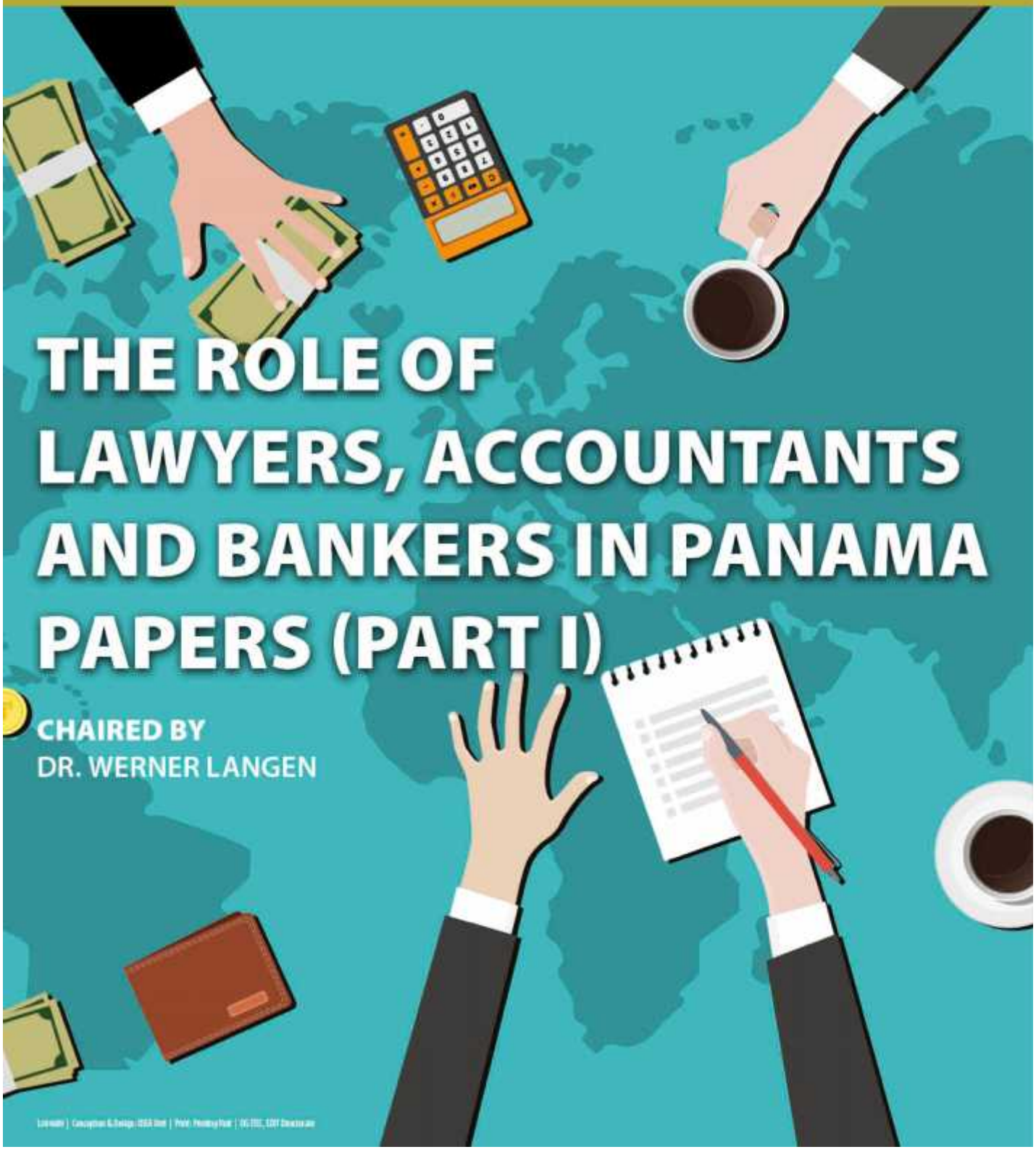
PUBLIC HEARING

COMMITTEE OF INQUIRY INTO MONEY LAUNDERING, TAX AVOIDANCE AND TAX EVASION (PANA)

