



INFORMATION BRIEFING: FATF & BEPS OBLIGATIONS

Thursday, 21st March 2019
British Colonial Hilton
Nassau, The Bahamas



Property of The Securities Commission of The Bahamas



OVERVIEW OF INTERNATIONAL INITIATIVES

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OVERVIEW OF PRESENTATION

- BEPS Background
- Overview of Action 5 on Harmful Tax Practices
- The Bahamas' Response
- Implications for Registrants and Licensees
- FATF: ICRG Action Plan & Current Status
- Risk Based Supervision and Examinations



DEVELOPMENT OF BEPS FRAMEWORK

Base Erosion and Profit Shifting (BEPS) – refers to tax planning strategies by multinational enterprises that exploit gaps/mismatches in tax rules of different jurisdictions to artificially shift profit to low or no tax jurisdictions where there is little or no economic activity.





THE BEPS PACKAGE

15 MEASURES FOR IMPLEMENTATION

Action	Issue Addressed	Action	Issue Addressed
Action 1	Tax Challenges of the Digital Economy	Action 8-10	Transfer Pricing
Action 2	Hybrid Mismatch Arrangements	Action 11	Measuring & Monitoring BEPS
Action 3	Controlled Foreign Co. Rules	Action 12	Disclosure Rules
Action 4	Base Erosion through Interest Deductions	Action 13*	Country by Country Reporting (CbCR)
Action 5*	Harmful Tax Practices	Action 14*	Dispute Resolution Mechanisms
Action 6*	Treaty Abuse	Action 15	Multilateral Agreements
Action 7	Artificial Permanent Establishment Status	Inclusive Framework	Actions 5, 6, 13, and 14 minimum standards for the inclusive framework.



ACTION 5

COUNTERING HARMFUL TAX PRACTICES

- Focuses on the elimination of harmful preferential regimes in the area of tax.
- Requires:
 - substantial activity for preferential regimes such as intellectual property regimes, holding company regimes, fund management regimes, finance and leasing regimes, etc.
 - compulsory spontaneous exchange on rulings related to preferential regimes.



THE BAHAMAS' RESPONSE

- Suite of legislation issued:
 - Multinational Entities Financial Reporting Act, 2018
 - Register of Beneficial Ownership Act, 2018
 - Removal of Preferential Exemptions Act, 2018
 - Commercial Entities (Substance Requirements) Act 2018, Amendment Act, 2019, and Guidelines

- Objective to improve compliance with BEPS and other international standards on tax governance and transparency



COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT, 2018

- Provides for:
 - *substantial* economic presence
 - annual reporting for commercial entities conducting *relevant activities*.

- Scope: Commercial entities registered under:
 - the Companies Act, International Business Companies Act, Partnership Act, Partnership Limited Liability Act, and Exempted Limited Partnership Act, which conduct relevant activities and are resident in The Bahamas.

- Requires Included Entities to demonstrate adequate substance



REMOVAL OF PREFERENTIAL EXEMPTIONS ACT, 2018

- Addresses ‘ring-fencing’
 - which is deemed a harmful tax practice
 - refers to regimes that afford tax advantages to a specified group. Advantages are usually ‘ring fenced’ from the domestic market.
- Removes exemptions:
 - from fees and/or taxes of companies incorporated/registered under the IBC Act (Ch.309), Exempted Limited Partnership Act (Ch. 312), ICON Act, 2014 and Executive Entities Act, 2011, which operate exclusively outside of The Bahamas.
- Levels tax playing field
 - seeks to make both domestic and international companies registered/incorporated in The Bahamas, subject to the same taxes



CHANGES TO BUSINESS LICENSE REGIME

- Financial institutions permitted to offer services to domestic & international clients (meeting prescribed regulatory requirements).
- New framework proposes regulated financial entities be exempted from paying a business license fee.
- Companies under the Companies Act (Ch. 308) and International Business Companies Act, (Ch. 309) required to register under the business license Act and pay a value-based business license fee.



IMPLICATIONS FOR REGISTRANTS

Legislative Change	Implications for Registrants/Licensees
Commercial Entities (Substance Requirements) Act, 2018	<ul style="list-style-type: none">• Introduction of physical presence (core income-generating operations in The Bahamas) and other substance requirements.• New Reporting Requirements on compliance with the Act.
Impending Changes to Business License Regime	<ul style="list-style-type: none">• Regulated financial entities to be exempted from paying a business license fee;• FIs permitted to offer services to both domestic and international clients;• Companies under the CA (Ch. 308) and IBC Act, (Ch. 309) to register under the Business License Act and pay a value-based business license fee.
Multinational Entities Financial Reporting Bill, 2018	<ul style="list-style-type: none">• Filing obligations on aggregate financial information for MNE groups with consolidated revenue over US \$850m.

