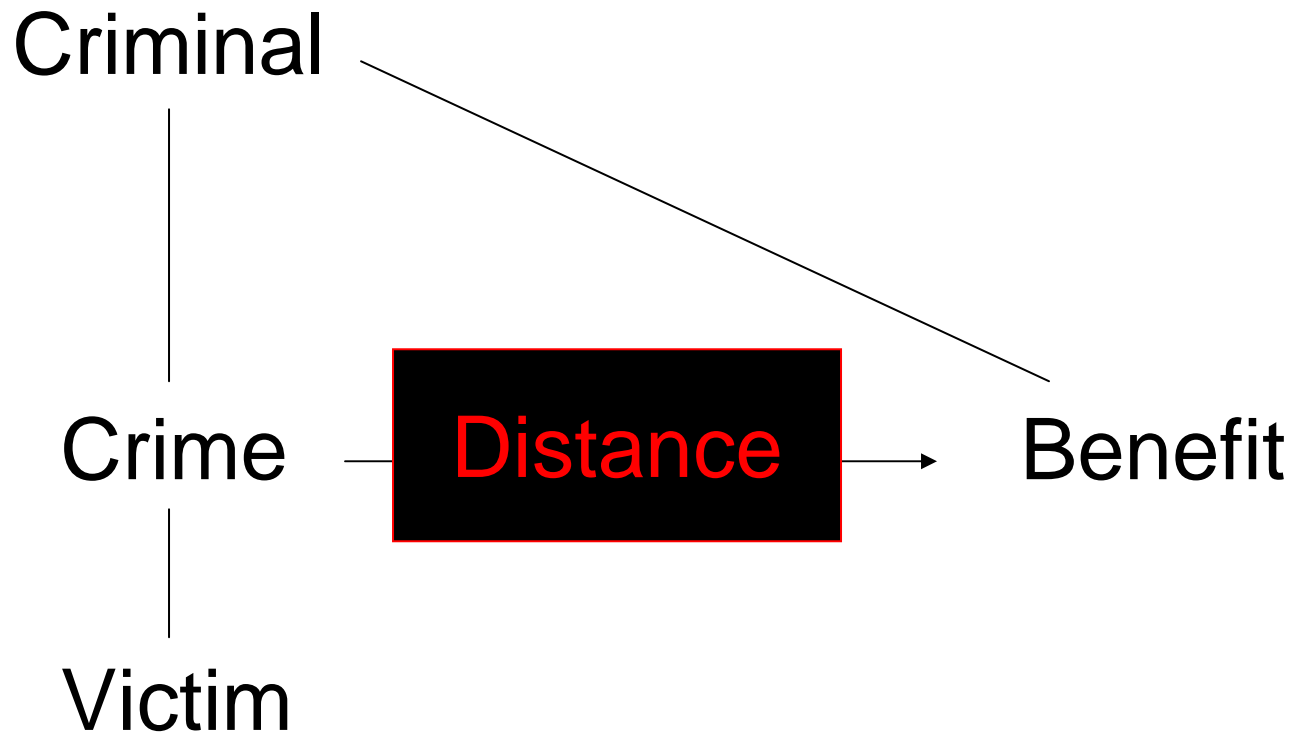


2011 Malta International Financial Crime Forum