European Parliament

Tuesday 24.01.2017 – **09:00-12:30**
JÓZSEF ANTALL BUILDING – ROOM **6Q2**



THE ROLE OF LAWYERS, ACCOUNTANTS AND BANKERS IN PANAMA PAPERS (PART I)

CHAIRED BY
DR. WERNER LANGEN

PUBLIC HEARING

THE ROLE OF LAWYERS, ACCOUNTANTS AND BANKERS IN PANAMA PAPERS - (PART I)

TUESDAY, 24 JANUARY 2017

9.00 - 12.30

Room: József Antall (JAN) 6Q2

DRAFT PROGRAMME

9:00 - 9:10	Welcome by the PANA Chair

9:10 - 9.40	First panel Presentations by speakers (at 10 minutes each)

- Professor Ronen Palan, Senior advisor - Tax Justice Network
- Professor Brooke Harrington, Associate Professor Copenhagen Business School. Author of "Capital without Borders, Wealth Managers and the One Percent"
- Daniel Hall, Director and co-head of Burford's global corporate intelligence - Burford Capital

9.40 - 10:45	Discussion with PANA Members

10:45 - 11.15	Second panel Presentations by speakers (at 10 minutes each)

- Rupert Manhart, Chair of the Anti-money laundering Committee of The Council of Bars and Law Societies of Europe (CCBE), and Richard Frimston, Member of the CCBE and expert on topics relating to tax, beneficial ownership, and offshore activities aspects
- Wim Mijs, Chief Executive Officer (CEO), and Roger Kaiser, Senior Policy Adviser of European Banking Federation (EBF)
- Professor Stef van Weeghel, Global Tax Policy Leader, Price Waterhouse Coopers (PWC)

11.15 - 12:25	Discussion with PANA Members

12:25 - 12:30	Conclusions by the PANA Chair

PANA

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

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TUESDAY, 24 JANUARY 2017

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CVS OF THE SPEAKERS

Professor Ronen Palan

Professor of International Politics, Department of International Politics, City, University of London

Background

Professor Ronen Palan (BSc. Econ, LSE, PhD LSE) joined City University London in September 2012. Prior to this he has been a professor of IPE at the University of Birmingham and Sussex University, and a lecturer in International Relations at the University of Newcastle-upon-Tyne.

He was a visiting professor at the Hebrew University, Jerusalem and York University, Canada. He was also a founding editor of the Review of International Political Economy (RIPE) and member of the Fellow and Promotion Committee at the Institute of Development Studies, Brighton.

Professor's Palan's work lies at the intersection between international relations, political economy, political theory, sociology and human geography. He wrote a number of books and numerous articles, book chapters and encyclopaedia entries on the subject of Offshore and Tax havens, state theory and international political economic theory. His work has been translated to Chinese, simple and complex characters, Japanese, Korean, Spanish, French, Russian, Italian, Azeri and Czech.

(Source : Wikipedia)

_____

Education: Bsc. Econ and PhD, The London School of Economics and Political Science, 1984, 1990

Previous Appointments: University of Birmingham, Sussex, Newcastle-Upon-Tyne

Visiting Professorships: Luiss, Rome, Thammasat, Bangkok, CEPREMAP, Paris; Central European University, Budapest; York University, Toronto, Canada; Hebrew University, Jerusalem

External Funding

Corporate Arbitrage and CPL Maps: Hidden Structures of Controls in the Global Economy

CORPLINK, ECR Advanced Grant, project 694943 - CORPLINK - GAP-694943 1,728,000 Euros, 2017-2021

Combating Fiscal Fraud and Empowering Regulators (COFFERS), Horizon 2020. 4,999,999 Euros, PI for WP1, 638,000 Euros.

