

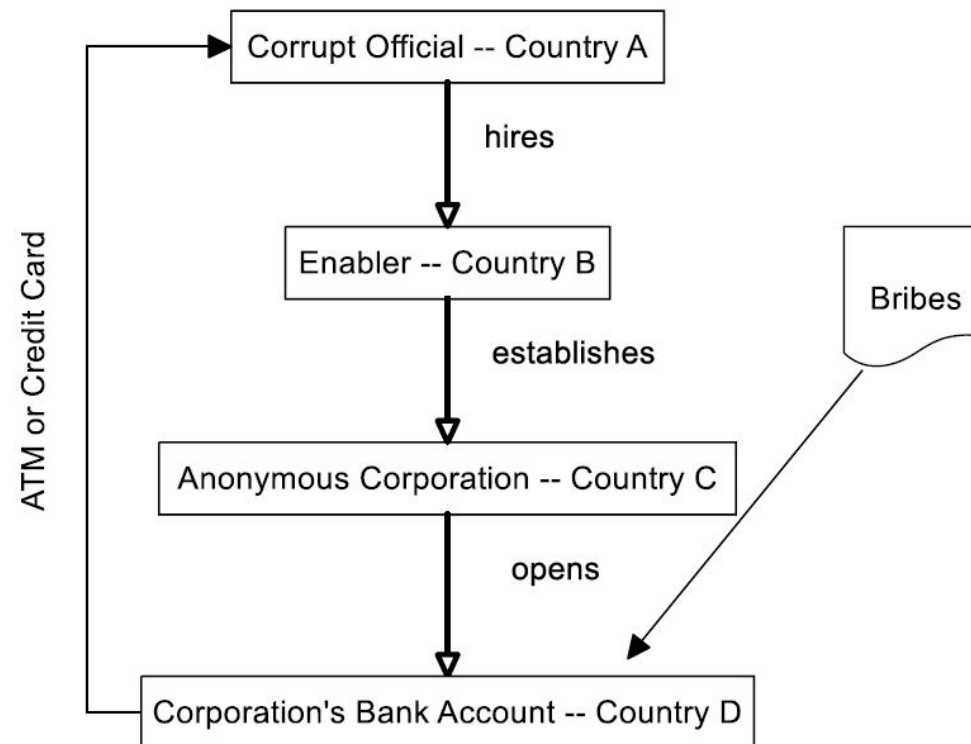


# International Cooperation For Taxing HNIs: Freezing and Confiscating Assets

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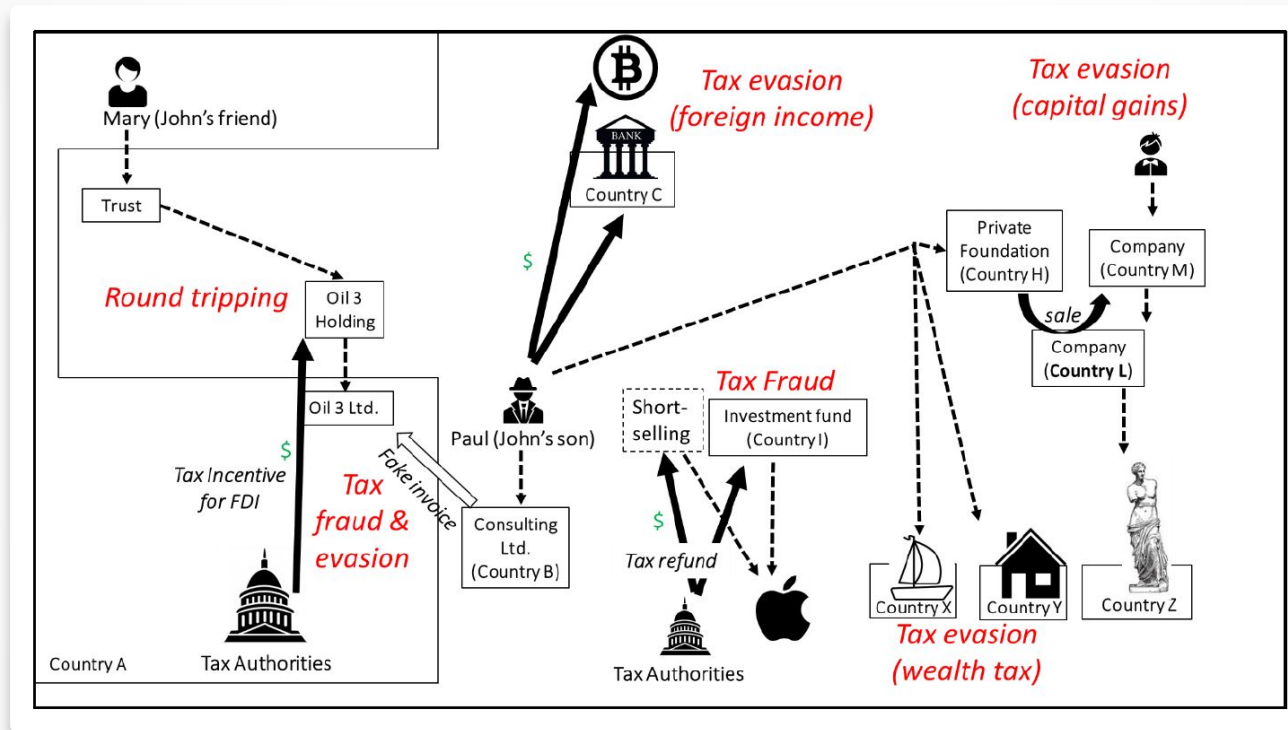
# Sample Process For Hiding Assets Overseas

