



**Disrupting criminal trafficking and smuggling networks
through increased anti-money laundering and financial investigation capacity
in the Greater Horn of Africa
(AML-THB in the GHOA)**



Strategic Considerations in Asset Freezing/Seizures

May 20th 2021

Arguments in Favour of Building FI Skills

- FI requires very different knowledge, skills and expertise to that of traditional investigations /prosecution work (a case can only be as good as the investigations)
- The process involves litigation(interim orders) and an emphasis on property law and understanding of financial systems
- It is often a challenge to to learn new law and processes as they are sometimes complicated new procedures
- **FI, Prosecution & Asset confiscation raises very complex issues and tends to be heavily litigated by criminals who can often afford to employ the best counsel**
- it is therefore necessary to dedicate capacity who will stay up-to-date- thanks to the HoAF training program

Objectives of FI

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- ▶ **Asset Identification**- following leads to collect evidence on assets
- ▶ **Arrest**- evidence on assets will lead to nature of crime disclosure/discovery and leading to arrests
- ▶ **Jail**- evidence from assets, leading to arrest, and evidence on prosecution leading to conviction, confiscation orders and jail
- ▶ **Confiscation**-permanent deprivation of illegally acquired assets
- ▶ **Return** to owner/social reuse

Preliminaries in FI

- ▶ Putting the team together-
experts/specialized inter agency
- ▶ Looking at the domestic legal
framework requirements and quick
wins
- ▶ Establishing contacts in complex
multijurisdictional cases
- ▶ Securing stuffiest resources
- ▶ Planning/work plan
- ▶ Securing assets

FI-Information Overload

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Financial Profile - Outcome

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- ▶ **FP will support your decision making on what strategy to take in securing assets- procedure, forum, persons/defendants to pursue, what assets to target, & management options:-**
 - **Specialized financial statements showing what the profiled subject owns, owes, earns, and spends at any given point, or over a period of time-determine value and nature.**
 - **May yield direct evidence of illegal income or hidden assets, or circumstantial (indirect) evidence of illegal activity by showing that the subject's expenditures exceeded known sources of funds- supports the burden of proof threshold**
 - **Allows for contisystematic method for collecting and analyzing financial data concerning the subject for inter parte heachallenges nued raised by suspects**

- **Person Profiling**
- **Company/Business Profiling**
- **Financial Profiling**



Securing assets

- ▶ Preventing dissipation of assets is crucial:-
 - I. **Seizure**: involves taking physical possession of the targeted asset
 - II. **Restraining/Freezing orders restrains** any person from dealing with or disposing of the assets pending final judicial decisions/ or any other decision
- ▶ Different legal systems have different processes e.g. in most civil law jurisdictions FI is overseen by the Prosecutor or Investigative Magistrates who can quickly issue such orders, while in common law systems, the court plays the central role



Property Based (in rem)

- ▶ Based on “tainted property” systems i.e., confiscation of assets found to be the proceeds or instrumentalities of crime
- ▶ At seizure applications- your domestic legislation will dictate that you establish a link between the assets and the offence
- ▶ In this instance several parties who hold such assets can be included in the application

Value Based (in persona)

- ▶ Referred to as “benefit” systems
- ▶ Requires a linkage between the accused person and the assets
- ▶ Allow the determination of the value of the benefits derived from crime
- ▶ The confiscation of an equivalent value of assets that may be untainted.

Standard of Proof in Provisional Measures.

- ▶ At this stage the purpose is only to preserve assets- most framework have provided for lower standards of proof
- ▶ Use off terms include reasonable ground or belief; suspected of living a criminal lifestyle; evidence needed to establish the truth, investigations has commenced, arrest has taken place
- ▶ It is therefore important to consider before action that evidence in possession is sufficient to satisfy requirement and can withstand challenge.

Confiscation Enhancements

- ▶ Different financial crime framework has made provisions to enhance confiscation such as:
 - Accomplice evidence admitted without corroboration
 - Reversal of evidentiary burden
 - Unexplained wealth/increase in wealth
 - Lifestyle
 - Possession
 - Direct lifting of the veil to BO
 - Sudden disposal of assets
 - Belonging to or associating with organized crime networks

Interim Management

- ▶ Provided in some domestic framework but can be complex and costly
- ▶ Subsistence provisions
- ▶ Best Practice:
 - Have a centralized agency to keep all data/coordinate
 - Undertake/ national fund
 - undertake risk assessments- cost of management
 - pre-seizure planning- involve relevant parties at beginning
 - Guidelines on processes and oversight for daily use
 - Interim disposal applications/policies
 - Agreements with Defendants

Suggested “Place holders”

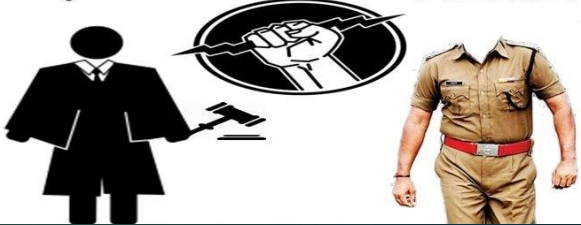
- ▶ When evidence not yet sufficient can use:-
- ▶ Administrative procedures
- ▶ FIU
- ▶ Tax
- ▶ Sanctions
- ▶ Informal networks- ARINEA, ARINSA, CARIN , Interpol etc
- ▶ Settlements

The battle to secure assets

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Who is more powerful???

Lawyers?? **Police??**



THANKS!

- ▶ Any questions?
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