Techniques of investigation and prosecution of financial crime and money laundering.

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In this presentation

- My Background
- FATF and its global impact – The Israeli experience
- FATF methodology regarding the investigation and prosecution of Money laundering – is it working ?
- Best practices and examples
- FATF Going ahead
- Conclusions

My Background
I will highlight the LEA perspective –
but financial people - Please Listen !

- Prosecutor

- Head of Israel FIU

- Deputy state attorney

- International experience as an evaluator trainer and consultant

XXIII CONGRESO
HEMISFÉRICO PANAMÁ 2019

FATF and its global impact – The Israeli experience

- 2000 - NCCT Black list
- 2018 - Joining FATF as a full member

IO.1 - Risk, policy and coordination	IO.2 International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	Substantial	Moderate	Moderate	Substantial	High
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Substantial	High	High	Substantial	Moderate	

FATF · COUNCIL OF EUROPE · CONSEIL DE L'EUROPE

Anti-money laundering and counter-terrorist financing measures

Israel

Mutual Evaluation Report

December 2018

FATF - New FATF methodology focusing now on effectiveness

- 7.1. How well, and in what circumstances are potential cases of ML identified and investigated (including through parallel financial investigations)?

- 7.2. To what extent are the types of ML activity being investigated and prosecuted consistent with the country's threats and risk profile and national AML/CFT policies?

- 7.3. To what extent are different types of ML cases prosecuted (*e.g.,* foreign predicate offence, third-party laundering, stand-alone offence etc.) and offenders convicted?

- 7.4. To what extent are the sanctions applied against natural or legal persons convicted of ML offences effective, proportionate and dissuasive?

FATF methodology regarding the investigation and prosecution of Money laundering – Is it working ?

- Very few STRs leading to conviction of ML
- Even fewer ML convictions with foreign predicate offences
- Most cases prosecuted – self laundering
- Hardly any convictions of professional ML – stand alone cases
- Relatively low amounts of proceeds confiscated

FATF methodology regarding the investigation and prosecution of Money laundering – Is it working ?

- Punishment for ML not dissuasive
- (and what is the probability of being caught?)
- Corporate liability - few convictions - mostly DPA with managers getting "off the hook"
- Is this just "the cost of business"?