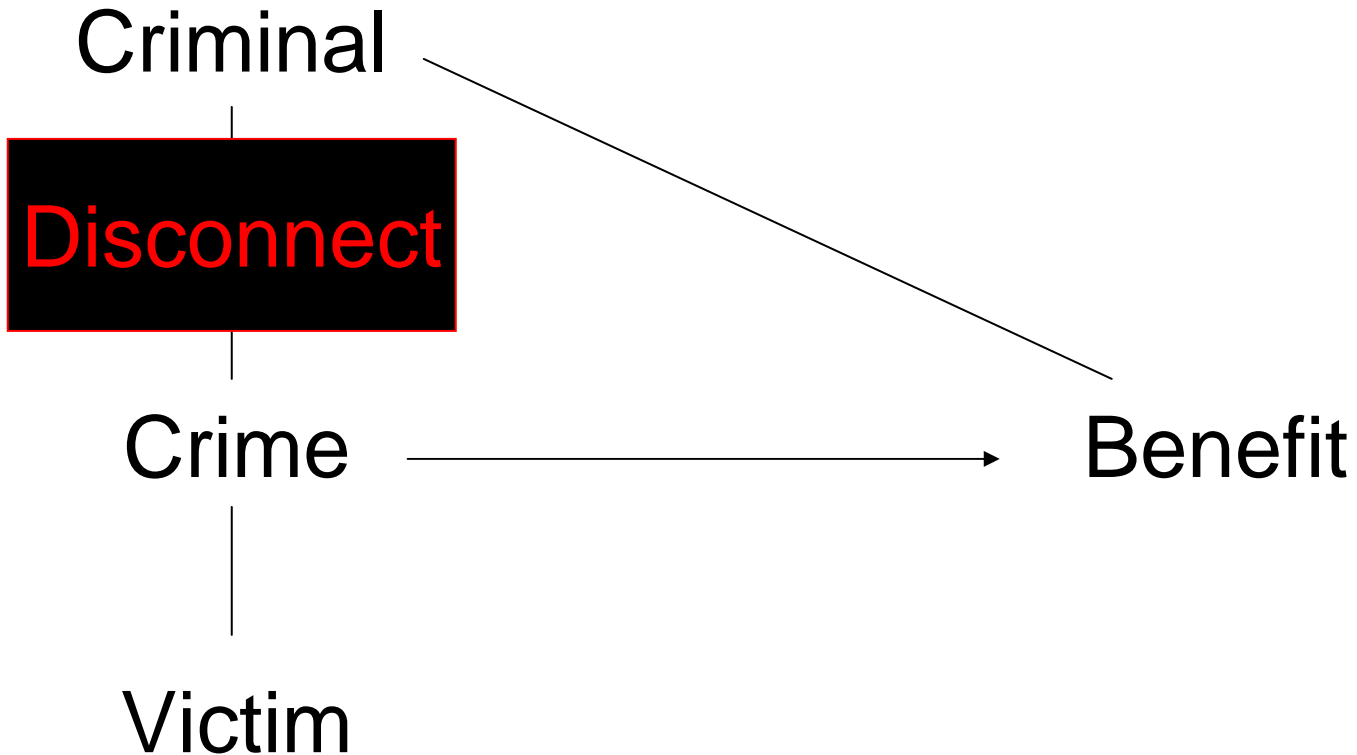
Washing the fruits of financial crime
in offshore locations

