deceased’s heir or personal representative.
   b) If there is more than one surviving partner, all partners must agree for such purchase to take place, and if they cannot agree, the partnership is terminated.
   c) The purchase price shall be equal to:
      • the deceased partner’s capital account as at the date of his/her death, plus
      • the deceased partner’s income account as at the end of the prior fiscal year
      • increased by the deceased partner’s share of partnership profits or decreased by their share of partnership losses for the period from the beginning of the fiscal year in which their death occurred until the end of the calendar month in which their death occurred, and
      • decreased by withdrawals charged to the deceased partner’s income account during such period.

Date:

______________________________

Name and signature of each partner
Tool 14: Mainstreaming Gender in Regulatory Compliance Cost Tools


The Standard Cost Model and the Compliance Cost Tool both provide a quantitative assessment of the costs imposed on businesses by regulation (for example by business licenses). Both methods can capture: (i) the differential costs on female-headed businesses on the one hand and male-headed businesses on the other of obtaining a license, and (ii) the different experiences of male and female license applicants. This sex disaggregated information should inform the business licensing reform process. But neither method captures two important pieces of information which should inform business licensing reform and policy development:

a) The sex disaggregated extent of non compliance. There is international evidence that suggests that women may be more likely than their male counterparts to choose not to license their businesses due to, for example, their double time burden; limited knowledge about licensing requirements; or limited business networks. If it is found that women are much less likely than men to license their businesses, then the reasons for this need to be investigated (for instance through interviews, focus group discussions, surveys) and then appropriate policy response can be developed, for example targeted information for female-headed businesses.

b) Sex disaggregated qualitative costs. There is international evidence that women are liable to be subjected to sexual harassment when they deal with public officials. This type of experience is not quantifiable but clearly imposes a significant personal cost on women and is a clear disincentive to comply with licensing requirements. If these qualitative issues are revealed, appropriate policy responses can be developed, for instance if sexual harassment is an issue, the assignment of female licensing staff to deal with female license applicants.

Non compliance may be assessed by comparing (i) the total number of license holders with (ii) the total number of businesses. An attempt should be made to find sex disaggregated data on both (i) and (ii). The licensing authority may have sex disaggregated information on the proportion of licenses held by male-headed firms on the one hand and female-headed firms on the other. However, if licenses are in the names of businesses, rather than business owners, this may be problematic. Reliance could instead be placed on anecdotal evidence from the licensing authority or private sector survey evidence, if available.

Information on qualitative costs may be obtained from one-on-one interviews, focus group discussions, or private sector surveys where the experience of men and women when they apply for licenses may be explored.

98 It will be necessary to identify a working definition of ‘female-headed / male-headed business’. The US Survey of Business Owners and the Self-Employed provides a helpful definition. A female-headed business is: at least 51 percent owned by a woman or women; and ‘controlled’ by a woman or women (‘control’ in this context means exercising the power to make policy decisions); and ‘operated’ by a woman or women (‘operate’ in this context means being actively involved in the day-to-day management).
### Key aspects Standard Cost Model (SCM)

1. Provides a framework methodology for measuring administrative costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.

### Key aspects Compliance Cost Tool (CCT)

Provides a framework methodology for measuring policy as well as administrative costs imposed on businesses by Government. Aim is to measure the average cost to a business of complying with the regulation.

### Gender perspective

If impacts on female-headed and male-headed businesses are assessed separately, both tools will enable differentiated impacts to be revealed and then explored.

### Gender checklist

Ascertained proportion of licenses held by female-headed businesses on the one hand and male-headed businesses on the other (see introduction above for suggestions about how to obtain this information).

Based on the proportions above, use a statistically appropriate number of women-headed firms in the sample frame. For example if 50 percent of license holders are women-headed firms by women, 50 percent of sample should be women-headed firms. (See footnote 1 on definition of female-headed firm)

If non-compliance is gender-skewed (for example if women hold far fewer licenses than men) further analysis should be undertaken to ascertain why this is (see introduction above) and the sex disaggregated data should be treated with caution. If few women have obtained licenses, those who have are likely to be atypical (for example they may be well educated / run large businesses.)

### 2. The administrative burden is measured through in-depth interviews with a small number of firms within the target group of the law. They are asked to specify how much time and money they spend performing each administrative activity that is required when fulfilling a given information obligation. The different effects that a law may have on various types of businesses (or a relevant segment of businesses) is carried out. For example, often it will be necessary to distinguish between smaller and larger firms.

The methodology for measuring both the administrative and policy burdens is as per the SCM, but questions on each type of cost burden are separated so that separate information can be collected on each, and each can be measured separately.