System of Tax Evasion and Laundering: Locating Global Wealth Chain in the International Political Economy (STEAL). Team member. PI Professor Leonard Seabrooke. Research Council of Norway, 4,997,000 NKR.

Selected Publications

Palan, Ronen & Abbott, Jason with Phil Deans, 1996, 2003 *State Strategies in the Global Political Economy*. London: Pinter. HB. Czech translation.

Palan, Ronen, 2000, 2013 (Editor), *Global Political Economy: Contemporary Theories. Routledge: London and New York.* HB & PB. Azeri and Chinese Translations.

Palan, Ronen, 2003, 2006 *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*. Ithaca, N.Y.: Cornell University Press.

Cameron Angus & Ronen Palan, 2004, *The Imagined Economies of Globalisation*. London: Sage..

Chavagneux, Christian et. Palan, Ronen, 2006, 2007, 2013, 2017 *Paradis Fiscaux*, Paris : La Découverte.,Japanese and Spanish Translation.

Palan, *Ronen*, Murphy Richard and Christian Chavagneux, 2010, *Tax Havens: How Globalization Really Works*. *Cornell Studies in Money*. Ithaca: Cornell University Press. Chinese traditional and complex characters, Korean, Japanese Trans.

Halperin, Sandra & Ronen Palan, 2015 (Eds.) Legacies of Empire. Cambridge University Presss.

Palan, Ronen, 1998, "Trying to Have Your Cake and Eating It: How and Why the State System Has Created Offshore" *International Studies Quarterly*, 42 (4),625-644

Palan, Ronen, 2002, "Tax Havens and the Commercialisation of State Sovereignty" *International Organization* 56 (1), 2002, 153-178.

Nesvetailova, Anastasia & Palan, Ronen, 2008, "A Very North Atlantic Credit Crunch: Geopolitical Implications of the Global Liquidity Crisis", *Journal of International Affairs* (With Anastasia Nesvetailova). 62:1, 165-185.

Palan, Ronen, 2010, "Financial Centers: The British Empire, City-States and Commercially-Oriented Politics", *Theoretical Inquiries in Law*. 11(1), 142-167.

Documentaries:

Advisor to: Britain's Trillion Pound Island – Inside Cayman, BBC2, The Price we Pay, InformAction.Canada, The UK gold, Brassh Moustach, UK, Les Dessous Des Ecart, ARTE, Germany/France.

(Source : Pr. Palan)

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Academic Appointments

2010-present	*Associate Professor of Sociology* Copenhagen Business School (tenured) Maternity leave: January-August 2010
2012-2013	*Visiting Scholar* (during research leave from CBS) European University Institute
2006-2009	*Research Fellow, Max Planck Institute for the Study of Societies*
2003-2004	*Visiting Scholar* (during sabbatical leave from Brown) Princeton University Stanford Graduate School of Business Santa Fe Institute
1999-2007	*Assistant Professor of Sociology and Public Policy* Brown University

Education

1999	Ph.D. in Sociology, Harvard University *Committee*: Peter Marsden, Lotte Bailyn (MIT Sloan), David Frank
1996	M.A. in Sociology, Harvard University
1990	B.A. in English Literature, Stanford University

Selected Publications

2016	*Capital without Borders: Wealth Management and the One Percent* Harvard University Press. Japanese, Korean and Danish translations in progress.
2016	"Trusts and Financialization." *Socio-Economic Review*, 14: 1-33.
2015	“Going Global: Professionals and the Microfoundations of Institutional Change.” *Journal of Professions and Organization, 2:* 1-19*.*
2012	“Trust and Estate Planning: The Emergence of a Profession and Its Contribution to Socio-Economic Inequality.” *Sociological Forum*, 27*:* 825-846*.*

Articles in the popular press and policy journals available at www.brookeharrington.com.

Daniel Hall

Daniel Hall is a Director and co-head of Burford's global corporate intelligence, asset tracing and enforcement business.

