



**Asia-Pacific
Economic Cooperation**

2020/ACT/WKSP/006

Challenges in Identifying Beneficial Owners in Corruption and Money Laundering Investigations

Submitted by: Malaysia



**Capacity Building Workshop on Exposing the
Unseen Hands: Tackling Concealment of
Beneficial Ownership
19 October 2020**

**MALAYSIAN ANTI-CORRUPTION
COMMISSION (MACC)**



**“Capacity Building
Workshop on
Exposing the Unseen
Hands : Tackling
Concealment of
Beneficial
Ownership”**

Presentation By :

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DEPUTY COMMISSIONER
AML DIVISION
MACC HEADQUARTERS
PUTRAJAYA, MALAYSIA
19 OCTOBER 2020**



TOP WORLD CORRUPTIONS SCANDALS

- Siemens: corruption made in Germany
- Draining Nigeria of its assets
- Fujimori's Peru: death squads, embezzlement and good public relations
- Kadyrov's Chechnya: bikers, boxers, bribes
- Shutting down competition in Tunisia
- Ukraine's missing millions
- Ricardo Martinelli's spy-game in Panama
- The 1MDB fund: from Malaysia to Hollywood
- The Russian Laundromat (with a little help from Moldova)
- Spain's largest corruption scandal: Gürtel
- Venezuela's currencies of corruption
- The Panama Papers
- Maldives: a paradise lost
- Teodorín Obiang's #LuxuryLiving in Equatorial Guinea
- How the Gupta family captured South Africa through bribery
- Lebanon's garbage: the stench of corruption
- FIFA's football parallel universe
- Myanmar's dirty jade business
- Fighting impunity in Guatemala
- Turkey's "gas for gold" scheme
- The Azerbaijani Laundromat
- Paradise Papers: where the rich & powerful hide their money
- Operation Lava Jato: clean cars, dirty money
- The Troika Laundromat
- Andrej Babiš's conflict of interest in Czechia





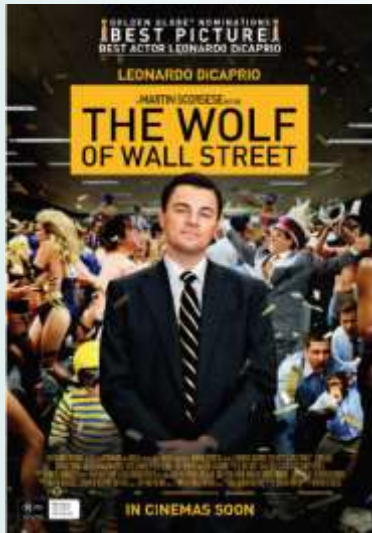
JITO LOW
SHAHROL HALMI
NAJIB RAZAK
RIZA AZIZ
KIMORA LEE SIMMONS AND TIM LEISSNER
ROSMAH MANSOR
MATTATHIR MOTTAMAD