Male- and female-headed firms tend to be different – in terms of size and sectors in which they operate.

The sample should reflect the proportions of male- and female-headed firms of different sizes and in different sectors.

### 3. Each administrative activity is a function of the internal and external costs to business, multiplied by the number of times each business has to perform the activity. ‘Time spent’ on fulfilling a requirement is translated into a cost using the wage of the person who is normally assigned to carry out the task, multiplied by the frequency with which that task is carried out.

As per SCM

Even where there is no explicit legal or regulatory restriction, cultural or economic reasons may force women to depend on men to act as intermediaries between themselves and state officials. As a result, women’s interactions with officials are less efficient and women’s choices are restricted.

The data should capture the sex of the person assigned to the task of license application and interaction with the public authority concerned. If the person who obtains the license is not the business owner, the reasons for this should be explored if possible.
### Key aspects Standard Cost Model (SCM)

4. Administrative costs are defined as ‘the costs imposed on enterprises when complying with information obligations stemming from government legislation’. Examples include keeping records, carrying out inspections, completing returns and reports, standing in queues to obtain approvals or file documents, entering information in a register, getting hold of the law or reading a brochure or paying a solicitor to understand what one’s compliance obligations are, cooperating with audits/inspections.

5. An information obligation is defined as ‘a compulsory duty to procure or prepare information and subsequently make it available to a public authority or 3rd party’.

6. Enables reduction targets to be set and key areas for reform to be identified.

### Key aspects Compliance Cost Tool (CCT)

4. Administrative costs are defined as per Standard Cost Model. But importantly they can include costs of avoiding compliance with these requirements, including paying bribes to avoid queuing up or to avoid being caught.

5. An information obligation is defined as per SCM. But compliance costs can also include policy costs – that is, the cost inherent in meeting the aims of a regulation, for example a direct cash cost such as changing stationery to include a tax number, training staff on health and safety compliance, paying direct fees, levies or taxes.

6. Enables reduction targets to be set and key areas for reform to be identified.

### Gender perspective

The making of unauthorized payments is fertile ground for consideration of gender issues. There is international evidence that firms paying small bribes are likely to spend more management time dealing with officialdom, not less. This imposes a double burden – both the cost of the bribe and the additional management time. But it is unclear if male- or female-headed firms are more likely to pay bribes:

- a) Men may be more likely to try to avoid compliance with regulatory requirements than women (such as by paying bribes). This may be due to their greater exposure to bureaucracy, experience and confidence in dealing with officialdom, and given they tend to have wider and deeper networks of influence than female entrepreneurs.

- b) On the other hand there is international evidence that women are more susceptible than men to queue barging, harassment, and requests for ‘speed payments’, being seen as soft targets.

### Gender checklist

Ensure sex disaggregated data is gathered on unauthorized payments when obtaining a license. If possible, gather sex disaggregated data on costs of avoiding compliance.

Sex disaggregate information on opportunity cost (if obtained).

Undertake careful analysis in the light of different gender roles.

Opportunity costs for men and women may be different as women are more likely to juggle their businesses with family/domestic duties. For a woman, spending less time on a licensing requirement may not necessarily translate into additional time spent attending to her business.

If sex disaggregated data is collected, both models will allow a consideration of the different impacts and cost burdens a law may impose on female-headed businesses, as compared with male-headed firms.

They will also reveal any differences in the experiences of men and women dealing with public officials in connection with licensing.

---


**Tool 14B: Regulatory Impact Assessment: gender checklist**

The aim of a Regulatory Impact Assessment (RIA) is to help improve policy-making by placing a greater emphasis on quantifying benefits and costs. An RIA is a detailed and systematic appraisal of the impacts of a regulation in order to assess whether the regulation is likely to achieve the desired objectives. In assessing these impacts it is important to understand them in relation to women, as well as to men. Key aspects to consider are:

- Is the data on which the proposed measure is based disaggregated by sex?
- Will men and women each be directly or indirectly affected by the proposed measure?

**Sample questions to determine impacts on gender equality:**

- Does the measure take into account differences between men and women in access to, and use of, infrastructure?
- Does the measure take into account the freedom of men and women to dispose of their time?
- Does the measure influence the choice and exercise of an occupation by women and men?
- Does the measure take into account the differences in access to information and education for women and men?
- Does the measure take into account the differences in the daily lives of women and men?