Mr. Hall is a UK qualified solicitor who practised in both London and Hong Kong for Stephenson Harwood.
After leaving the law, he enjoyed a number of years in the investigative sector, latterly as a Partner at a leading global risk-management consultancy. He spent ten years investigating fraud and financial crime before founding Focus and has particular experience in sovereign disputes.

Mr. Hall graduated from Oxford University with a degree in Law.

MMag. Dr. Rupert Manhart, LL.M. (LSE)

Born 1977 in Salzburg (Austria), Rupert Manhart has been Attorney-at-Law and Partner at Manhart Einsle & Partner, Bregenz (Austria) since 2009. Since 2010, he has been Member of the Austrian Delegation to the Council of Bars and Law Societies of Europe (CCBE).
He was Member of the CCBE Committee on Competition and the CCBE Anti-Money Laundering Task Force from 2010 to 2016. Since 2016, he has been Vice-Chair of the CCBE EU Lawyers Committee and Chair of the Anti-Money Laundering subgroup.
Furthermore, he has been Member of the Working Group on Criminal Law as well as of the Commission on Criminal Law of the Austrian Bar (ÖRAK) since 2009.

Between 2002 and 2006, he was Junior Lecturer at the Department of Criminal Law of the University of Innsbruck. He was trained as Attorney-at-Law from 2006 to 2008 at Fellner Wratzfeld Partner, Vienna (Austria), and from 2008 to 2009 at Stolz Manhart Einsle, Bregenz (Austria).

He has studied Law (2001 Graduation to Magister iuris, 2004 Promotion to Doctor iuris, 2005 Graduation to Master of Laws) and International Economic Sciences (2002 Graduation to Magister rerum socialium oeconomicarumque) at the Universities of Innsbruck and Strasbourg as well as at the London School of Economics and Political Science (LSE). Bar exam 2009 and notarial exam 2012. Several academic awards and scholarships.

Doctorate in Law with a dissertation on tax crimes. Several publications and lectures on financial criminal law, white collar crime, money laundering and environmental criminal law as well as on European private law.

July 2016

BIOGRAPHY: WIM MIJS

Chief Executive of the European Banking Federation

Wim Mijs (1964) was appointed Chief Executive of the European Banking Federation in September 2014.

Between 2007 and 2014 Wim served as CEO of the Dutch banking association NVB. During this time he transformed the NVB into a modern industry association, positioning it as the key representative of the banking sector in the midst of the financial crisis.

Wim studied law at the University of Leiden in the Netherlands, specialising in European and International law. After his studies he worked for one year at the International Court of Arbitration at the Peace Palace in The Hague. In 1993 he joined ABN AMRO in Amsterdam before moving to Brussels to head up the bank's EU liaison office. Wim moved back to The Hague in 2002 where he became the Head of Government Affairs for ABN AMRO.

Between 2011 and 2015 Wim served as Chairman of the International Banking Federation. From 2012 to 2014 he was Chairman of the Executive Committee of the EBF. From 2013 to 2015 he was President of the Board of Euribor, now known as the European Money Market Institute.

Wim is married and has two children.

Twitter: @Wim_Mijs

European Banking Federation aisbl

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EU Transparency Register / ID number: 4722660838-23

www.ebf.eu

January 2017

BIOGRAPHY OF ROGER KAISER

Senior Policy Adviser, European Banking Federation

Master's Degree in Business Engineering

Master's Degree in Taxation

Chartered Tax Accountant

Roger Kaiser has 25 years of experience in taxation and financial reporting and a robust expertise in international public affairs.

In the 90's, he received a Master's Degree in Business Engineering from HEC-University of Liege (Belgium), a Master's Degree in Taxation from ESSF-ICHEC, Brussels (Belgium), and a Post-Graduate Degree in European Tax Law from ESSF-ICHEC and University of Burgundy, Dijon (France). He is also a member of the Belgian Institute of Chartered Accountants and Tax Advisers.