1MDB

1Malaysia Development Berhad

ABUL KANDA
KHADEM AL QUEBISI
PATRICK MAHONY





1MDB

1Malaysia Development Berhad



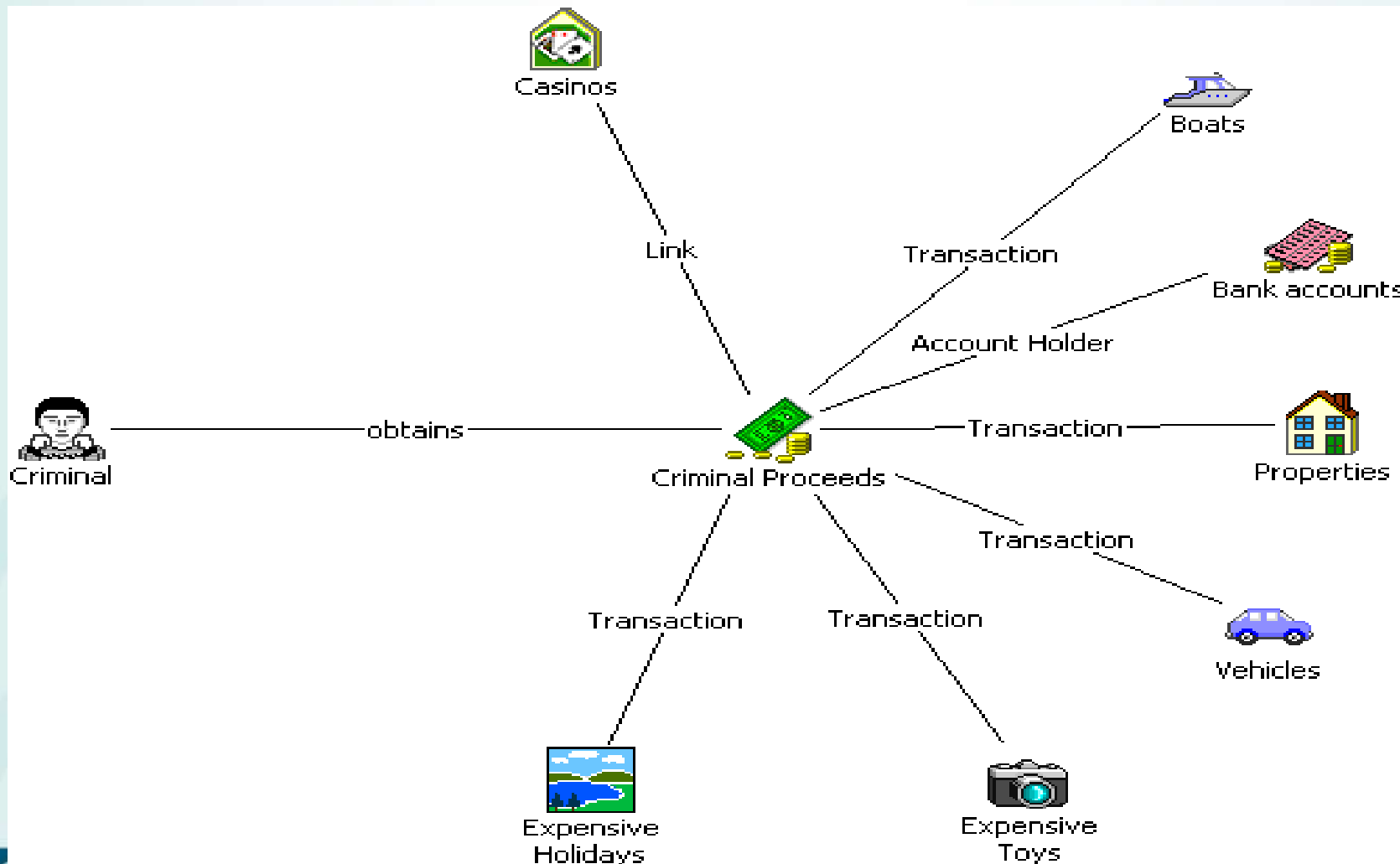
"more than \$4.5 billion" (US DOJ)