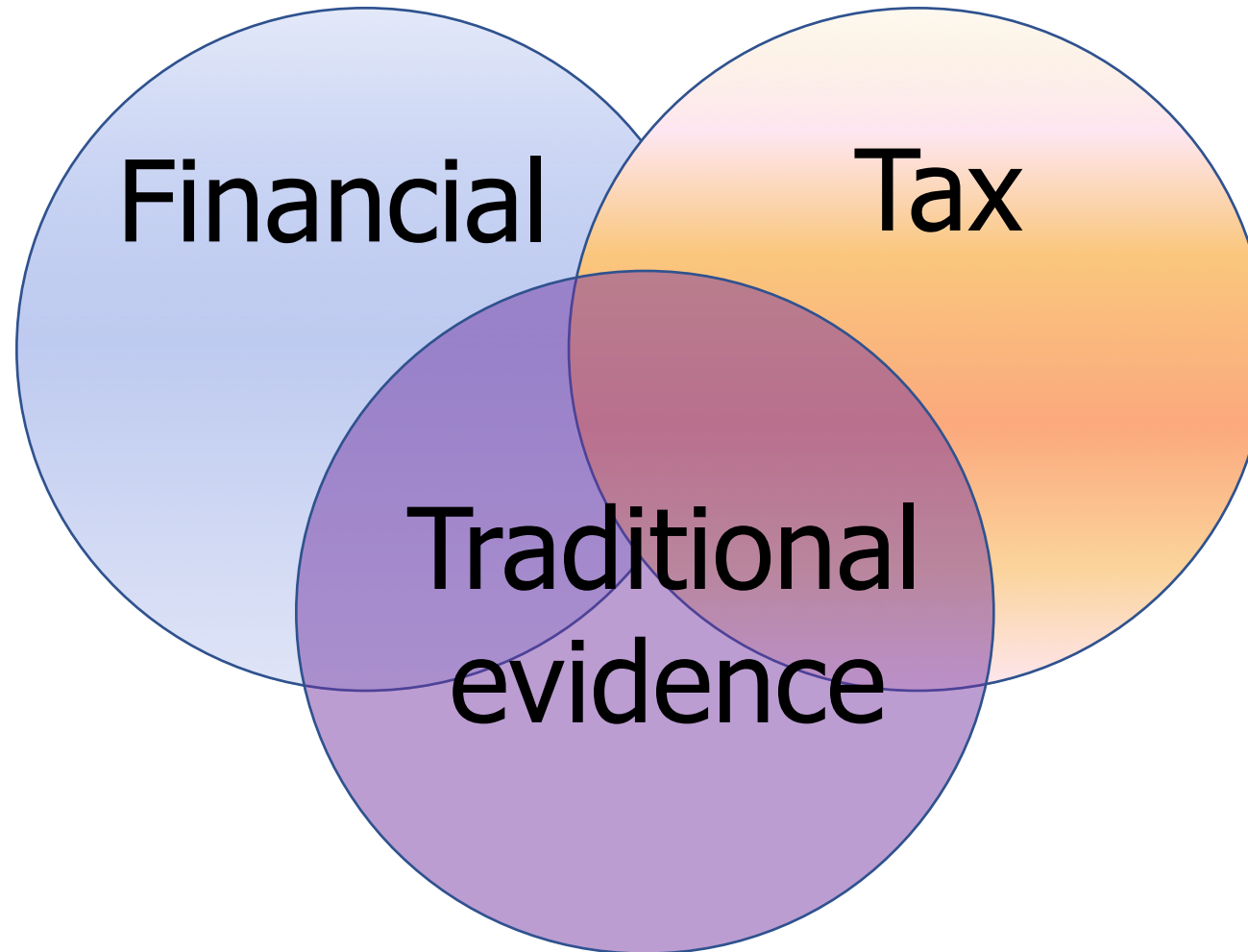# Best practices and examples on 4 levels:

- Adopting a policy for investigation and prosecution of ML
- Mechanisms for improving the Use of financial intelligence (STRs etc) in ML investigations
- Creating legal tools for better using financial intelligence as evidence in ML cases
- Developing jurisprudence making it easier for prosecutors to proving knowledge and intent