FATF: ICRG ACTION PLAN & STATUS

Action Item	Action taken/pending by the SCB
<p>1) Issue pending AML guidelines, manuals & codes for Non bank FI supervisors to enhance risk based supervision.</p>	<ul style="list-style-type: none"> • Issue pending AML/CFT Guidelines for securities sector. • Draft Securities Industry (AML/CFT)(Amendment) Rules and FCSP (AML/CFT) Rules presently undergoing technical review.
<p>2) Demonstrate commencement of Risk Based Supervision and enforcement</p>	<ul style="list-style-type: none"> • Developed new penalty regime FCSPs & High-Risk SIA/IFA licensees will be subject to AML/CFT focused examinations; • Notice of 2019 Risk Based Priorities provided to registrants/licensees and posted to Commission's website.



FATF: ICRG ACTION PLAN & STATUS

Action Item	Action taken/pending by the SCB
3) Demonstrate competent authorities identifying and tracing money laundering proceeds and freezing/restraining property in ongoing ML prosecutions.	<ul style="list-style-type: none">• SCB developing a monitoring mechanism to track ML/FT matters identified & provide statistical reports.
4) Bahamian authorities to address gaps in TF framework & circulate international sanctions lists without delay.	<ul style="list-style-type: none">• Issued notice on International Obligation (Economic and Ancillary Measures) Act, Chpt. 16 and posted on Commission website.



RISK BASED APPROACH & 2019 EXAM PRIORITIES

- Three Aims of Commission's RBS Approach:
 - Identify systemic risk in our financial systems
 - Identify the activities of our licensees and registrants that exhibit the greatest amount of risk
 - Focus the Commission's resources on the mitigation and/or elimination of high risk concerns.

- Focus for 2019 on-site examinations
 - AML/CFT Thematic Reviews of Financial and Corporate Service Providers
 - Risk Management Including Self Risk-Assessment and Client Risk-Rating Framework
 - Business Conduct and Risk Profile
 - Cybersecurity



COMMERCIAL ENTITIES (SUBSTANCE REQUIREMENTS) ACT 2018 & GUIDELINES

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DEPUTY CHAIRMAN

SECURITIES COMMISSION OF THE BAHAMAS



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ANTI-MONEY LAUNDERING & COUNTERING THE FINANCING OF TERRORISM RULES (SIA/FCSPA)

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Overview

➤ Rules

- Securities Industry (Anti-money Laundering & Countering the Financing of Terrorism) (Amendment) Rules 2019
- Financial and Corporate Service Providers (Anti-money Laundering and Countering the Financing of Terrorism) Rules 2019

➤ Guidance Notes

- Sound Management of Risks Related to Financial Crime in The Bahamas – Issued 21st August, 2018
- Proliferation and Proliferation Financing – Issued 21st August, 2019

➤ UNSCR Obligations

AML/CFT RULES

Securities Industry (Anti-money Laundering & Countering the Financing of Terrorism) (Amendment) Rules 2019

- I. Compliance officer – establishing, implementing, and maintaining policies, procedures, and internal controls r. 3
- II. Regular verification of compliance with internal policies, procedures and controls r. 3
- III. Money Laundering Reporting Officer – senior, qualified, level of authority r. 4
- IV. Self-assessments and Pre-launch/introduction risk assessments r. 5
- V. Verification of identity – new and existing customers r. 6
- VI. Re-verification of existing customers conducting further business r. 8
- VII. Reliance on third party customer due diligence r. 22
- VIII. Introductions from group companies and intermediaries r. 23
- IX. Exemptions to verification of identity requirements r. 24
- X. Enhanced due diligence r. 25 and 26
 - Suspicion of involvement with high risk Country
 - Politically exposed persons

AML/CFT RULES

Financial and Corporate Service Providers (Anti-money Laundering and Countering the Financing of Terrorism) Rules 2019