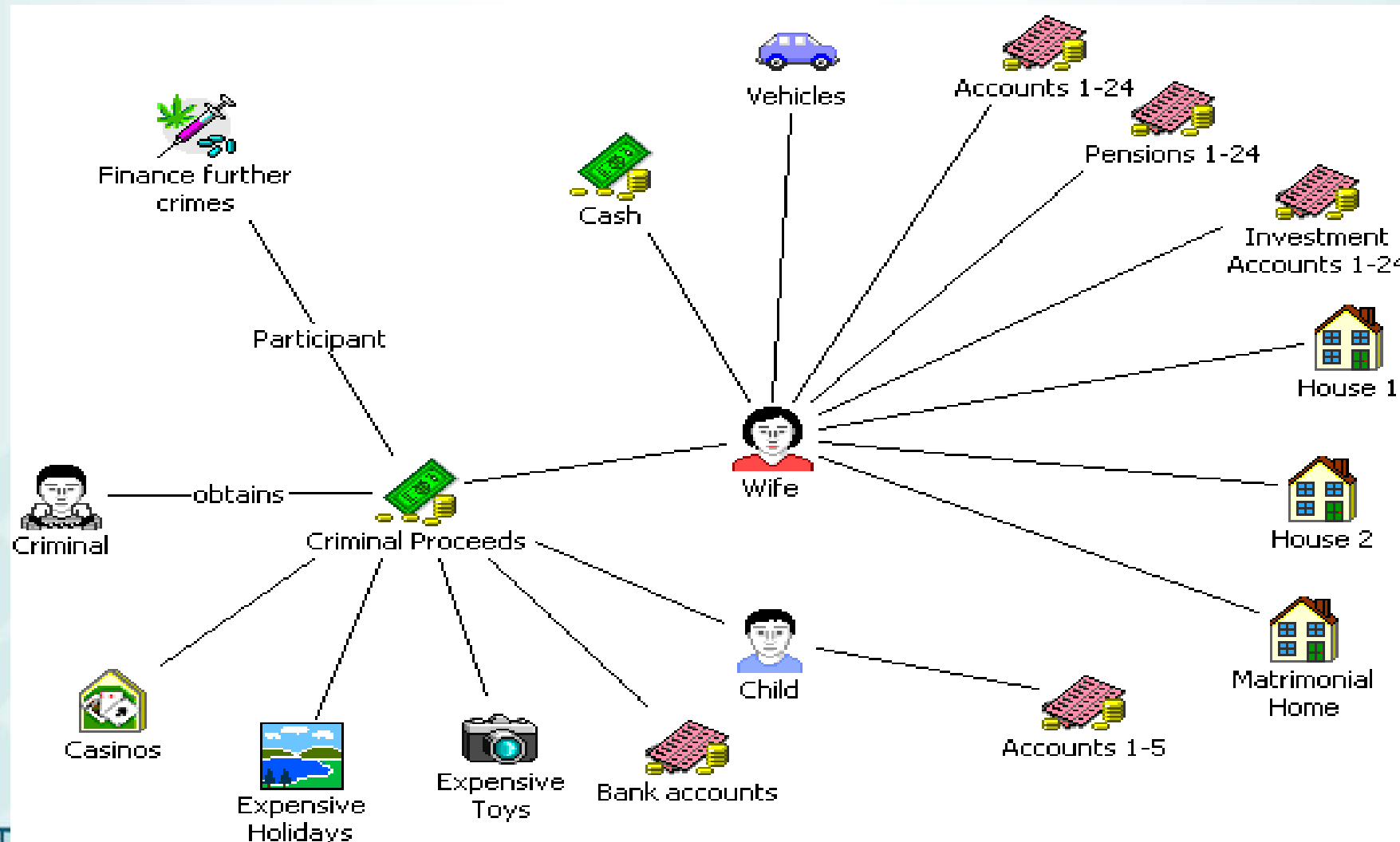
Objectives of Criminal

- Obtain as much money as possible.
- Hide as much money as possible.
- Spend as much money as possible.