He has served the Belgian Internal Revenue Service for 7 years, notably as Head of the Taxation Unit for Brussels' financial intermediaries and as Head Inspector at the Ruling Commission and the Directorate General for Corporate Income Tax & Withholding Tax.

In 1999, he joined the European Banking Federation (EBF), the representative body of Europe's banks. In his capacity as Senior Policy Adviser for taxation and financial crime, he represents European banks in a number of international expert groups run under the aegis of the OECD, EU Institutions and industry representation bodies. He is also Lecturer in the Master of Advanced Studies in International Taxation at the University of Lausanne.

European Banking Federation aisbl

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Prof.dr.Stef van Weeghel (1960) is a tax partner with PwC (Netherlands). Stef is PwC's Global Tax Policy leader. He is also professor of international tax law at the University of Amsterdam.

Stef's focus is on tax policy, strategic tax advice and tax controversy. He regularly renders advice and second opinions to clients and to other advisers, on corporate income tax and tax treaty matters and is also consulted by the Dutch government on a regular basis. He acts as expert witness in tax matters (for taxpayers and for governments) before Dutch and foreign courts and in arbitration pursuant to bilateral investment treaties.

At the University of Amsterdam his research focuses on tax treaty abuse and the interaction between domestic anti-avoidance rules and tax treaties. His PhD-thesis of 1997 (the Improper Use of Tax Treaties) was about tax treaty abuse. In 2010 he was the general reporter for Subject 1 (Tax treaties and tax avoidance: application of anti-avoidance provisions) at the Congress of the International Fiscal Association (IFA) in Rome. He also spoke about tax treaty abuse at the OECD Annual Global Forum on Tax Treaties.

Stef is chair of the Permanent Scientific Committee of IFA and former chair of the Dutch branch of IFA. IFA was established in 1938. It is the only non-governmental and non-sectoral international organisation dealing with fiscal matters.

Stef also chairs the Board of Trustees of the International Bureau of Fiscal Documentation (IBFD). IBFD, also established in 1938, is a non-profit foundation that conducts independent tax research, provides international tax information, education, and government consultancy.

Stef graduated from the University of Leiden in business law (1983) and tax law (1987) and obtained an LLM in Taxation from New York University (1990). In 1997 he received a doctorate in law from the University of Amsterdam. He was admitted to the Amsterdam Bar as attorney in 1987. In 2000 he was appointed tenured professor of international tax law at the University of Amsterdam. He authored and co-authored several books and numerous articles on Dutch and international taxation and has lectured extensively in the Netherlands and internationally.

Prior to joining PwC Stef was a partner at law firms Linklaters (2007-2009) and Stibbe (1992-2007) where his roles included membership of the Executive Committee, head of tax and resident partner in the New York office.

In 2009/2010 Stef chaired the Study Group Tax System, a committee that advised the Dutch government on comprehensive tax reform.

In 2000 he was a member of the Van Rooy-Committee that advised the Dutch government on corporate income tax reform.

Prior thereto he was member of a working group at the Dutch Ministry of Finance that worked on revision of the Dutch ruling practice. He also worked on the review of administrative practices in taxation commissioned by the European Commission.

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CONTRIBUTIONS

Creative Compliance

Wealth Management, Taxes and the Law

Brooke Harrington, PhD
Associate Professor
Copenhagen Business School

What the Panama Papers tell us

- the law doesn't constrain the ultra-rich as tightly as everyone else
- they can pay firms like Mossack Fonseca to "liberate" them from many legal constraints
  - when it comes to tax, the scale of avoidance we see now (~$200B/year by individuals worldwide) could not exist without expert facilitation

I've spent the past 9 years studying these experts.