- I. Risk Assessments – r. 2
 - Self-assessment
 - Facility Holders
 - Risk Profiling
 - Framework
- II. Internal Controls r. 4-6
 - Compliance Officer
 - Money Laundering Reporting Officer
- III. Customer Identification Requirements r. 9-18
 - Due diligence prior to business relationship
 - Additional care and evidence
 - Required documentation
- IV. Third-party Verification r. 14
 - Similar Financial Institutions
 - Non-sanctioned jurisdictions
- V. Eligible Introducers r. 15
 - Confirmations
 - Certifications
 - Documentation
- VI. Customer verification exemptions
 - Financial institutions
 - Central/local Governments
 - Publically traded companies
- VII. Record keeping



FINANCIAL CRIME GUIDANCE NOTE

What is considered Financial Crime?

THE CORE PRINCIPLES

I. Intolerance to Financial Crimes

II. Risk Assessment

III. Proper Governance

IV. Three Lines of Defense

- Business Unit
- Independent oversight
- Auditing

V. Board Oversight

VI. Business Acceptance

VII. Ongoing Monitoring

VIII. De-marketing

IX. Training

X. Cross-border/group wide risk management



PROLIFERATION GUIDANCE NOTE

FINANCIAL & CORPORATE SERVICE PROVIDERS FINANCIAL INSTITUTIONS

I. What is Proliferation?

- FATF 2008

II. What is Proliferation Financing?

- FATF 2010

III. UNSCR 1540

- Abstinance
- Adoption and implementation
- Establishment and enforcement

IV. Operations and Network

- Global exploitation
- Ordinary financial transactions
- Cash trade
- Dual-use goods

IV. Red Flags

- Address/weak financial safeguards
- Military/research bodies
- Business profile
- Pattern of financial activities

V. Licensees should:

- Consider proliferation risk factors in AML/CFT risk assessments
- Added consideration for Countries located in or associated with UN Sanctioned Countries or on a National listing for high risk entities
- Confirm, assess and continually and monitor the business profile of clients



UNSCR OBLIGATIONS

International Obligations (Economic and Ancillary Measures) Act & Anti-Terrorism Act 2018

- I. High-risk Countries
 - Prohibition of business relationships
 - Enhanced AML/CFT measures
- II. Orders from the Governor General
- III. Seizure, freezing and sequestration of assets
- IV. Duties of National Identified Risk Framework Coordinator
- V. Duty of Licensees to comply
- VI. Reports to Financial Intelligence Unit and Commissioner of Police

QUESTIONS & ANSWERS

COFFEE BREAK





AML/CFT TYPOLOGIES

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TYOLOGIES – STUDY OF OR ANALYSIS BASED ON TYPES OR CATEGORIES



Presenters: Mrs. Magan Taylor & Wilfred Bain



Money Laundering

- **Objective is to Place, Layer and Integrate Money into legitimate financial systems**
- **Professional Money Laundering Networks:**
 - **Collection of Associates and Contacts working together to facilitate ML**
 - **Increasingly utilizing business models and service providers for ML such as:**
 - **Foreign exchange brokers**
 - **Securities market deals**
 - **Sale of Shell Companies**
 - **Loans between shell companies**
 - **Real Estate Investments**
 - **Trade based Schemes**