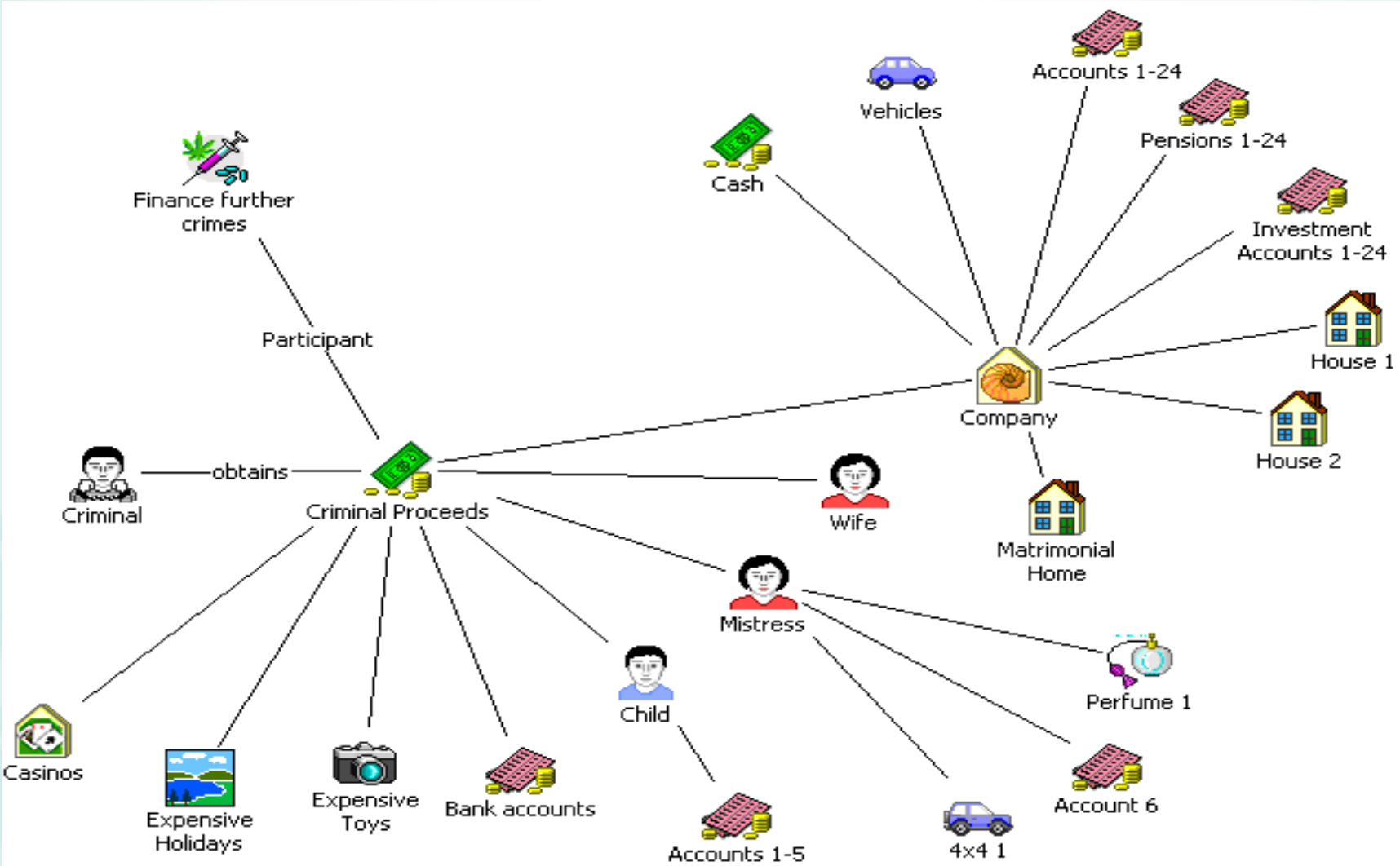
SIMPLE MONEY LAUNDERING SCHEME



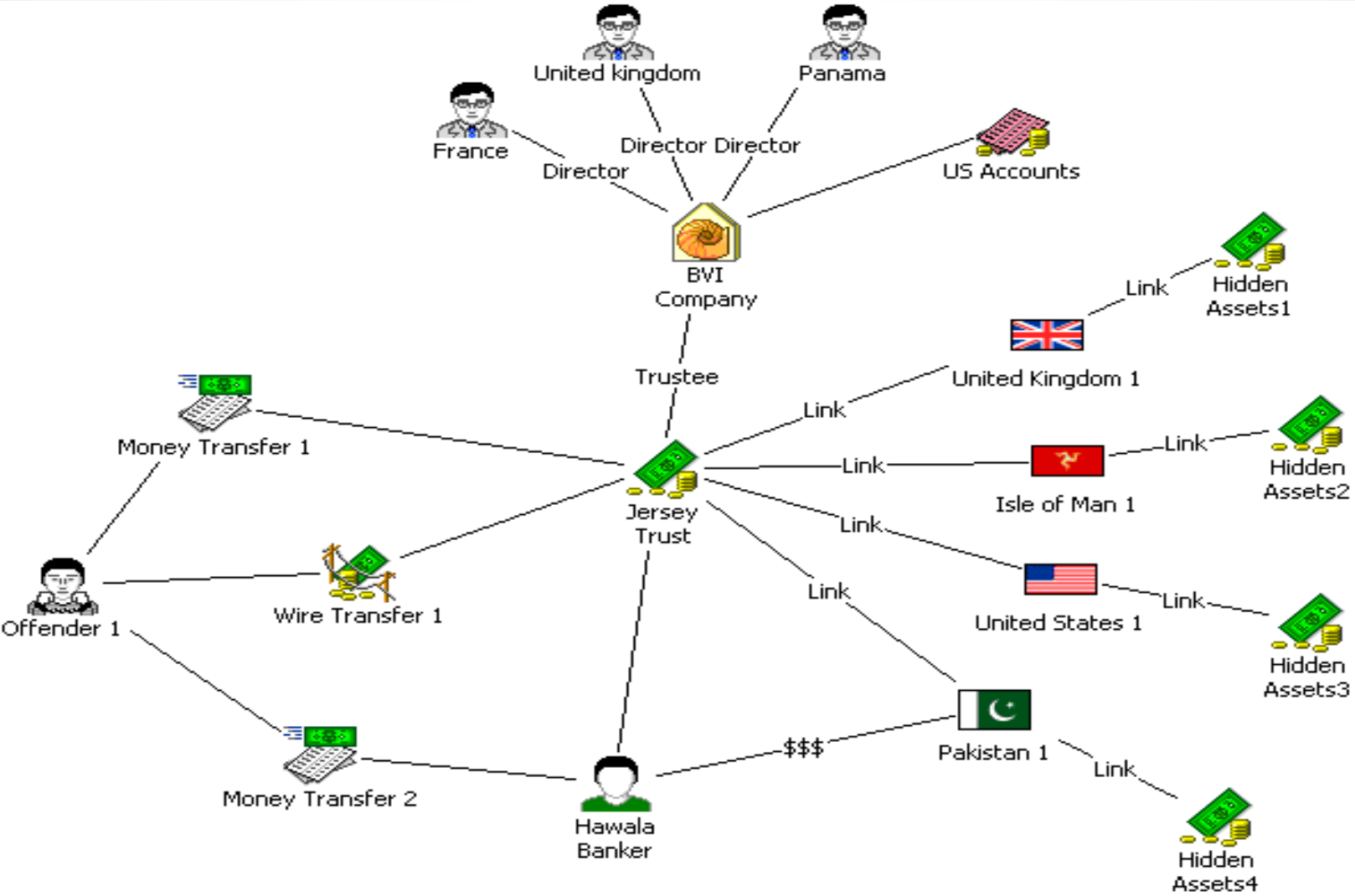
SIMPLE MONEY LAUNDERING SCHEME



MORE COMPLEX MONEY LAUNDERING SCHEME



COMPLEX MONEY LAUNDERING SCHEME



Issues?

1) Mechanisms of Hiding the Money Trail



2) *How to Spend it?*
Acquisition of Luxury Assets
“Integration”



Most common:

Misuse of foreign shell companies (incl. offshore)

Use of nominees or associates to obscure connection to PEP

Misuse of domestic shell companies

Fake consultancy agreements

Bid rigging/preferential treatment in public procurement

Privatization of state assets

Deceptively named corporate vehicles

Misuse of foundations

Use of cash

Related party lending

Corruption Mechanisms (tracked)

Also featured but rare

Manipulation of regulations and import quotas

Use of share purchase agreement to disguise bribes

Use of bearer shares

Fake Invoices

Misuse of trusts

Misuse of lawyers account

Very novel/creative:

Use of financial restructuring to cover up embezzlement

Raising funds for graft through bond issuance

CURRENT TRENDS

CHALLENGES...

