

THE SANCTIONS: FREEZING OF REAL ESTATE AND ALL CONNECTED CHALLENGES (USA-EU-AFRICA-MIDDLE EAST)

Introduction

The sanction of freezing of real estate, usually referred to as a "property freeze" or "asset freeze," is a legal action taken by government authorities or regulatory agencies to temporarily prohibit the transfer, sale, or disposal of real property.

In essence, when real estate assets are frozen, the owners or stakeholders cannot sell, transfer, or otherwise dispose of the property until the freeze is lifted.

This action occurs as a result of various legal and financial challenges such as discussed below:

Circumstances of property freeze

There are various cases which may lead to the freezing of property. These cases usually involve legal disputes, regulatory actions or alleged criminal activities such as money laundering, fraud, corruption, Terrorism or organized crime. They aim to prevent suspects from selling or moving assets until the conclusion of a legal investigation.

Legal Procedure

A property freeze is typically initiated through a court order or by a relevant government authority. The affected property owner is notified, and their rights to the property are temporarily suspended.

In Rwanda, **Law n° 42/2014 of 27/01/2015 governs the recovery of offence-related assets**. This Law aims at seizing, confiscating and managing offence-related assets, laying down and enhancing powers and competencies of the organs in charge of the tracing, recovery and management of assets and benefits provided under it and determining the framework for cooperation between Rwanda and foreign States towards the recovery of assets and benefits provided under it.¹

Recoverable assets are those derived from offences including corruption and other related offences provided for by criminal laws and international conventions on the fight against corruption ratified by Rwanda, offences related to the stock market exchange or illegal public issue of shares, financial fraud, theft or extortion, forgery and use of forged documents, fraudulent bankruptcy, among others listed.²

This law gives the responsibility to the National Public Prosecution Authority, the Ministry of Justice (and the Office of the Ombudsman to some extent) to coordinate the activities related to the seizure, confiscation and management of offence-related assets.³

¹ Law n° 42/2014 of 27/01/2015 governs recovery of offence-related assets, Article 1

² Ibid, Article 3

³ Ibid, Articles 15,16 and 23.

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The Challenges connected with freezing of property

Property freeze has financial impacts on the property owners. They may face severe financial constraints, because of the inability to rent, sell or mortgage their real estate during the freeze.

Resolving issues related to frozen properties can be time-consuming and expensive. The Property owners may be required to hire legal representation and engage in a lengthy legal process to unfreeze their real estate assets. In the end, legal fees and expenses can prove to be burdensome as property owners have to hire legal counsel to navigate the complexities of the freeze.

The owners also have to maintain the property even if it's frozen, incurring costs for maintenance, security, and other necessary expenses.

The property owner or businesses associated with the frozen property may also bear the burden of reputational damage, especially if the freeze is related to criminal activities or financial fraud.

Economically, property freezes can also have a disruptive effect on real estate markets, particularly if the frozen assets are significant. Buyers and sellers may face uncertainty, and market activity can slow down.

The value of the property may also decline during the freezing period, potentially affecting the owner's ability to recover their investment or to pay back a loan.

Governments often generate revenue from property-related transactions, including taxes, fees, and permits. Frozen properties lead to reduced transactions, resulting in a loss of revenue for local and national governments. This can ultimately impact public services and infrastructure development.

The property freeze may have a negative impact on Banking and Financial Institutions that have provided loans or mortgages for the frozen properties. If property values decline due to freezing, it can lead to bad loans and financial instability in the banking sector.

The freezing of real estate assets can lead to a loss of investor confidence. Uncertainty in the real estate market may lead to hesitancy among investors, reducing overall investments in properties and related industries.

The duration of a property freeze can vary, depending on the legal process and the specifics of the case. Periodic reviews may be conducted to assess the need for continuation. Courts usually grant property owners the opportunity to challenge a property freeze in court by presenting evidence to demonstrate that the freeze is unjust or no longer necessary.

Where individuals are found guilty of the alleged crimes, the frozen assets may be subject to forfeiture thus being permanently seized by the government.

Cooperation between different countries and their legal systems may be required in cases involving the freezing of real estate assets with international dimensions that transcend different jurisdictions (Russia, Afghanistan, Iran, North Korea, ...).

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Conclusion

The sanction of freezing real estate is an important legal measure taken to preserve assets during investigations or legal proceedings. Whereas it has important legal and financial purposes, it also comes with numerous challenges and implications for property owners, stakeholders such as Tenants, co-owners, Banks, real estate markets, and the broader legal system.

Overall, the Freezing and confiscating of property is intended to deprive criminals of their illegally acquired assets. It is therefore a crucial means of combating (organized) crime and a way to stop the proceeds of crime from being laundered and reinvested in legal or illegal business activities or prevent suspected criminals from using the assets to secure more funds to finance their criminal or terrorism activities.

I trust you found the session both enjoyable and informative. In case of any queries/clarification, please feel free to reach out.

Wishing you a wonderful time at IBA Paris and a safe trip back home

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