Stephen Baker
English Barrister
Jersey Advocate

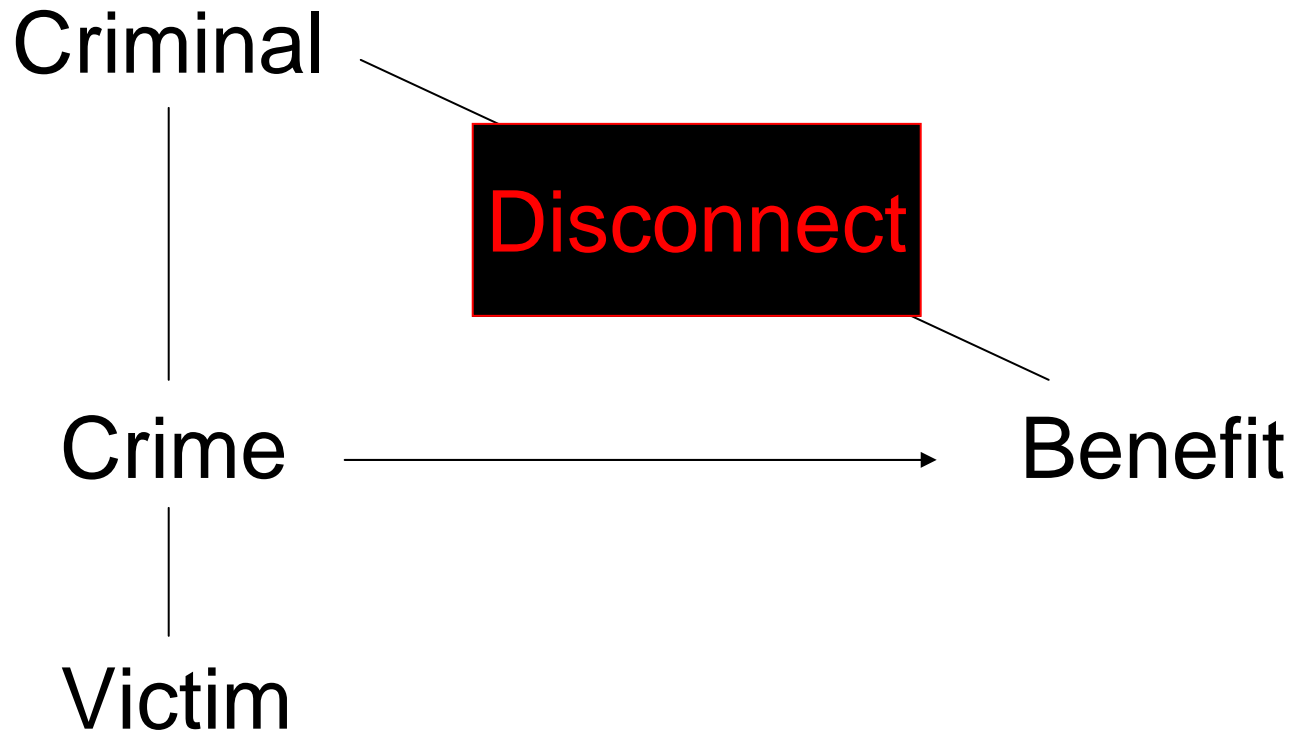
Criminal objective



Criminal objective



Criminal objective



Permutations of abuse

- Use in commission of offence
- Use in conversion of property
- Use in ownership of property
- Use in transfer of property in the evasion of forfeiture

Case study

General Abacha



Jersey's response

- Criminal investigation into all Abacha related funds in Jersey
- Instruction of expert lawyers
- Close liaison with Nigeria, Switzerland, Liechtenstein and USA
- Lead role in international investigation

Results

- \$165 million returned to Nigeria
- Liaison with US re. Extradition of Abubaker Bagudu
- Arrest of Bagudu in Texas
- Imprisonment of Bagudu in Texas
- Return of Bagudu to Nigeria
- Investigation ongoing

Bagudu

- Highly educated
- Best friend of Mohammed Abacha
- Opened accounts worldwide for Abacha
- At centre of laundering hundreds of millions of dollars