Tool 15: Analysis of Business Names Registration Process

1. Business name registration legislation
   a) PNG, Solomon Islands, Tonga, and Vanuatu (and most developing countries with an English legal system heritage) all have a similar Business Names Registration Act. The regime is modeled on a system that operated in England and Wales from 1916, but was abolished there in 1982. The Act and the registration requirements have not only been abolished in the UK but also in many developed countries that previously had such legislation.101
   b) The Act requires a business name to be registered by anyone who wishes to carry on business which is:
      i) NOT as registered as a company under the Companies Act
      ii) Carried on under any name except the name/s of the proprietor/s.
   c) The business names registration regime is not designed to register all businesses. As described above it does not, and is not designed to, capture either companies or businesses trading under the name of their owner/s.
   d) In some cases (such as PNG) the registration of a Business Name is valid for a limited period of time (in the case of PNG three years). It must be renewed after that period if the business is still in operation.

2. Purpose of business name registration
   a) Registration under the Registration of Business Names Act has a quite different effect to registration under the Companies Act. It does not create a new legal body or confer any legal status on a business. It is simply a register of names of some unincorporated businesses.
   b) The rationale behind the regime (as behind the original English legislation) is threefold:
      i) The main purpose of the regime is to allow members of the public, by searching the register, to see who the individuals are that are trading under a business name (where the business is not a company)
      ii) It also provides some ‘protection’ for existing business names – by preventing other businesses trading with a registered name, and
      iii) The Act gives the State the right to restrict the use of certain business names, particularly ones that may be misleading102.
   c) However, in developed countries where similar legislation has been abolished, it has been discovered that a blanket registration requirement is not required, nor necessarily the best way to deal with these issues.
   d) In all the countries considered by the Pacific Gender and Investment Climate Assessments it was acknowledged that the regime was not in practice enforced, and no action is taken against businesses that fail to comply. In practice therefore the register is out of date and incomplete. In all countries considered it is therefore currently failing in its regulatory purpose.
   e) Because the register is not designed to be a comprehensive register of all businesses, but rather for the specific purposes described in paragraph b) above, it is not used by other public authorities, such as the tax authorities, as a compliance tool. This contrasts with the situation in Hong Kong for example, where ALL businesses (whatever their legal form and whatever name they use) are required to register with the Tax Authority. This is quite different from a business names registry.

3. Regulatory cost of business names registration
   a) Against the purpose of business names registration (as described in paragraph 2 b) above) must be weighed the regulatory cost it imposes on businesses.

---

101 The UK, New Zealand, Hong Kong have all abolished the requirement. Australia and Canada continue to maintain a business names registration regime similar to that in PNG, Tonga, Solomon Islands and Vanuatu.

102 Registration may for example be refused if the proposed name includes the word ‘Presidential’ or ‘Government’.
b) The procedure for registering a business name is straightforward. It requires the completion of a single form and paying a small fee. In most cases the forms need to be taken to the Business Names Registry which is located in the capital city. Despite this seemingly straightforward procedure, there is evidence that the requirement imposes a burden on businesses (see box below).

Kenya has almost identical Business Names Registration legislation to that in the countries considered by the Pacific Gender and Investment Climate Assessments. Research commissioned by the Deregulation Project of the Kenya Institute of Public Policy Research and Analysis103 suggests that this regime, taken together with the Trade Licensing regime, cost the Kenyan economy in the region of 1 percent of GDP each year104. This cost includes authorized and unauthorized payments and management time taken up with compliance.

c) As stated above, in practice many businesses using a trading name fail to register it, making the business owners in theory liable to criminal prosecution.

d) In practice, enforcement of the regime can occur when a business comes into contact with a formal authority such as a bank. When approaching a bank for a loan, a small business will typically be required to register under the Business Names Act for the transaction to proceed. Such registration seems to be regarded as bestowing a level of formality on a business. It also imposes a barrier on access to credit by small/informal businesses (especially those outside the capital city for whom business name registration imposes a more significant regulatory burden).

4. International Best Practice

a) As stated above, similar regimes have been dispensed with in other common law jurisdictions such as the UK, New Zealand (which has been at the forefront of business law reform in common law jurisdictions), and Hong Kong105. The regime remains in many less developed countries.

b) The experience of other jurisdictions has been that there are less burdensome and less costly ways of addressing the issues which the Act seeks to deal with – see box below.

In England and Wales the system of registering business names has been successfully abolished since the mid 1980s. The blanket requirement for registration has been replaced by other, less onerous, and more specific requirements to address the need for transparency and protection of business names:

- The desire to see who is ‘behind’ a business is addressed by requiring the owners of businesses to have their name and address displayed on, for example invoices, letters, and at the place of business.