Adopting a policy for investigation and prosecution of ML

- Risk based
- Parallel financial investigation
- Measuring effectiveness
- Improving the chances of being caught (big and small cases)
- Alternative measures to criminal
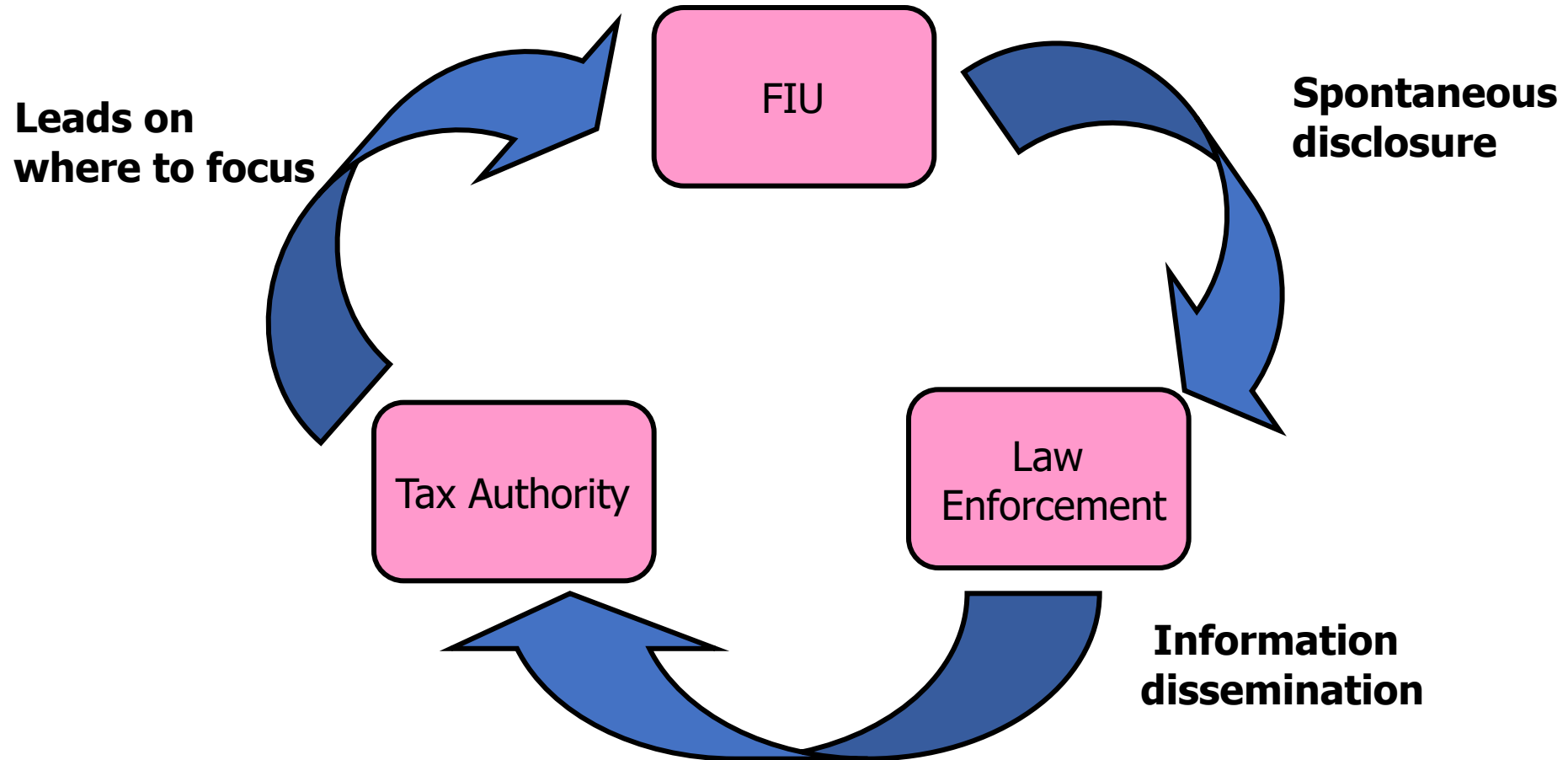
Modern Financial Investigation

Financial focused investigation

- Physical Surveillance
  - Curriers depositing cash
  - ATM withdrawals of the suspect
  - Collecting evidence to rebut "Bona fide" claims of property - Who is using the car?
- Interviews (prepared professional questions)
- Account Monitoring Order
- Search Warrants
- Electronic Surveillance
  - of who? (Banker?, Lawyer?, Financial adviser?)
- Undercover Operations
- "Controlled delivery" – marking notes
- Trash Runs

Mechanisms for improving the Use of financial intelligence (STRs etc) in ML investigations

- Information exchange
- Fusion centre
- Lesion officers at FIU
- Professionalism - Investigator knowledge AML/CFT obligations
- Prosecutorial involvement

Fusion center

Creating legal tools for better using financial intelligence as evidence in ML cases

- Expert evidence
- Focus on domestic predicate offences – (fraud, false declarations - CDD KYC)
- Investigate deviation from normal business conduct

The Financial Evidence Paradox

Financial institution   FIU   Police   Prosecutor   Court

← Level of Financial expertise

Unreasonable - Suspicious - Prima facie – Beyond reasonable doubt

Level of evidence needed to prove →

Expert evidence

Based on ML typologies – for example:

- Cash deposits in account of civil servant
- Taking of loans even though account is balanced
- Rounded numbers
- Immediate withdrawals after deposit
- Discrepancy between business records and financial records
- Smurfing