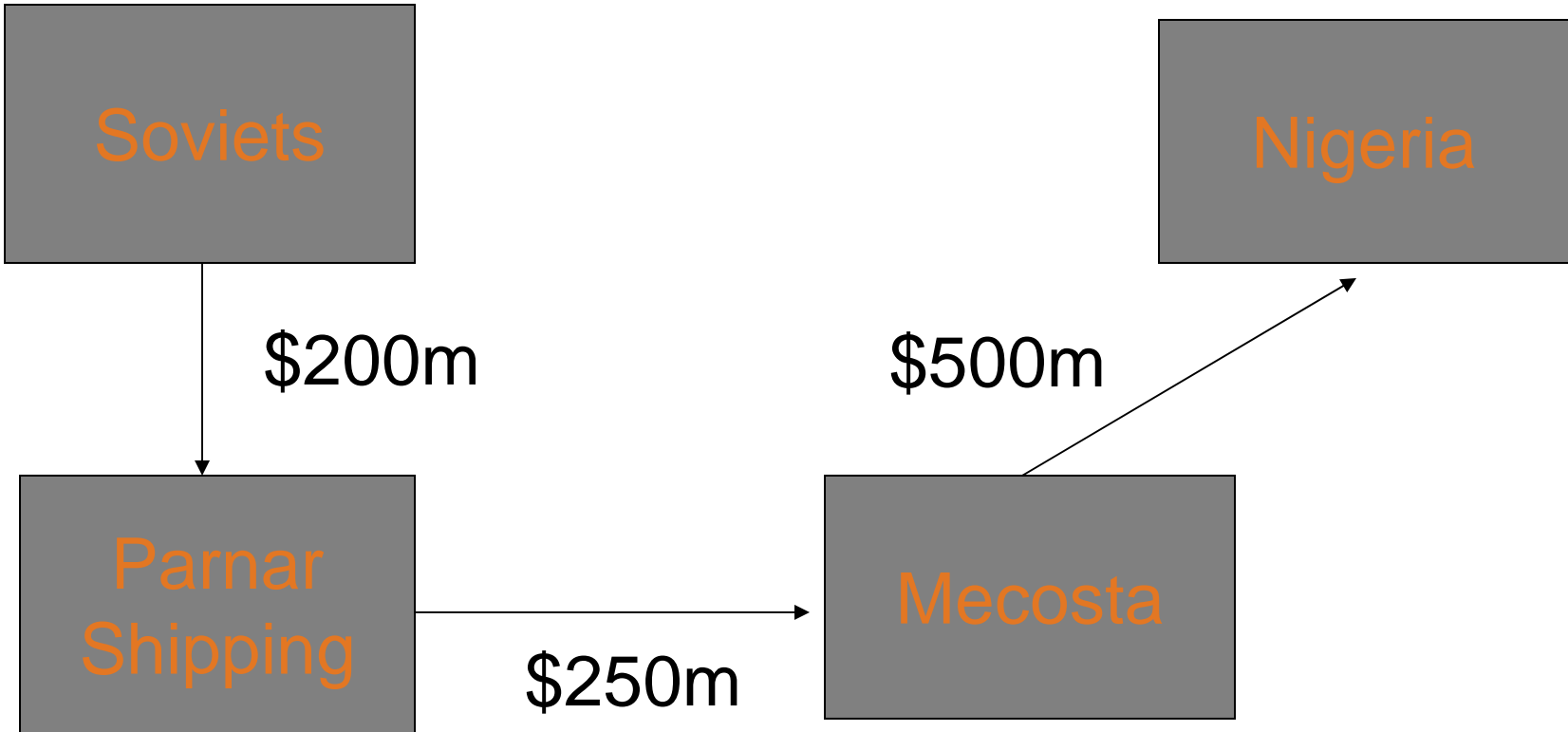
Ajaokuta Steel

- Steel mill in Nigeria
- Built by Soviet company
- Paid for by letters of credit
- Nigeria reneged on letters of credit
- Later announces buy back

Ajaokuta Steel

- Nigeria does not buy back letters of credit direct
- Two offshore companies are used

Structure



Mecosta

- Company vehicle of Mohammed Abacha and Bagudu
- They extract \$250m from the Nigerian Treasury
- Nigeria has paid \$500m for something it could have bought for \$200m

Security Votes

- Another means of abstracting money from the Nigerian Treasury
- Abacha claims they are funds for peace keeping in Africa
- Treasury records relating to movement of tens of millions of dollars indicate reason for movement 'Security Votes'
- No valid reason for these movements

Where does the money go?