**Figure 1. Use of Anonymous Corporation to Hide Asset Ownership**



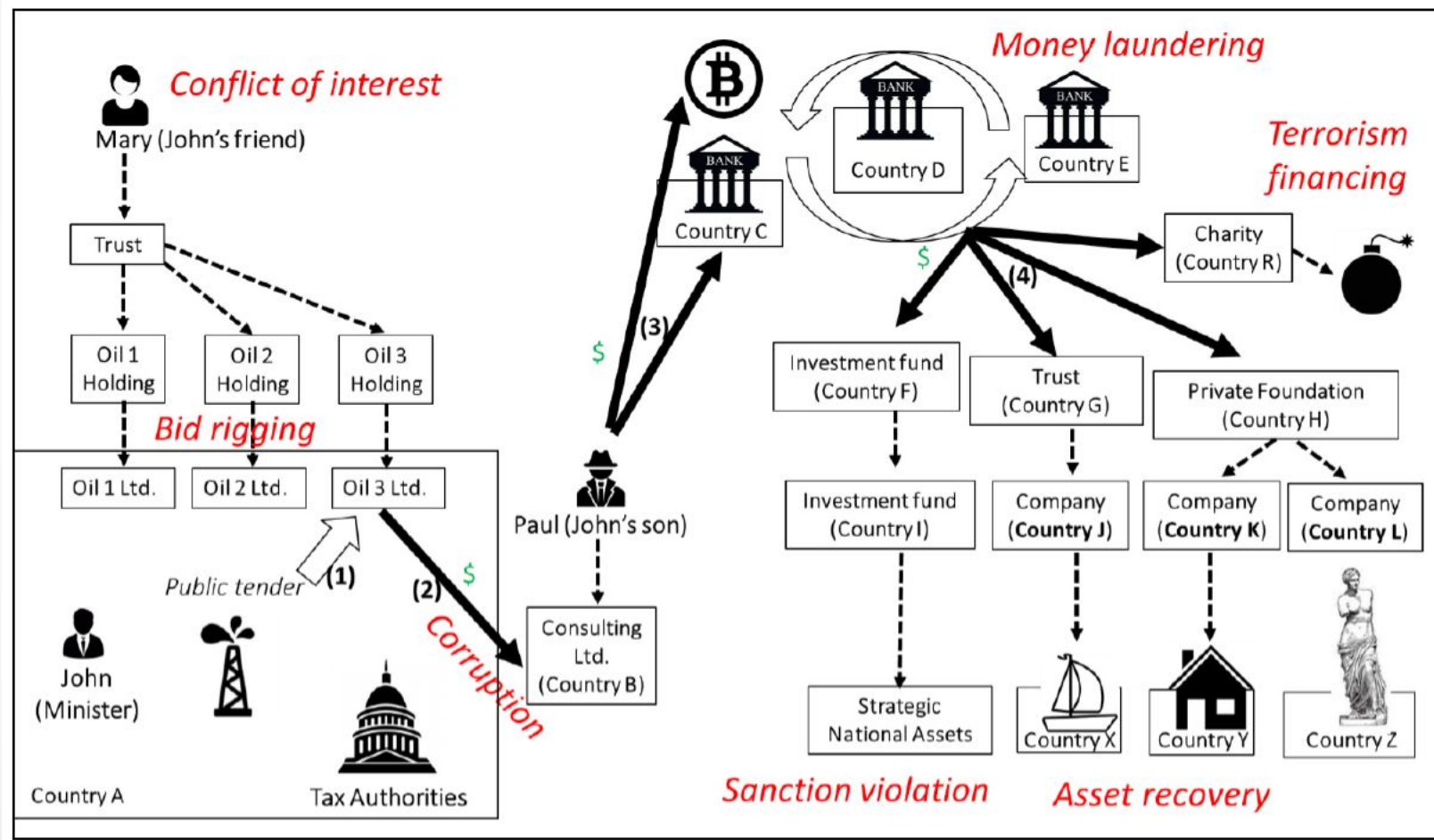
- Source: Kanji and Messick(2020)