Terrorist Financing

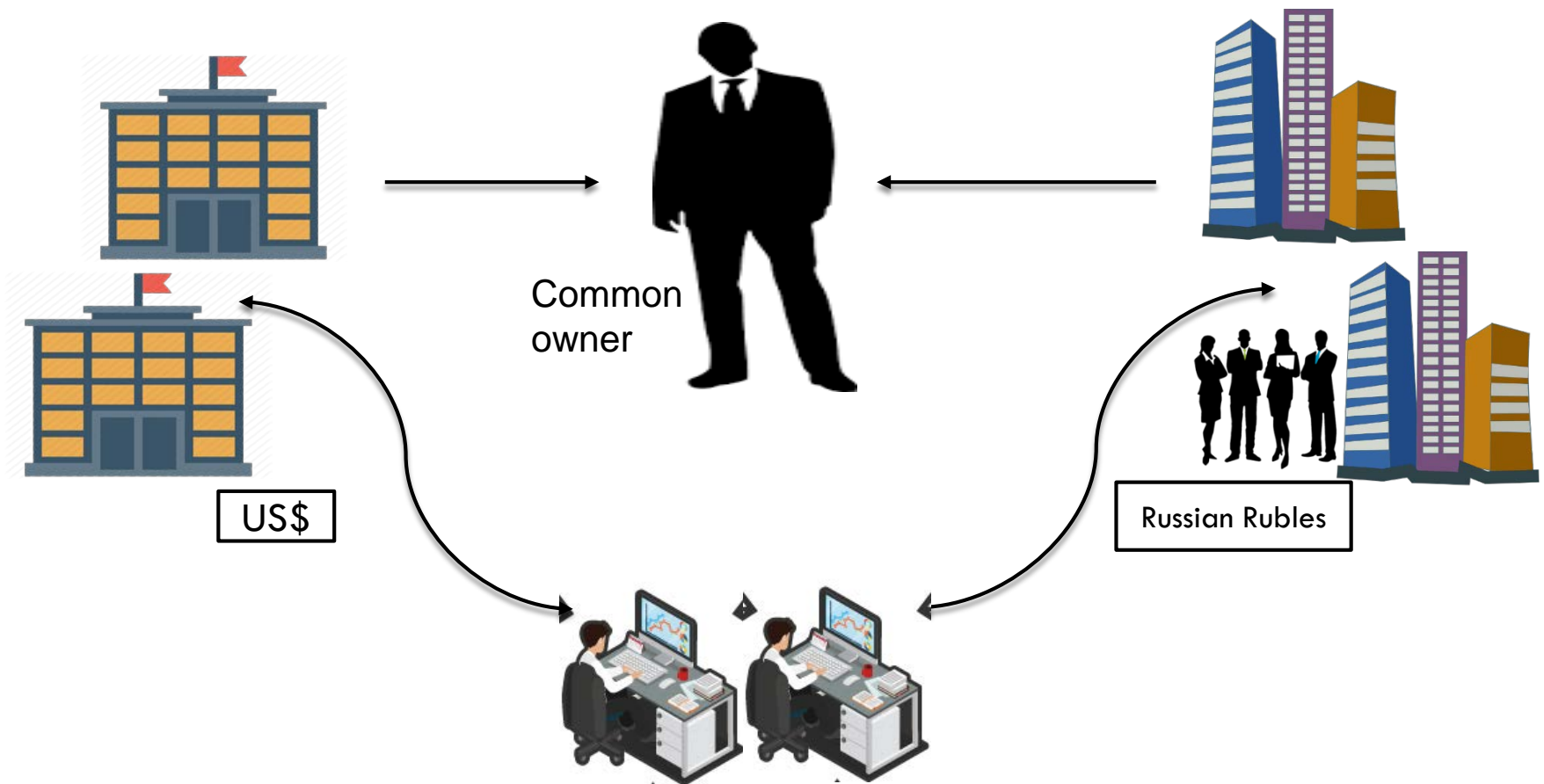
- **Objective is Terrorism**
- **Terrorist Financing Methods include:**
 - **Laundering the Proceeds of Criminal Activity**
 - **Financial Managers to accumulate revenue and establish financial shelters**
 - **Utilizing legitimate business models for investment**
 - **Cyber and Social Media Funding, Hacking of Internet based payment services**



TYOLOGY 1:

SECURITIES MARKET DEALS

TYPOLOGIES





RED FLAGS/INDICATORS

1.

- Dealing in securities or trades in large amounts with no concern for gains or losses or no profit seeking behavior

2.

- Shell Companies

3.