- By various routes in a Jersey bank account
- Jersey bank told money represented legitimate oil revenues
- Reference is provided. Reference is false

The criminal investigation

- Circumstances of Ajaokuta and Security Votes uncovered in Nigeria
- Nigerians provide evidence
- Witness statements taken from referees
- Admitted references false
- Evidence Bagudu gave in London High Court case used against him

The criminal investigation

- Warrants for Bagudu's arrest issued in Jersey
- Bagudu located in Texas
- Liaison with DOJ
- Arrest and imprisonment of Bagudu

Charges

- Money laundering (post July 1999)
- Receiving in Jersey property dishonestly obtained abroad
- Fraud on the bank

UK and US Proceedings

- Extradition proceedings begin in Houston
- Bagudu challenges Home Secretary's decision to seek extradition in London
- Problem – Huge resources available to fight legal proceedings

Resolution

- Bagudu agrees to repay \$165m to Nigeria
- Agrees to return to Nigeria
- Nigerian President asks Jersey to ensure Bagudu is returned to Nigeria
- He is.

Key to success

- Acceptance of international responsibility by Jersey
- Careful investigation by experts
- Full and proper international co-operation
- Lack of fear of Abacha's
- Look for solutions not problems
- Pragmatism
- Good luck – Abacha's didn't see it coming

Abacha and London

- US\$900m passed through 15 UK banks
- Very primitive methods were used
- \$US50 m placed into Banks in cash
- Substantial transfers to London from Nigerian Central Bank
- Alleged operation of accounts for Abacha's son's without realisation of their PEP status