# Sample Process for Hiding Assets Overseas



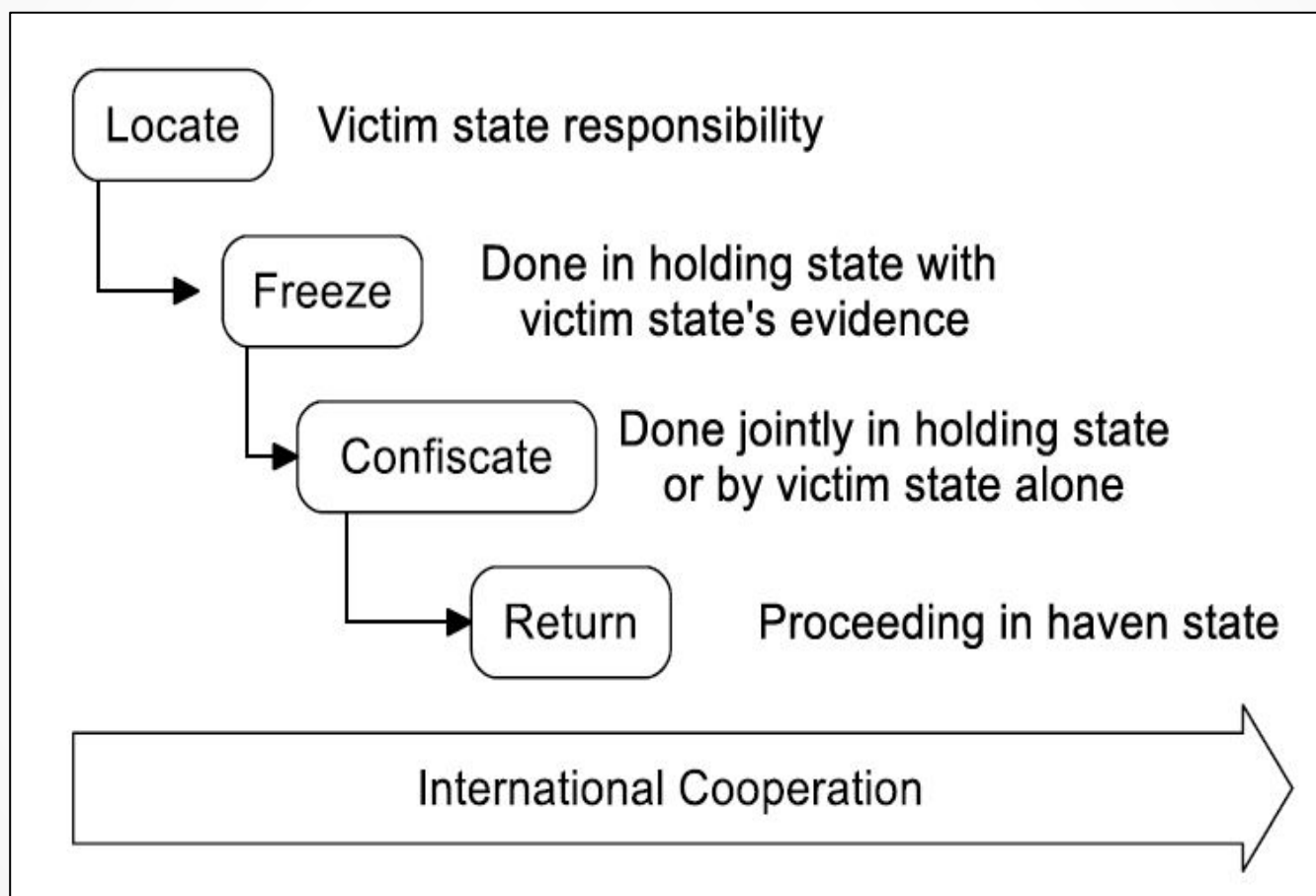
Source: Andres Knobel (2020)

# Sample Process for Hiding Assets Overseas



- Source: Andres Knobel (2020)

# Asset Freezing and Recovery



- Source: Kanji and Messick(2020)

# What Assets Can be Frozen and Recovered?

- Proceeds relating to Offences under:
- UN Convention Against Corruption
- UN Convention Against Transnational Organized Crime
- **UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances**
- International Convention For The Suppression Of The Financing Of Terrorism

# What Assets Can be Frozen and Recovered?

- UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances
- Article 3: Drug production, financing, money laundering of the proceeds



# Questions for consideration

- Which of these offences are recognized in the domestic laws of your countries?
- Are there any which are not yet recognized?
- What have been the challenges in doing so?