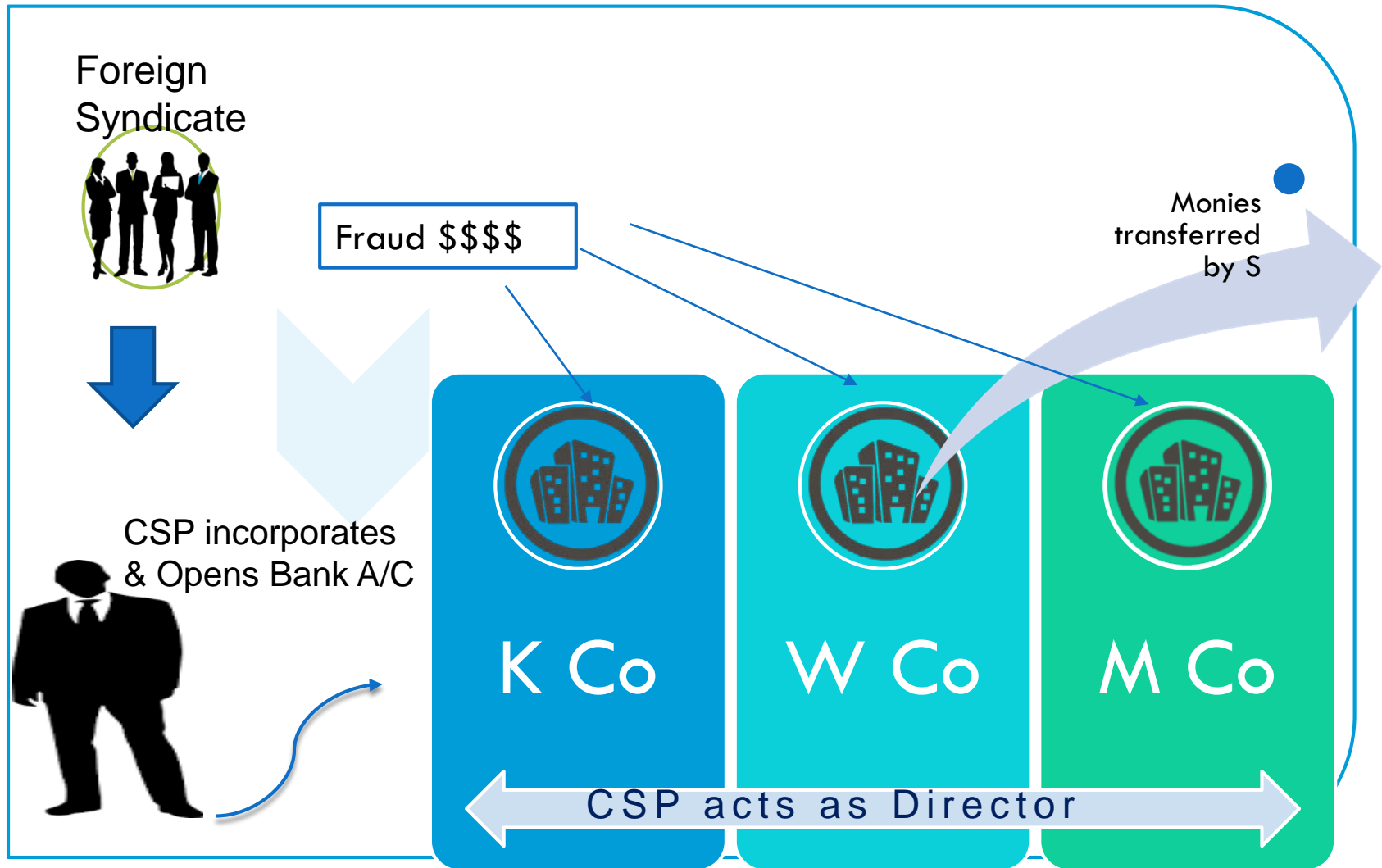
- Cross Border Transfers



TYPOLOGY 2:

USE OF SHELL COMPANIES AND CORPORATE SERVICE PROVIDERS

TYPOLOGIES





RED FLAGS/INDICATORS

1.

- No real business activities

2.