THE BENEFICIAL OWNERSHIP

THE **1MIDB**
1Malaysia Development Berhad

BENEFICIAL OWNERSHIP

“The real person who is the true owner or beneficiary of an account, trust, foundation or company”

Who generally have ultimate control through ownership or other means over the funds in the account



Who are the ultimate owner of source of funds for the account and whose source of wealth should be subject to due diligence

Ability to disguise the true beneficiaries of accounts and entities through the use of nominees, trustees, anonymous shell companies, and fake foundations and trusts

Due diligence and knowing your customer to limit the access of terrorists, criminal groups, entities under international sanctions and potentially corrupt politically exposed persons (PEPs) to the legitimate financial system

INTRODUCTION

Beneficial owner is a legal term where specific property rights ("use and title") in equity belong to a person even though legal title of the property belongs to another person. Black's Law Dictionary (2nd Pocket ed. 2001 pg. 508).

Definition of 'beneficial owner' from the Glossary to the FATF Recommendations

*“Beneficial owner refers to the **natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted**. It also includes those persons **who exercise ultimate effective control over a legal person or arrangement**. Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which **ownership/control is exercised through a chain of ownership or by means of control other than direct control**”*

Section 56 and 68 of the Companies Act 2016

- the empowerment for companies to request information on beneficial ownership from their shareholders
- requirement on companies to notify the Companies Commission of Malaysia on their BO
- Increase sanction for breaches

Labuan Companies Act 1990

- Trust companies to declare & maintain accurate and timely records of BO

Section 16 of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001

- Requirement for Reporting Institutions to conduct 'Customer Due Diligence'
- Reasonable measures to identify customer and a person acting on his behalf, and beneficial owner and verify their identification

Section 25 of the Securities Industry (Central Depositories) Act 1991

- The account holder is deemed as the BO

Challenges in Establishing B.O.



Lack / Obscure Audit & Financial Trail

Cash Transactions

- transactions conducted in cash will minimize/eliminate audit trail
- Financial trail will come to dead end when transactions are switched to cash
- Outside of the financial system

Uses of Virtual Currencies

- Borderless & Mostly unregulated entities
- Lack of audit / financial trail except at the point of entry & exit

In Malaysia - The exchangers are **reporting institutions** under the AML regime

Ownership & Control

- Non standardized legislations among jurisdictions
- Definition of 'control' & 'ownership' – countries and context
- Determination of ownership & control – golden shares, control in absence of shareholding

Complex Structure of Corporate Ownership

Offshore / Tax Haven

- Lax law and regulation – weak or non existence control
- Multiple layering & complex structure – corporate shareholders
- No public office
- Registration functions delegated to agents
- Flexibility to change ownership

Challenges in Establishing B.O.



Collusion

Inability to secure evidence for prosecution & enforcement

- Gatekeepers are in cohort with criminals, e.g. lawyer, accountant, company secretary
- Concealment of information – appointed proxies & nominees are related or family members
- Risks of destruction on evidence & dissipation of properties

Implementation & Enforcement Issue

Accessibility, integrity & veracity of beneficial ownership information

- Lack of capacity & capability of regulatory, supervisory & enforcement bodies to ensure rules & regulations on beneficial ownership are complied with:
 - Comprehensive and accessible databases - updated & error free
 - Availability of competent human capital to review, supervise and enforce the requirements
 - Inability of the gatekeepers to ensure compliant by their clients/customer
- Inadequate sanction to force compliance

Impacts



2

Assets Recovery effort

- Properties / Assets obtained from corrupt activities are **not** fully recovered

