

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.



MUTUAL ASSISTANCE TO FOREIGN COUNTRIES

- 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,
- MAY ALSO PROVIDE NON-COERCIVE ACTIONS SUCH AS SEARCHING FOR A PERSON IF REQUESTED BY A FOREIGN JURISDICTION;
- 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;
- 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 ASSISTANCE IN MANY WAYS INCLUDING FOREIGN ASSETS 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;
- PRE-SEIZURE PLANNING – IS VITALLY IMPORTANT FOR THE SUCCESSFUL SEIZURE OF FOREIGN ASSETS BECAUSE IT WILL DETERMINE IF GOVT WILL BE LIABLE TO ANY FINANCIAL LOSS OR REPUTATIONAL HARM.