- State witness (Professional enablers)
- Wilful blindness
- Rule regarding the expected reasonable outcome of one's action
- Circumstantial evidence evidence (reasonableness, Logic, life experience)

Shmuel Dechner - "The Man who told the story" - The "Holy land" case

- Corrupt State witness
- Paid millions
- Testified 67 court days
- Prosecution - limited
  indictment only to Instances
  where financial trail
   Was found

Zschüschen v. Belgium

- Belgium conviction following report to FIU on smurfing of 5 X 15,000 Euro

- During CDD KYC regarding Source of funds – "I work in the Netherlands in the shadow economy, enough to justify 75,000 in 4 years I don't want to talk about it…. my employers will get into trouble…people told me its better to put money in the Belgium ..pay less taxes.. Maybe I can prove this but I don't want to harm those people"

- In the Antwerp criminal court – convicted of Money laundering and sentenced to 10 months on probation, 5000 fine and confiscation of the 75000 - as proceeds of crime

- The court ruled that due to the circumstantial evidence in this case – there was no need for a specific predicate offence to determine the illicit origin of the funds.

Zschüschen v. Belgium

- The circumstantial evidence in the lower court:
  - No explanation as to the source of the funds
  - The perpetrator - Known in the past as related to drug offences
  - No reported income
  - The court found his explanations unreliable – because he would not collaborate them with evidence.
- Held in the Belgium supreme court
  - For a money laundering conviction – the mental element of knowing that the property is of an illicit origin must be proven - but not a specific predicate offence
  - The court put emphasis on the following points:
    - There was no economic rationale for the smurfing
    - Apart from the first deposit, all the other deposits to the bank where made by an unknown 3rd person (while the perpetrator remained outside the bank - "because that's better"#
    - Smurfing - a known typology for laundering drug money

Zschüschen v. Belgium (application no. 23572/07) the European Court of Human Rights

Mr Zschüschen complained of a violation of:

- **His right to be presumed innocent**

- **His right to remain silent**

- **His defence rights more generally**

Zschüschen v. Belgium (23572/07) the European Court of Human Rights

As to the right against self incrimination - The Court noted that the domestic courts had convincingly established a body of circumstantial evidence sufficient to find Mr Zschüschen guilty. His refusal to provide the requisite explanations about the origin of the money had merely corroborated that evidence…. it was not incompatible with the notion of a fair criminal trial that the persons concerned should be obliged to give credible explanations about their assets.
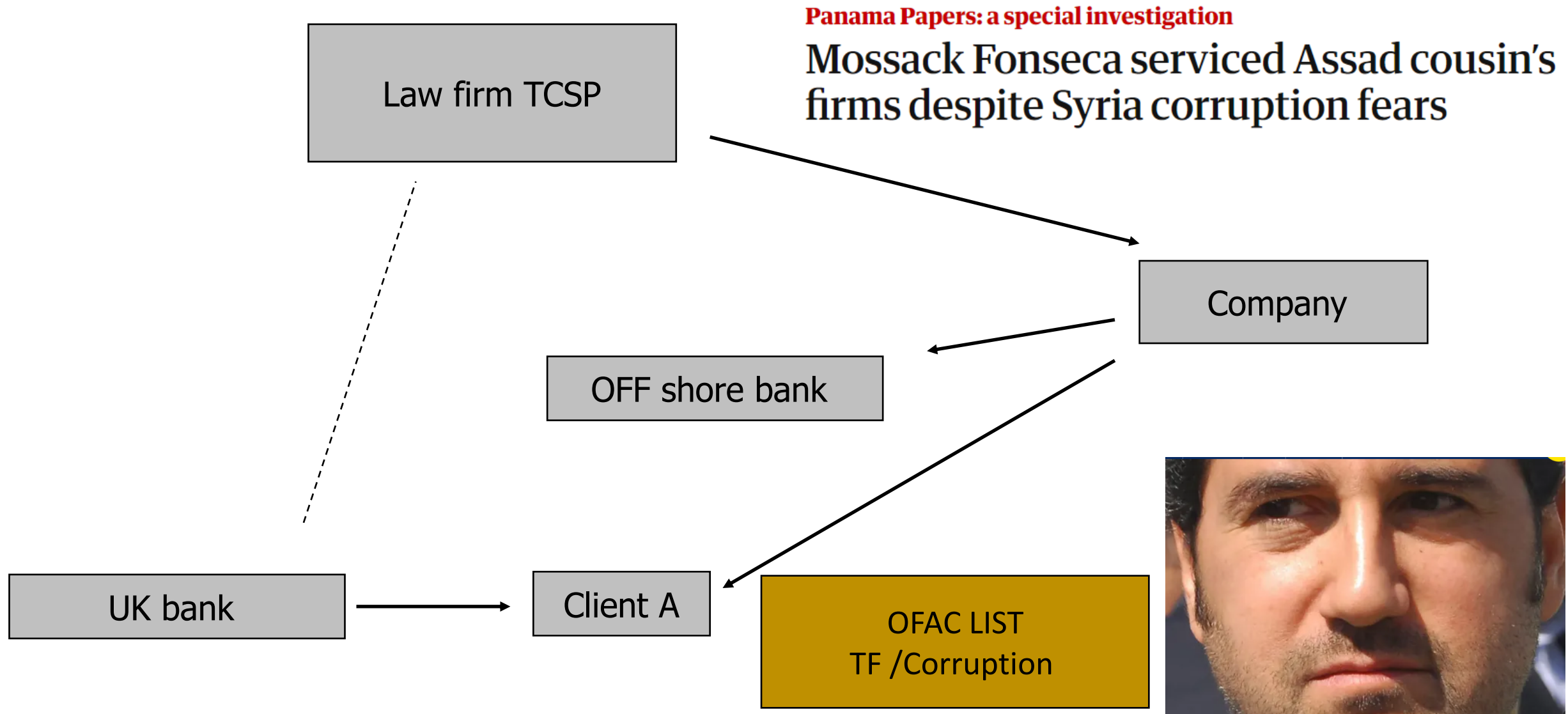
As to the presumption of innocence

The Court …did not find it necessary to define the predicate offence in order to convict a person of money laundering, had not had the effect of shifting the burden of proof from the prosecution to the defence, in breach of the principle of the presumption of innocence.

As to the right to be informed promptly of the accusation - The Court noted that the summons had contained a comprehensive and detailed description of all the suspicious transactions and had also referred to the legal characterisation of the facts. In the Court's view, Mr Zschüschen had been charged with money laundering and the fact that the summons merely which served to establish the existence of this offence sufficed to enable the accused to exercise his defence rights…no obligation to additionally explain the unlawful activities from which the proceeds had subsequently been laundered

See also R v Anwoir [2008] EWCA Crim 1354

visible means of support. That is quite a different case from the scenarios envisaged by Sullivan J in paragraphs 33 and 34 of his judgment. We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime. This in our judgment gives proper effect to the decision in Green, and is consistent with the decisions of this court in Gabriel [2007] 2 CAR 11, IK [2007] 2 CAR 10 and, of course, Craig. We consider that it is also consistent with the approach of this court in R v El Kurd (unreported CA 26th July 2000).

The judge, directing the jury as to this aspect of the case said as follows at page 15:

Example - TCSP in a financial center

Law firm TCSP

Panama Papers: a special investigation

Mossack Fonseca serviced Assad cousin's firms despite Syria corruption fears

Company

OFF shore bank

UK bank

Client A

OFAC LIST
TF /Corruption

- Wilful blindness
- Rule regarding the natural consequences of ones actions
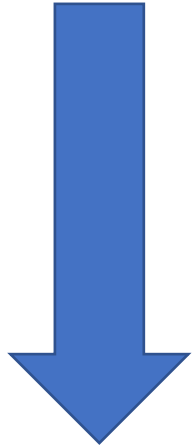- Circumstantial evidence
- Expert evidence

Following Wednesdays discussion: The TF risk is relevant to south America and Panama!