- The issue of protection of business names is now a matter for businesses themselves rather than the State. If a business wishes to protect its name it may do (at its own discretion) by registering it as a trademark. If a business already has a reputation and goodwill in a business name which another company tries to take advantage of by using the same business name a common law ‘passing off’ action can be taken.106

- Finally, the issue of use of misleading names is dealt with by the Business Names Act 1985. The Act controls the use of certain words or expressions in business names by requiring permission of the Secretary of State of other body. (For example, the use of words giving the impression that a business is connected with the Government or a local authority require the permission of the Secretary of State; the use of the word ‘Charity’ requires the permission of the Charity Commission.)

103 Supported by the UK Department for International Development.
104 ‘Improving the Legal and Regulatory Environment for Business through Trade Licensing Reform’ Presentation by KIPPRA, 27 September 2000.
105 Business names registration operates in some other common law jurisdictions eg Australia and Canada.
106 Sources: The Law & Development Partnership; UK Companies House website www.companieshouse.gov.uk.
5. Recommendations for policy paper on Business Names

a) The benefits of a blanket requirement for the registration of every unincorporated business in which uses a business name needs to be balanced against the costs of compliance. It is important to note that the potential benefits of the regime relate only to businesses that are NOT companies and that are NOT trading under the name/s of their owners. The current regime is NOT intended to be, nor is it, a comprehensive register of businesses. The potential uses of the regime are:

- To enable members of the public to learn who is ‘behind’ a business
- To provide limited protection to businesses from use of their business name by another business, and
- To enable the State the right to restrict the use of certain business names.

b) In practice the regime is currently largely un-enforced. The business registration regime should either be enforced or abolished.

c) The UK, New Zealand, and Hong Kong have all abolished the business names regulation regime with no apparent adverse consequences, thus liberalizing the business formation process and reducing the regulatory burden on business start-ups.

d) The experience from UK, New Zealand, and Hong Kong is that a much lighter and more focused regulatory regime is a satisfactory way to address the mischiefs which the Registration of Business Names Act was intended deal with. These more liberalized regimes do not involve the compulsory registration of business names.

e) If the requirement for business names registration were to be abolished, businesses that are concerned to protect their business name would be able to do so on a voluntary basis by registration under trademark legislation. Consideration would need to be given to whether it would be appropriate to introduce new legislation which:

- Requires disclosure of who is behind a business on, for example, letterheads and business premises (as in the UK under the Business Names Act, 1985, section 4), and
- Controls the use of certain business names by a system of certain names requiring approval from a Government authority.
Tool 16: Mechanism to Sex Disaggregate Data on Holders of Sectoral Licenses

Finding out the sex of owners/managers of business that holds licenses

Sectoral licenses tend to be held in the name of individual businesses. In most cases the businesses will be companies or trading under a business name. The sex of the owner/s / manager/s of the business will not therefore be readily ascertainable from licensing records. In the case of registered companies it is relatively straightforward to find out if the shareholders and directors are male or female by conducting a company search (currently the companies registry does not collect data on sex of directors and shareholders, but this can largely be ascertained from the registered names of directors and shareholders).

In the case of unincorporated businesses, the business names registry or other business registry may reveal who the owners are. Again, the sex of the owner/s may be ascertained from the owner/s names.

Going forward, new applicants in the application form for sectoral licenses could be required to specify who are the owners/managers of the business and their sex.

Establishing a baseline

When developing a baseline relating to the extent to which female-headed businesses hold sectoral licenses, the starting point is to decide if you are measuring ‘stock’ or ‘flow’.

### Stock

- Number of existing companies that have male/female directors/shareholders (sample)

### Flow

- Number of new registrations that have male/female directors/shareholders (total number over a period of time)

The analysis should be conducted for licenses granted over a time period (if measuring flow) or for total licenses granted – or possibly, more realistically, a random sample (if measuring stock). Simple data collection sheets should be developed. For example:

**Number of license holders that are companies registered with directors who are...**

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Number of license holders that are companies registered with shareholders who are...**

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Number of license holders that are un-incorporated businesses with owners who are...**

<table>
<thead>
<tr>
<th></th>
<th>Only male</th>
<th>Only female</th>
<th>Male + Female</th>
<th>Corporate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTALS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Tool 17: Gender Perspectives on CIMC Informal Policy Concept Paper

Tool 17 does not apply in Tonga
**Tool 18: Outline of Basic Contract**

**Contract for sale of future goods**

This basic contract sets out the key terms that may be agreed by the parties in relation to the sale of future goods, for example, a craft item that has been ordered by the buyer subject to manufacture by the seller. It does not require the services of a lawyer to complete, but both parties should ensure that they understand what they are agreeing to. Some of the proposed terms may need altering depending on the precise circumstances of the situation.