3

Reputation of the LEAs

- Accusation of incompetent investigators
- Shoddy investigation - Crime pays

Major Consequences

Erosion/undermining of public trust in government

Loss in public revenues

Erosion/undermining of economic competition in affected sector

Political instability & mass public protests

Loss in foreign aid

Inflated consumer prices in affected sectors

Long-term harm to financial sector, incl. currency depreciation

Erosion of public trust in financial institutions

2nd ORDER

Stifling of economic development

Increase in economic inequality

Threat to political stability

Threat to financial stability

Threat to national security

Threat to democratic order

MACC INVESTIGATION APPROACH

MACC INTELLIGENCE-BASED INVESTIGATION (IBI)

GATHERING INFORMATION THROUGH:

1. INFORMAL INFORMATION SHARING WITH FOREIGN COUNTERPARTS (DOJ, FBI, AFP, NCA UK, FOREIGN AGC'S OFFICE, CAD, SWISS PROSECUTOR, CCDI etc.);
2. INTELLIGENCE SHARING WITH FIU VIA EGMONT GROUP;
3. INTELLIGENCE SHARING WITH DOMESTIC LEA'S;
4. SERIES OF UNOFFICIAL ENGAGEMENT WITH FOREIGN AUTHORITIES SUBSEQUENT TO MLA'S;
5. LEVERAGE ON NETWORKING WITH WORLD BANK, StAR, UNODC, IACCC

DOMESTIC COOPERATION



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA
(Agensi di bawah KPDNHEP)



MACC INVESTIGATION APPROACH

MANAGING TEAM-BASED INVESTIGATION

1. **SPEARHEADED BY DCC (O) MACC**
2. **SET-UP OF TASKFORCE SECRETARIAT FOR COORDINATION OF OPERATION INVOLVING INTER-AGENCY TASKFORCE & MACC;**
3. **TASKFORCE – MOBILISATION OF OFFICERS FROM DIFFERENT DIVISIONS;**
4. **ENGAGEMENT OF EXPERTS FROM OTHER AGENCIES, CENTRAL BANK (FIU) & AGC;**
5. **DEDICATED OPERATION CENTRE – ACTING AS ONE-STOP CENTRE FOR 1MDB INVESTIGATION;**
6. **EFFECTIVE UTILISATION OF RESOURCES BY ENSURING NON-OVERLAPING OF TASK, EACH TEAM/ OFFICERS HAVE OWN DEDICATED TASK;**
7. **EXPEDITING EVIDENCE GATHERING PROCESS.**

MUTUAL LEGAL ASSISTANCE/ CROSS-BORDER INVESTIGATION



1MDB is a transnational case that involves many member and non-member economies. To expedite investigation, MACC seek full cooperation from countries such as :

1.UNITED STATES

2.SWITZERLAND

3.SINGAPORE

4.INDONESIA

5.NETHERLAND

6.FRANCE

7.LUXEMBOURG

8.UNITED KINGDOM

9.BARBADOS

10.SEYCHELLES

11.CHINA & HONG KONG, CHINA – ENGGAGEMENT WITH CCDI

**International
Taskforce**

** Series of the meeting have been held in Malaysia, Singapore, USA, Switzerland, etc.



APEC 2020
MALAYSIA



SERIES OF MEETINGS IN MALAYSIA



BENEFITS OBTAINED

- ✚ **INTERNATIONAL COLLABORATION IN INVESTIGATION – CROSS BORDER INVESTIGATIONS**
- ✚ **MUTUAL LEGAL ASSISTANCE – ASSISTING IN PRE-LAUNCHED M.L.A (FACTS & ASSISTANCE WERE DISCUSS BEFORE THE M.L.A SEND TO THE RESPECTIVE ECONOMY)**
- ✚ **SHARING FACTS & EVIDENCE – SOME FACTS ARE NOT BEING DISCLOSED UPON OFFICIAL REQUEST MADE BY ATTORNEY GENERAL CHAMBERS OR VIA EGMONT CHANNEL.**
- ✚ **ASSISTANCE IN BRINGING BACK THE SYPHONED FUNDS & ASSETS FROM ABROAD**

Moving Forward



Joint Investigations

- Full force of the law against the offenders – multiple offences under different laws
- Shared expertise and human capital resources
- Accessibility to information