- 2018 - Tri border area - Barakat case
- July 2019 - Argentina Designates Hezbollah Terrorist Group on 25th Anniversary of Bombing (Panama reopens the plane crash investigation)
- 06/08/2017 - 19:30 Ali Kourani and Samir Eldebek were arrested - Hezbollah suspected members, who received military training in explosives, conducted missions for the organization in Panama to locate the Embassies of The United States and Israel and to assess the vulnerabilities of the Panama Canal and some ships.
- Hezbollah is well-entrenched in Venezuela, where the Shiite terrorist group has long worked to establish a <u>vast infrastructure</u> for its criminal activities, including drug trafficking, money laundering, and illicit smuggling. For example, Margarita Island, located off the coast of Venezuela, is a well-known criminal hotbed where Hezbollah members have established a safe haven
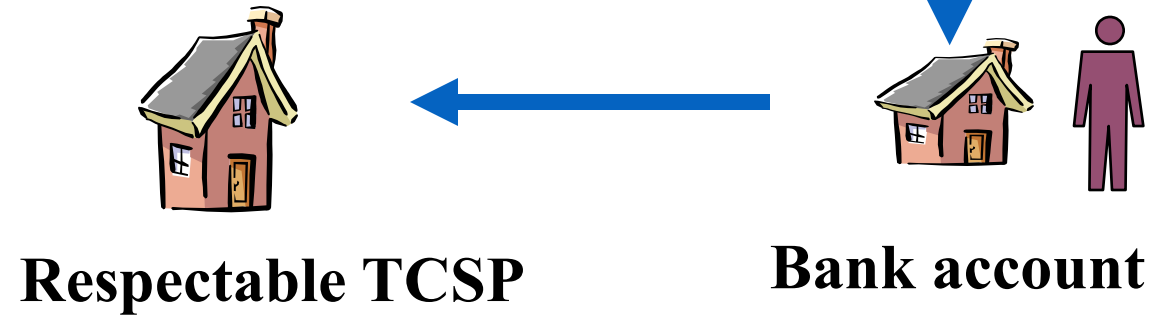
- Important in the combat against tax evasion
- Powerful in combating organized crime – Al Capone model
- Assists prosecutors in proving wilful blindness of financial and non financial enablers as to the illicit source of funds
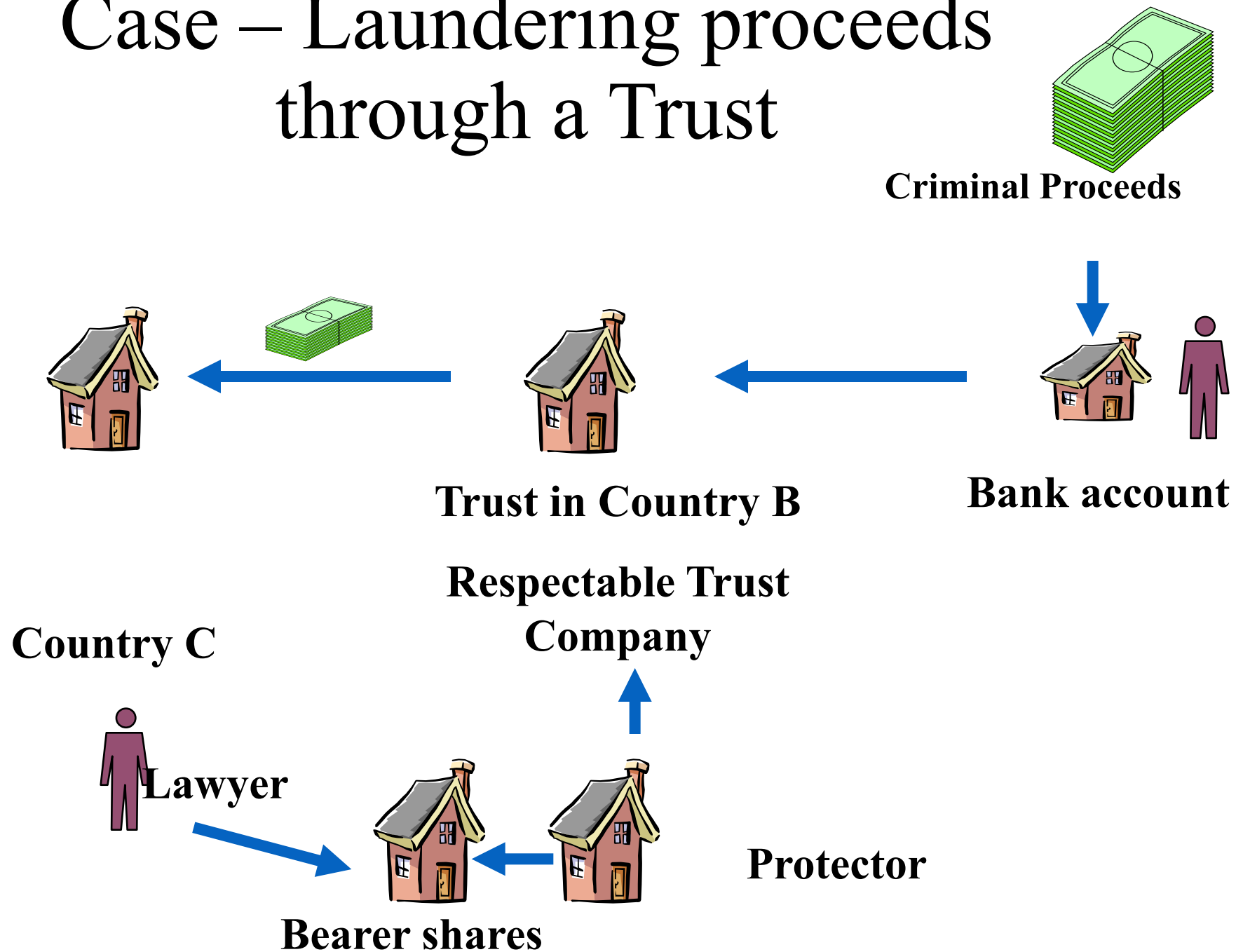
Example investigation of Money laundering through foreign trust