What I've learned

- what do the world's ultra-rich want?
  - not just tax avoidance, but *law* avoidance
- who does the work?
  - a recently-constituted professional group called wealth managers
  - most are trained as lawyers, accountants, and bankers; they specialize in serving the ultra-rich
  - at least 20,000 practitioners in 95 countries
- what do these professionals do?
  - help their clients violate the spirit of the laws while remaining formally compliant

How they work

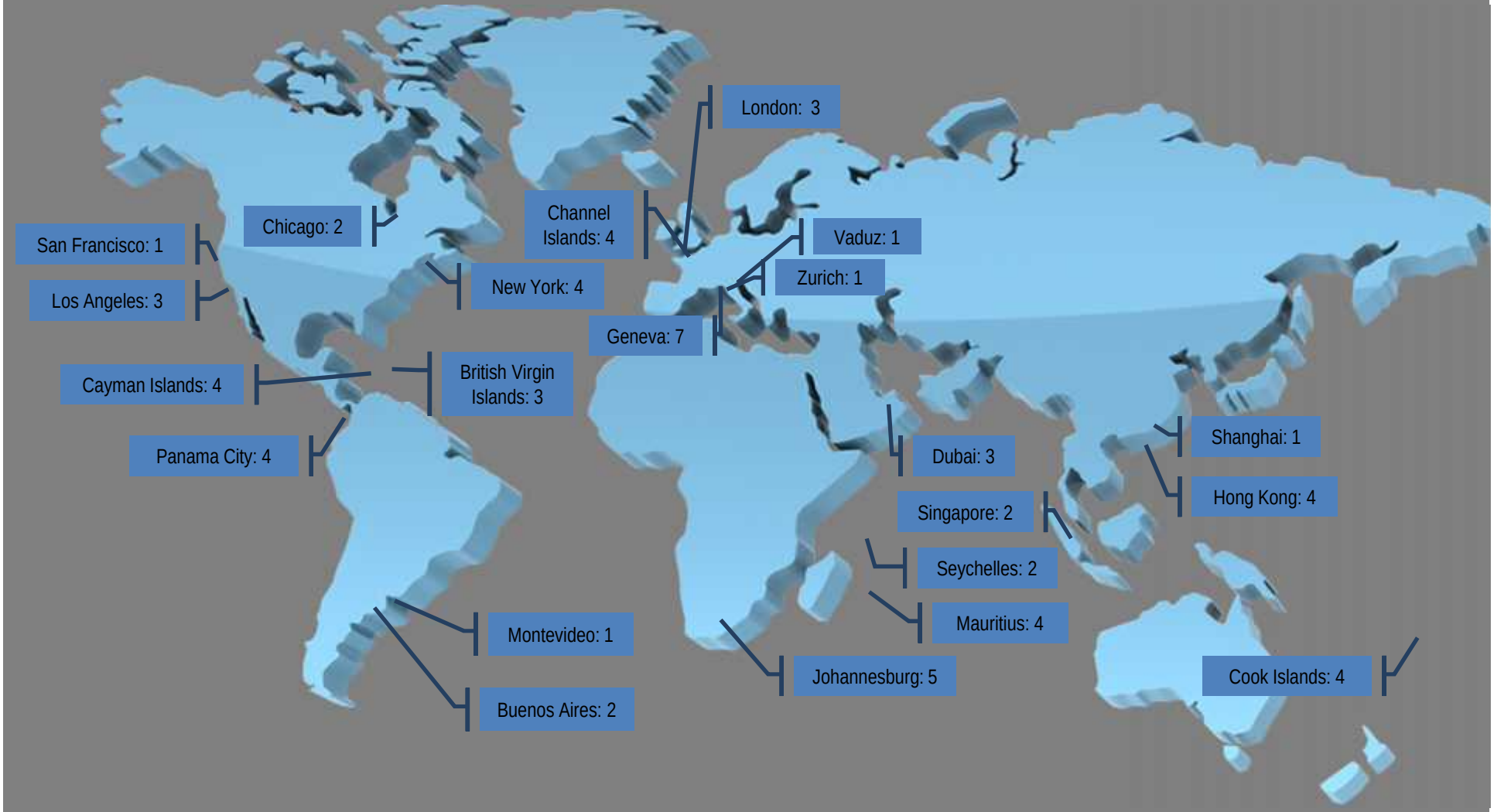
- key strategies
  - subvert regulation: not through overt defiance, but through “creative compliance”
  - discretion: stay out of public records, courts
  - use of three basic tools—corporations, foundations and trusts—to obscure ownership
  - “hacking sovereignty” across jurisdictions
- key outcomes
  - legal invisibility of client, frictionless movement of client assets worldwide, avoid accountability
  - thus, no prosecutions from Panama Papers