- Incorporation of several companies or shell Companies
- Nominee Directors

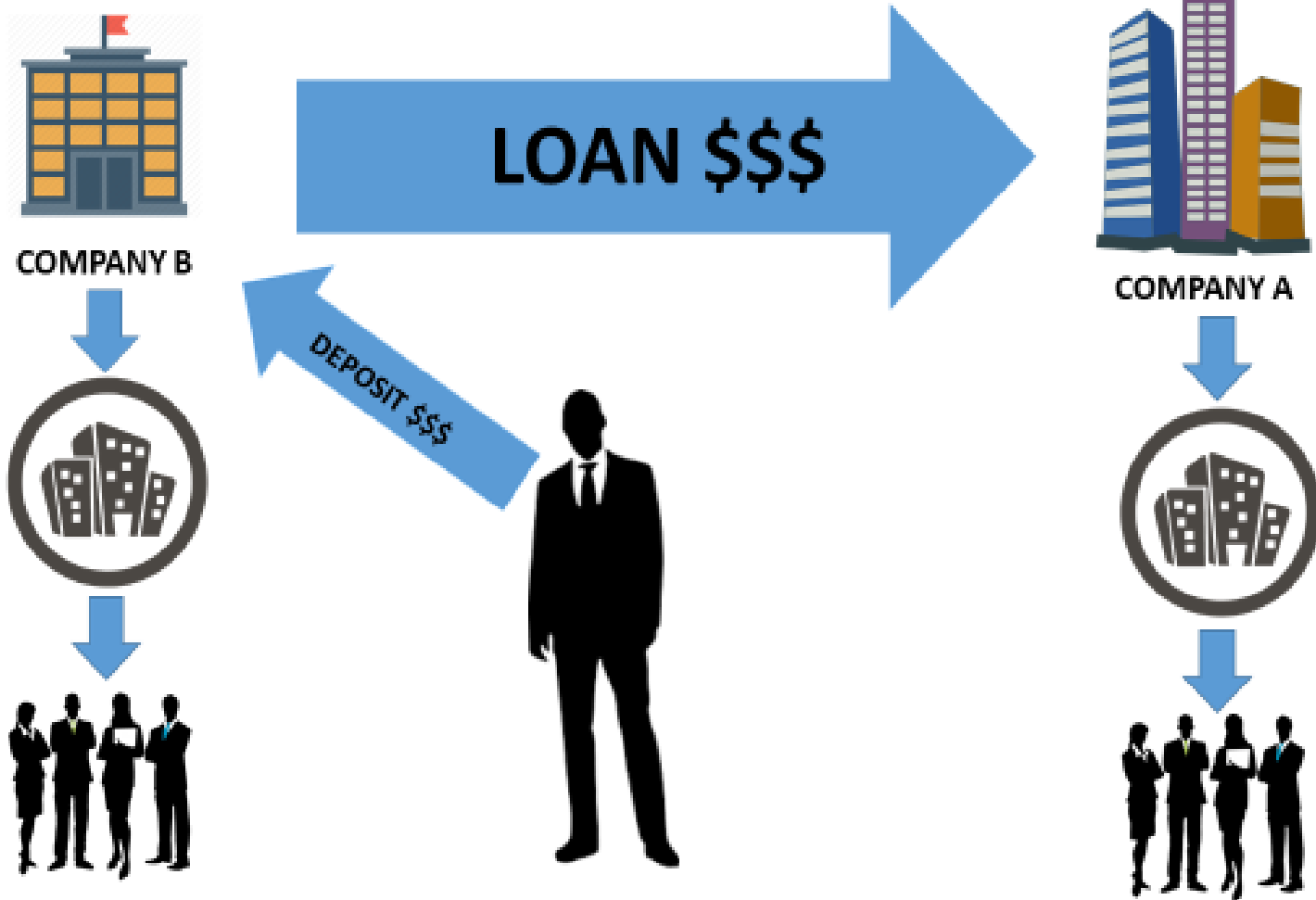
3.

- Lack of physical presence



TYOLOGY 3:

SHELL COMPANY





RED FLAGS

1.

- Legal person or arrangement incorporated/formed in a low tax jurisdiction or international trade or financial centre

2.

- Complex corporate structures that do not appear to legitimately require that level of complexity or which do not make commercial sense

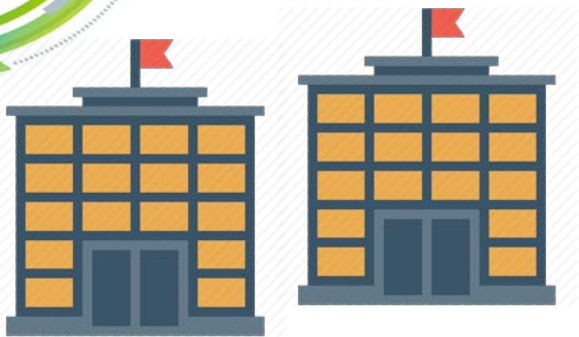
3.

- Finance is provided by a lender, including either a natural or a legal person, other than a known credit institution, with no logical explanation or commercial justification



TYOLOGY 4:

MONEY LAUNDERING VIA ROUND ROBIN SCHEME



AUSTRALIAN COMPANIES



ULTIMATE BENEFICIAL OWNERS



**PAYMENT FROM
AUSTRALIAN
COMPANY TO NEW
ZEALAND COMPANY
DISGUISED AS
INVOICE PAYMENT**



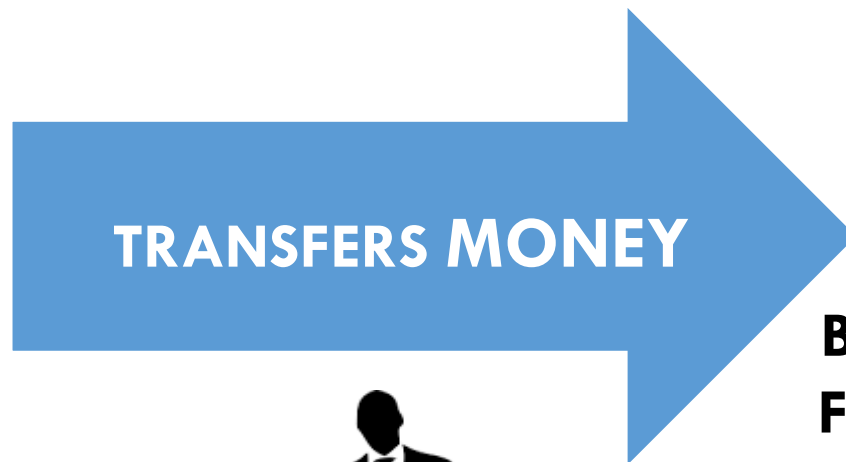
**BANK
ACCOUNT OF
NEW ZEALAND
COMPANY**



ACCOUNTANT



**BANK ACCOUNT
OF NEW
ZEALAND
COMPANY
CONTROLLED BY
ACCOUNTANT**



**BANK ACCOUNT OF
FOREIGN COMPANY
CONTROLLED BY
ACCOUNTANT**



ACCOUNTANT



**BANK ACCOUNT
OF FOREIGN
COMPANY**



ACCOUNTANT



**FALSE LOAN TO
BENEFICIAL OWNERS**

**FUNDS RETURN
TO BENEFICIAL
OWNERS IN THE
FORM OF FALSE
LOANS**



**PERSONAL BANK
ACCOUNTS**



ULTIMATE BENEFICIAL OWNERS





RED FLAGS/INDICATORS

1.

- Account activity inconsistent with customer profile

2.

- Customer receives international funds transfers declared as loans from a foreign lender

3.

- Customers undertaking complicated transfers without a business rationale



RED FLAGS/INDICATORS

4.

- Different ordering customers sending international funds transfers to the same beneficiaries

5.

- False invoices created for services not carried out

6.

- International funds transfers to a high-risk jurisdiction



RED FLAGS/INDICATORS

7.

- Multiple high-value international funds transfers to and from Australia with no apparent logical reason



RISK INDICATORS OF CONCEALED BENEFICIAL OWNERSHIP

- Client reluctant to provide personal information
- The client is reluctant or unable to explain:
 - The business activities and corporate history;
 - Their source of wealth/funds
 - The manner in which they are conducting the activities
 - Who they are transacting with
 - The nature of their dealings with third parties



RISK INDICATORS CON'TD

➤ The client:

- Insists on the use of an intermediary
- is conducting transactions which appear strange given their age
- is signatory to company accounts without sufficient justification
- Conducts financial activities and transactions inconsistent with their customer profile
- Declares income inconsistent with their lifestyle, assets or transactions



RISK INDICATORS CON'TD

➤ The Legal Person/Arrangement:

- Has a name that indicates a service it doesn't provide;
- Incorporated in a low-tax jurisdiction/Int'l trade center;
- Regularly send money to low tax jurisdictions
- Conduct a large number of transactions to a small number of recipients;
- Maintain relationships with foreign professional intermediaries from countries where they have not genuine business transactions;
- Has inconsistency between the wealth of the settlor and the object being settled



RISK INDICATORS CON'TD

- Individuals & Legal Persons/Arrangements:
 - Use multiple bank accounts in multiple jurisdictions without good reason
 - Appear focused on aggressive tax minimization strategies
 - Interested in foreign company formation; particularly in low tax jurisdictions and jurisdictions who promote secrecy
 - Have falsified paper trails
 - Have complex corporate structures that do not appear to legitimately require that level of complexity or do not make commercial sense



RISK INDICATORS CON'TD

➤ Shell companies:

- Have nominee owners and directors
- Have family members as nominees who are not involved in running of the enterprise
- No real business activities undertaken
- Does not have a physical presence
- Exclusively facilitates money transit but does not appear to generate wealth or income
- Address of mass registration: an address that is also the address of many other shell companies



THANK YOU!



QUESTIONS & ANSWERS



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