The document should be validated by a local lawyer in the country in which it is to be used, before it is promulgated.

Date:

Buyer: [Insert name] of [Insert address]

Seller [Insert name] of [Insert address]

1. The Seller agrees to provide for the Buyer, on or before [Insert date], the following goods: [Insert description of goods, for example type, number, measurement] at the following price [Insert price].

2. The goods will be delivered to the Buyer as follows: [Insert explanation of how the goods will be delivered, for example, the Buyer will collect them by a certain date / the Seller will deliver them to a certain address by a certain date]

3. The Seller acknowledges part payment of [Insert amount] for the goods.

4. The Buyer agrees to pay the balance due for the goods of [Insert amount] at the time and at the place where s/he receives them in accordance with paragraph 2 above.

5. If:
   a) the Buyer does not collect the goods by [Insert date], or
   b) the Buyer makes it impossible for the Seller to deliver the goods by [Insert date] as specified in paragraph 2 above, then ownership of the goods is deemed to pass to the Buyer on that date, and the Buyer is immediately liable to pay the balance of the purchase price to the Seller.

6. Until the goods have been received by Buyer (or are deemed to have been received by the Buyer under paragraph 5 above), all risks of damage to the goods shall be on the Seller.

7. The Seller warrants that at the time they are received by the Buyer the goods will be free from any security interest or other lien or encumbrance.

8. The Buyer has [insert number] days from receipt of the goods (or deemed receipt of the goods under paragraph 5 above) to notify Seller of any claim for compensation due to the condition, grade, or quality of the goods. Otherwise, the Buyer is deemed to have accepted the goods.

______________________________ Buyer

______________________________ Seller

[Signatures]

[On delivery of the goods, the following receipt should be signed by the Buyer]

Goods received in accordance with above contract

______________________________ Buyer

[Signature]

Date:
Tool 19: Mediation Sex Equality Checklist

1. Provide gender specific training for mediation providers. This should ensure sensitivity to gender issues, particularly the perceived power imbalances between genders; and also that the mediator provider is knowledgeable about cultural values and norms of both genders in local context.

A skilled mediator should ensure that the power differences between men and women, which put women at a 'disadvantage' in negotiating with men, are not brought in to play. Mediation validates the parties' ability to speak for themselves by the mediator's use of specific skills which help parties explore options and the possible repercussions of different courses of behavior or action. But if handled incorrectly, mediation can silence the voices of women and result in unfair settlements that fail to address their needs.

2. Provide an environment in which women feel free to speak.

3. Consider provision of separate front office desks, waiting areas and bathroom facilities for women.

4. Consider if opening hours are convenient for women (who may have to combine their business with domestic duties). Also consider child care issues – see box below.

In the United States, some cities such as New York and Washington DC. provide free or subsidized day care services close to court premises to enable mothers to attend court and facilitate access to justice16.

5. Ensure operational/procedural manuals / codes of conduct / customer charters address gender issues, and set out the level of service that women should expect.

6. Grievance mechanisms, complaints boxes, help desks should be undertaken by teams which include women.

7. Include women's groups (such as NGOs) and local women's interest groups in design and implementation.
**Tool 20: Methodology for Sex Disaggregation of ADR Users**

Where a new ADR system is being set up, sex disaggregated data should be collected from the beginning about who is using the system. This means that the data collected should include for each case:

- The sex of the claimant/s (or if they are a legal entity such as a company).
- The sex of the defendant/s (or if they are a legal entity such as a company).
- The sex of the mediator.

**Tool 21: ADR / Commercial Justice Users Perception Questionnaire**

The questions below are indicative only for inclusion in a survey on perceptions of users of the commercial justice system (including ADR users). The design of perceptions surveys are best undertaken once these systems are up and running and the issues associated with the reforms have emerged.

The survey should be administered to women and men, and results sex disaggregated.

**Questions for users of the system (for instance ADR / Small Claims)**

In this survey the scale of 1 to 4 is as follows:

1 = very satisfied
2 = satisfied
3 = not satisfied
4 = very dissatisfied

a) Did you bring the initial claim, or were you defending?
b) Overall, how would you rate the service you received (on scale of 1 to 4)?
c) How would you rate (on a scale of 1 to 4):
   - Cost of service
   - Timeliness of service
   - Fairness of service
   - The performance of the judge / mediator
   - The facilities (court / ADR centre)
d) What impressed you most about the service?
e) What was the worst thing about the service?
f) How would you improve the service?
g) Do you have a preference for a male or female judge / mediator? If so, why?
h) Any other comments
This report was printed on recycled paper produced from a sustainable forest.