MONEY LAUNDERING WITH TRUSTS AND RELATED TRUSTEE SERVICES

THE SEPARATION OF LEGAL AND BENEFICIAL OWNERSHIP MAKE TRUSTS INVALUABLE FOR THOSE SEEKING TO DISTANCE AND DISGUISE THEIR CONNECTION WITH PROPERTY USED FOR, OR GENERATED BY, CRIME.

OVERVIEW

Trusts are legal arrangements developed by common law jurisdictions in which the legal title and control of an asset are separated from the equitable interests to that asset. A trust is not a legal person and assets held by a trust are legally owned by the “trustees”. A trust cannot conduct transactions, or hold property, in its own right but must do so through the trustees.

In a typical trust, a “settlor” transfers the legal title of assets to a trustee who must hold those assets for the benefit of certain “beneficiaries” in accordance with the declaration of trust.

The separation of legal and beneficial ownership make trusts invaluable for those seeking to distance and disguise their connection with property used for, or generated by, crime. Further, in many jurisdictions there is no registration requirement for a trust: they are viewed as private arrangements and their existence is not a matter of public record. Trusts are therefore well suited to be used as secrecy vehicles by those wishing to launder money.

Professional trustees and administration services are often provided by trust service providers (or “TSPs”). These companies often also provide company, as well as trust, services and are hence also referred to as “TCSPs”. The trustees provided by TCSPs can be individuals or corporate entities, sometimes referred to as “trust companies”.

IN ORDER FOR A SETTLOR TO RETAIN CONTROL OVER THE ASSETS LEGALLY DIVESTED FROM HIS OWNERSHIP WHEN A TRUST IS SET-UP, COMPLIANT TCSPS CAN BE EXPLOITED WHERE THE TRUSTEES WILL SIMPLY FOLLOW THE DIRECTIONS OF THE SETTLOR.

However, to give such an arrangement the cover of legitimacy the trust can be set-up in such a way that the trustees receive “advice” from an “investment management company” (ultimately under the control of the settlor) in relation to the management of the trust assets.

Trusts are often used as the last layer of secrecy in a complex corporate structure designed to disguise a criminal’s connection to illicit funds. In order to aid this concealment, arrangements often span multiple jurisdictions, with trust assets, TCSPs, and investment management companies each located in a different country.
SCENARIO

Let’s suppose a member of a ruling family is paid a bribe by an arms manufacturer in order to influence the awarding of a contract for the supply of fighter planes.

The member of the ruling family will not want to receive this money directly, they will want to benefit from this money whilst avoiding detection.

1. Instead of directly paying the member of the ruling family, the arms manufacturer pays Company X under the cover of a “consultancy” contract.

2. Company X is a BVI company, managed and administered by a CSP on behalf of the ruling family member.

3. The shares of Company X have been settled into a Guernsey trust, administered by a TCSP.

4. The beneficiaries of the trust consist of the wife and children of the ruling family member and they will therefore be able to indirectly enjoy the proceeds of the bribe payment.