Trusts can be misused by criminals to conceal the proceeds of crime in all three stages of the money laundering process:

- As a means in the initial placement of 'dirty' cash;

- in the layering stage while transferring wealth between jurisdictions; or

- When integrating the laundered proceeds back into the legitimate financial world

United Kingdom Threat Assessment of Serious and Organised Crime 2003
www.ncis.co.uk/ukta/2003/default.asp

Case – Laundering proceeds through a Trust

Criminal Proceeds

Bank account

Trust in Country B

Respectable Trust Company

Country C

Lawyer

Bearer shares

Protector

Circumstantial evidence which may be enough for convicting the TCSP with Money laundering

- Embezzled funds deposited into the account of family members and then, only once disciplinary investigation began - settled into the trust
- Failure of defendant to give full explanation during the investigation
- Timing of the transactions – when aware of covert Investigation (wiretaps)
- Unreasonable explanation - Trust fund for son instead of will
- Nature of transactions (Large rounded sums)

FATF going ahead

- Properly measuring the FIU effectiveness

- More involvement of prosecutors

- Improving the standards regarding :
  - ML based on Foreign conviction of the predicate offence
  - Criminalization of stand alone ML with unknown or unspecific predicate offence
  - Dual criminality requirement in "stand alone" ML cases
  - Criminalizing the submission of false UBO info
  - Addressing the issues of corporate governance

Conclusions

- FATF standards and mutual evaluations have had an extremely positive impact in combating ML and TF
- Financial centres are extremely vulnerable both to ML and TF
- Improvement are needed in the investigation and prosecution of ML - focus on effectivness
- Need for updating the FATF standards

Thank You !!!

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