# CHALLENGES OF FOREIGN ASSETS SEIZURE- THE SAMOA EXPERIENCE



### DEFINITION ASSET SEIZURE IS THE CONFISCATION OF ASSETS THAT HAD BEEN ACQUIRED FROM ILLEGAL ACTIVITIES OR FROM THE ALLEGED PROCEEDS OF CRIME; IT IS A WAY OF COMBATING ORGANIZED CRIME BY STOPPING THE PROCEEDS OF CRIME FROM BEING LAUNDERED AND REINVESTED IN EITHER LEGAL OR ILLEGAL BUSINESS ACTIVITIES; FOREIGN ASSET SEIZURE INVOLVES THE SEIZING OF ASSETS THAT ARE LOCATED IN A FOREIGN JURISDICTION AND WILL NEED THE COOPERATION OF THAT JURISDICTION FOR AN EFFECTIVE AND SUCCESSFUL ASSET SEIZURE.



### HOW IT WORKS 1. A CRIME HAS TO BE COMMITTED BY A

- A CRIME HAS TO BE COMMITTED BY A LEGAL OR NATURAL PERSON AND THERE IS KNOWLEDGE THAT THE PROCEEDS OF CRIME ARE IN A FOREIGN JURISDICTION;
- 2. IDENTIFY THE ASSET(S) TO BE SEIZED AND PROPERLY PLAN THE SEIZURE PROCESS, THEREFORE PRE-SEIZURE PLANNING IS VERY IMPORTANT;
- 3. ONCE THERE IS CONFIRMATION THE RELEVANT AUTHORITIES ARE CONTACTED FOR THE NECESSARY ARRANGEMENTS. THEY MAY INCLUDE THE FIU, ATTORNEY GENERALS OFFICE, SUPREME COURT, POLICE, FOREIGN AFFAIRS ETC;
- 4. DETERMINE THE EXTENT OF THE INTERNATIONAL COOPERATION THAT CAN BE EXPECTED FROM A FOREIGN JURISDICTION BEFORE SEEKING THE COOPERATION OF THAT COUNTRY;
- 5. ONCE APPROVAL IS GRANTED, SAMOA CAN THEN COORDINATE WITH THAT FOREIGN COUNTRY FOR AN EFFECTIVE ASSET SEIZURE.

# SAMOA FOREIGN ASSET SEIZURE LEGAL FRAMEWORK

- SAMOA HAS A SOUND LEGAL FRAMEWORK FOR THE TRACING, FREEZING AND CONVICTION-BASED CONFISCATION OF PROCEEDS OF CRIME AND INSTRUMENTS OF CRIME;
- O THE "PROCEEDS OF CRIME ACT 2007" CONTAINS AN EXTENSIVE ARRAY OF POWERS TO SUPPORT ASSET SEIZURE AND CONFISCATION;
- O THE "MONEY LAUNDERING PREVENTION ACT 2007" ALLOWS THE FIU TO INVESTIGATE AND FACILITATE THE SEIZURE OF THE PROCEEDS OF CRIMES THAT HAVE BEEN LAUNDERED TO FOREIGN JURISDICTIONS;
- O THE "MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2007" HAS PROVISIONS TO FACILITATE THE PROVIDING AND OBTAINING INTERNATIONAL ASSISTANCE IN CRIMINAL MATTERS AND FOR OTHER RELATED PURPOSES.

## MUTUAL ASSISTANCE TO FOREIGN COUNTRIES

- O THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT AND THE PROCEEDS OF CRIMES ACT HAS PROVISIONS THAT ALLOWS COMPETENT AUTHORITIES IN SAMOA TO PROVIDE INVESTIGATIVE ASSISTANCE AND ASSET SEIZURE,
- O MAY ALSO PROVIDE NON-COERCIVE ACTIONS SUCH AS SEARCHING FOR A PERSON IF REQUESTED BY A FOREIGN JURISDICTION;
- O HOWEVER, THERE IS NOT MUCH PROVISIONS RELATING TO NON-CONVICTION BASED CONFISCATIONS, THEREFORE THE FOREIGN COUNTRY MUST CONFIRM THERE HAS BEEN A CONVICTION OR PROVE THE CONFISCATION WILL LEAD TO A CONVICTION;
- O COMPETENT AUTHORITIES SUCH AS SAMOA INTERNATIONAL FINANCE AUTHORITY (SIFA), MINISTRY OF REVENUE AND CUSTOMS (MCR), FINANCIAL INVESTIGATIONS UNIT (FIU) PROVIDE A BROAD RANGE OF DIRECT AND INDIRECT INTERNATIONAL OASSISTANCE IN MANY WAYS INCLUDING FOREIGN ASSETS SEIZURE.

#### CASE STUDIES

- O THERE HAS NEVER BEEN A CASE WHERE SAMOA HAD TO FREEZE, CONFISCATE OR SEIZE FOREIGN ASSETS FROM ANOTHER JURISDICTION;
- O NOR HAS ANOTHER COUNTRY REQUESTED THE ASSISTANCE OF SAMOA TO FREEZE OR CONFISCATE ASSETS WITHIN SAMOA;
- O HOWEVER, COUNTRIES CONTINUALLY SEEK THE ASSISTANCE OF SAMOA PARTICULARLY FROM SIFA AND MCR THROUGH THE EXCHANGE OF INFORMATION TREATIES TO PROVIDE INFORMATION IF POSSIBLE, THAT WILL ASSIST THEM IN THEIR INVESTIGATIONS AND POSSIBLY LEAD TO FOREIGN ASSET SEIZURE.

#### CHALLENGES

- LEGAL AVENUES THERE ARE DIVERSE LEGAL AVENUES FOR PURSUING FOREIGN
   ASSETS SEIZURE AND RECOVERY, THEREFORE A THOROUGH UNDERSTANDING OF
   INTERNATIONAL LAW AND THE LAWS OF THOSE FOREIGN COUNTRIES IS
   ESSENTIAL;
- LANGUAGE BARRIER PARTICULARLY IN COUNTRIES WHERE ENGLISH IS NOT THE FIRST LANGUAGE AND VICE VERSA;
- CONFISCATION ORDERS ENFORCING DOMESTIC CONFISCATION ORDERS IS ALWAYS DIFFICULT THEREFORE DOING IT ACROSS BORDERS WILL BE MORE CHALLENGING;
- O PRE-SEIZURE PLANNING IS VITALLY IMPORTANT FOR THE SUCCESSFUL SEIZURE OF FOREIGN ASSETS BECAUSE IT WILL DETERMINE IF GOVT WILL BE LIABLE TO ANY OFINANCIAL LOSS OR REPUTATIONAL HARM.