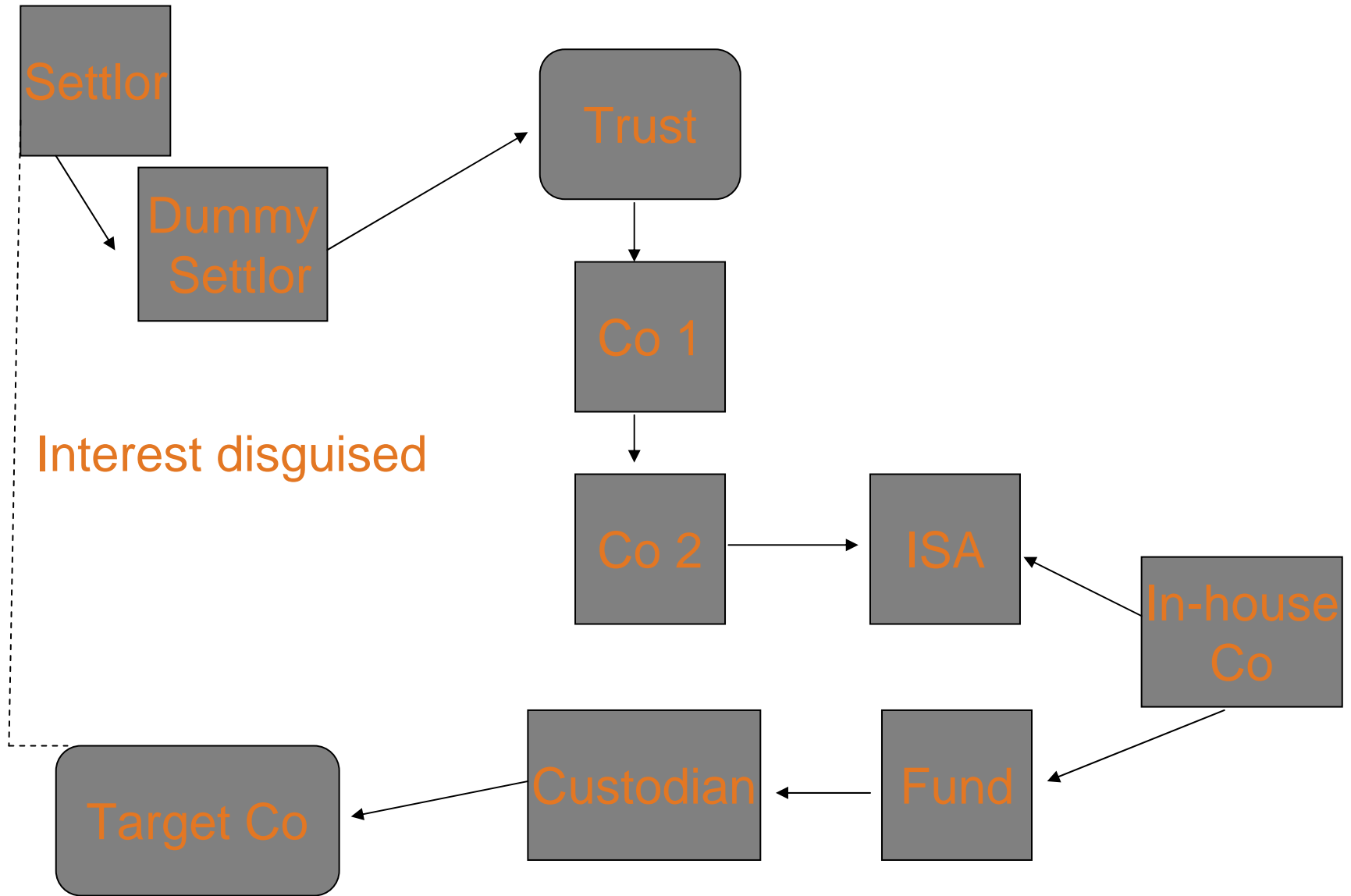
Abacha and London

- UK authorities criticised for reacting very slowly
- FSA said to have launched investigation months after Swiss authorities had frozen accounts
- Banks were not named and shamed