Capacity Building

- Continuous capacity building to equip Law Enforcement Officers with the prevalent knowledge, latest trend, modus operandi & typologies
- Upskilling with the latest technology & applications

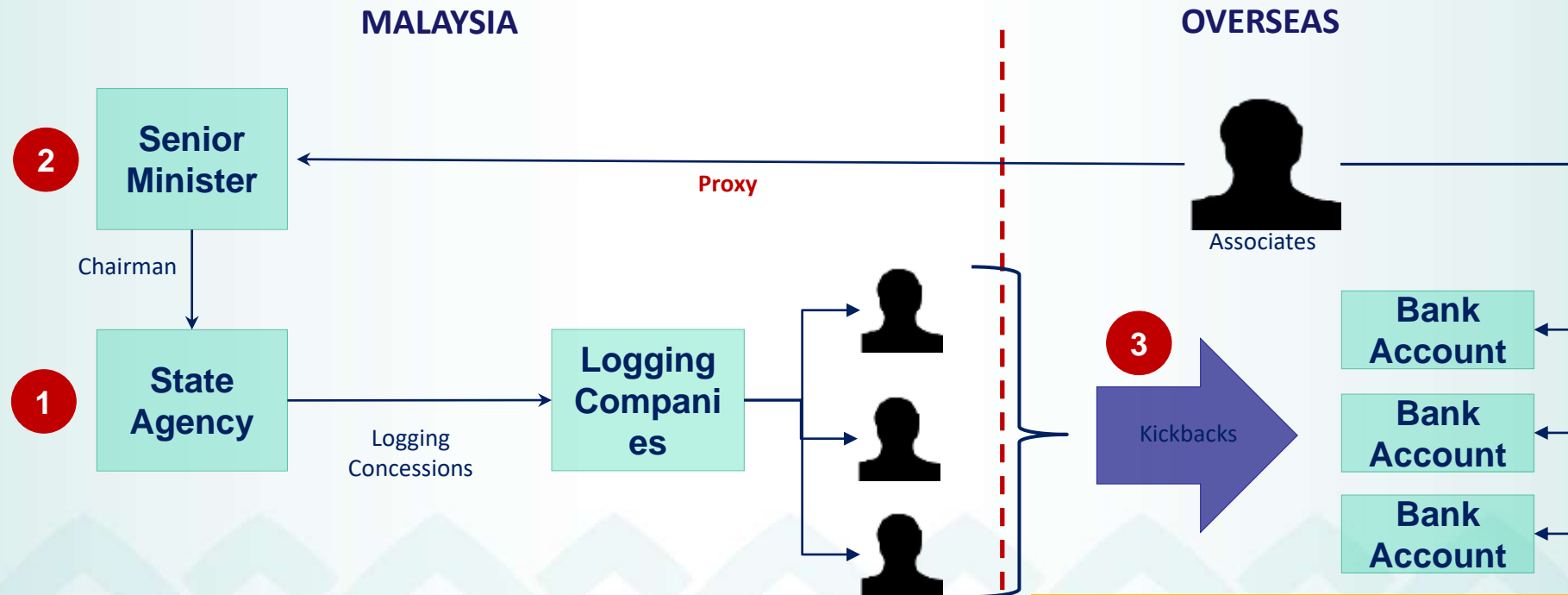
Risk Assessment

- Identification of high risk areas
- Allocation of appropriate resources on focus areas
- Development of strategic action plan to mitigate the identified high risk areas

Strategic Collaboration

- Information sharing with Financial Intelligence Unit
- Members of International & Regional Network e.g. IACCC & ARIN-AP
- Close cooperation with regional peers

Case Study



1 December 1970, the State Government granted the State Agency a logging concession for 1,008,778 hectares of forest

2 Had the authority and final decision to further award logging concessions for the 1,008,778 hectares of forest granted to the State Agency

Impact

- Required more time to complete investigation
- Statutory time bar in securing documentary evidence

3 Kickbacks were credited into overseas bank accounts managed by the Senior Minister's associates



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