# What Assets Can be Frozen and Recovered?

- Definitions of “freezing, “seizure” and “confiscation”
- Article 2(f)&(g) of UNCAC

# What to do once Assets have been located

- **Variety of international tools available:**
- Article 5 - UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988
- Article 8 - International Convention For The Suppression Of The Financing Of Terrorism, 1999
- Articles 13, 14 - UN Convention Against Transnational Organized Crime, 2003
- Articles 53, 54, 55 - UN Convention Against Corruption, 2005
- Recommendations 4 and 38 – FATF

# What to do once Assets have been located

- Procedure under UNCAC
- Initiate civil action in your court to establish title to or ownership of property acquired through the commission of an offence.
- Request the holding state to:
  - Give effect to an order of confiscation issued by your court if available;
  - If unavailable, give effect to a freezing or seizure order *providing reasons that the property would eventually be subject to an order of confiscation*;
  - If no orders are available, then a request for identifying, tracing, freezing or confiscation with the accompanying reasons that the property would eventually be subject to an order of confiscation.

# What the request should contain

- The request is technically one of Mutual Legal Assistance (MLA) and is hence governed by the relevant Article of the particular Convention (46 for UNCAC, 18 for UNTOC, 7 for Vienna Convention, 37 and 38 of FATF Recommendations)
- Details mentioned in Art. 46 (15) of UNCAC along with
- Details in Art. 55 (3) –
  - Where the request is to the holding state to issue a confiscation order, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

# What the request should contain

- Details in Art. 55 (3) –
  - Where the request is to the holding state to give effect to a confiscation order issued by your court, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;
  - Where the request is to the holding state to identify, trace and freeze or seize the assets a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

# MLA Guidelines for Foreign Authorities

- Many developed countries have uploaded MLA guidelines which can be referred to before making the request
- US:
  - [https://star.worldbank.org/sites/star/files/booklet\\_-\\_english\\_final\\_edited.pdf](https://star.worldbank.org/sites/star/files/booklet_-_english_final_edited.pdf)
- UK:
  - <https://www.gov.uk/government/publications/mla-guidelines-for-foreign-authorities-2012>
- G20 Countries:
  - [https://www.bmjbv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmjbv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf?__blob=publicationFile&v=1)
- Countries from East Asia and the Pacific:
  - [https://www.unodc.org/documents/southeastasiaandpacific/2013/07/mla/Guide\\_To\\_Mutual\\_Legal\\_Assistance.pdf](https://www.unodc.org/documents/southeastasiaandpacific/2013/07/mla/Guide_To_Mutual_Legal_Assistance.pdf)

# Importance of Confiscation Order

- Art. 57(3) provides for mandatory return of assets when:
  - a final order confiscating the assets has been issued in the requesting State's courts;
  - that order has been accorded legal effect by the holding State's courts; and
  - the requesting State's claim to the assets is clear.
- Hence, efforts should be taken to obtain **a final order of confiscation in the requesting state** to increase chances of freezing, confiscating and recovering the stolen assets.
- A requested State may waive the requirement that a final judgment of confiscation has been issued in the requesting State.



# Questions

- Have you ever been involved in preparing requests for identifying, tracing, freezing or confiscating assets?
- What were the lessons learned / key takeaways from the experience?

# Non Conviction Based (NCB) Freezing Orders and Confiscation Judgements

- Allows for the accused's assets to be confiscated even without conviction, in cases where s/he has died, cannot be found or the statute of limitation has expired.
- Growing trend - 14/20 countries assessed by UNODC in 2019 had NCB legislation.
- Recommended as a good practice esp as UNCAC calls on State Parties to provide each other the “widest measure of assistance” in the return of stolen assets.
- Can be implemented in both common and civil law jurisdictions.

# Non Conviction Based (NCB) Freezing Orders and Confiscation Judgements

- NCB confiscation laws can be incorporated into existing criminal codes, as well as anti-money-laundering acts or drug laws, and regarded as “criminal” proceedings to which the criminal procedural laws apply.
- This would increase the chance of confiscation in the holding country.
- Different country approaches are laid out in UNODC Note CAC/COSP/WG.2/2019/CRP.1 (paras 27-48)
- Courts in France, Switzerland and UK have broadly and favorably interpreted requests looking at substance rather than form.

# Additional Aspects of UNCAC

- Decisions by the holding state to be in conformity with its domestic laws and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.
- UNCAC can act as a treaty basis for freezing and confiscation.
- Holding state can stop cooperation if it does not receive sufficient and timely evidence or the property is of a *de minimis* value.
- Draft Non-Binding Guidelines for managing frozen, seized and confiscated assets can be referred to in CAC/COSP/WG.2/2019/3.

# Policy Recommendations

- Make all enablers subject to the anti-money laundering laws
- Ensure illicit enrichment statutes cover all corruptly acquired assets

# Thank You!

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