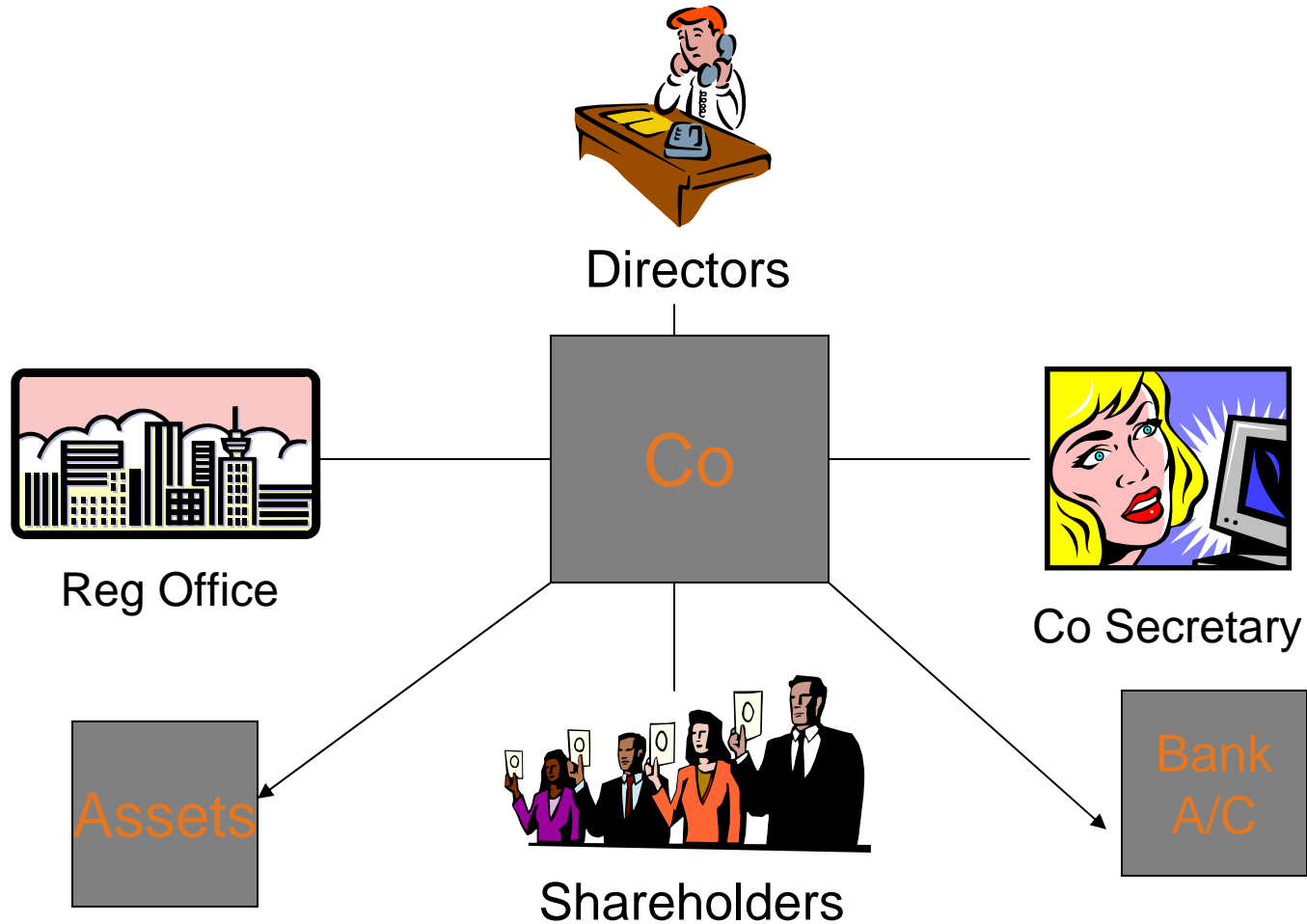
Abacha and Switzerland

- 19 banks implicated in Switzerland
- @US\$900 m in Switzerland
- SFBC Investigation and Report which categorized banks as follows:
 - Banks that complied fully
 - Banks with shortcomings
 - Banks with serious omissions

Case study



Company



Companies

- Vehicles with distinct legal personality that can be legally owned, controlled other than by the ultimate owners
- With distinct residence from ultimate owners

Corporate services

- Services provided by CSP's include:
 - Incorporation services (global)
 - Registered office services
 - Nominee shareholder service
 - Provision of directors
 - Arrangement of bank accounts
 - Introductions to investment management professionals

Nominee shareholders

- Shares in a company are held nominally by entities controlled by TCBs on 'bare trusts' for the ultimate shareholders
- Frequently bare trust declarations are not executed – making the identification of intended owners of the company more difficult

Private trust companies

- Trustees owned by the settlor
- Settlor may be very nervous about handing over control of his business empire or substantial fortune to a third party, albeit a reputable financial institution. If he uses a private trust company he may be able to have a board of directors in whom he has more faith and can exercise greater control
- It is a simple process for a director of a trust company to resign or be removed and a new one appointed.

Types of trust

- Fixed interest trusts
- Discretionary trusts
- Protective (spendthrift) trusts
- Charitable trusts
- Purpose trusts
- Flawed asset trusts
- Reserved powers trusts
- STAR Trusts
- Vista trusts

Making settlors comfortable

- Reserved powers
- Letters of wishes
- Protectors
- Keeping settlor informed
- Dummy settlors
- Charitable beneficiaries

Trust vulnerabilities

- The existence of a Trust is not formally registered with the authorities
- Trusts allow criminals to divest themselves of ownership of criminally derived property, whilst still being able to benefit from that property (the trustee owns the property once it is settled)
- Trusts allow audit trails to be broken and investigations to be frustrated
- Trusts allow criminals to benefit from your status as a reputable and regulated trustee
- The legitimate reasons for having a trust are easily applied (asset protection, succession planning etc)

Enhanced vulnerability

- Dummy settlors
- Letters of wishes
- Use of charitable beneficiaries
- Certain protector provisions
- Managed trust companies
- Vista trusts

Contact Details

Advocate Stephen Baker

Partner

Tel: +44 (0) 1534 766254

Fax: +44 (0) 1534 737355

Email: stephenbaker@bakerandpartners.com

www.bakerandpartners.com