How I know this

- **spent two years training as a wealth manager**
  - **learned the state-of-the-art techniques and strategic mindset**
  - **gained access to interview participants and archival materials for research**

- **dataset**
  - **65 interviews with wealth managers in 18 countries, including all the major world regions: Africa, Asia, Europe, and North and South America**

Research sites



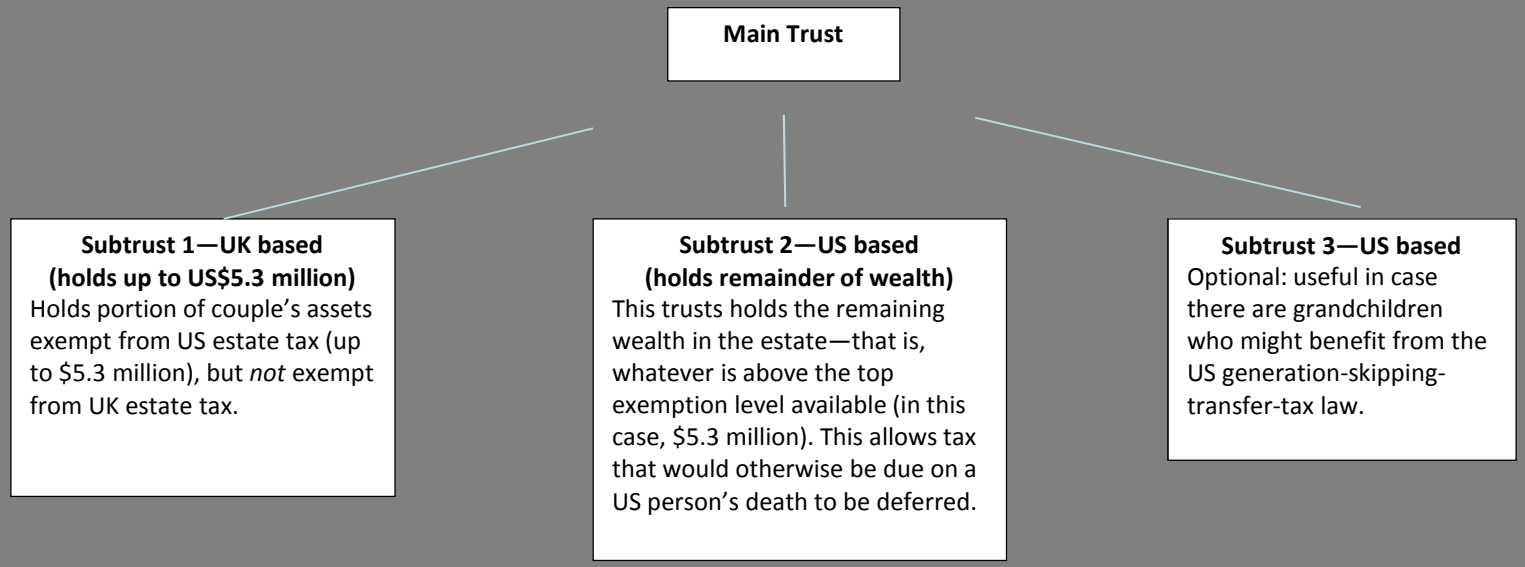
A few recommendations

- **focusing on tax policy for the rich has not worked**
  - **defeated by extreme mobility of the rich and their $**
  - **France and the wealth tax as cautionary tale**
- **focus on the wealth managers instead**
  - **Israel succeeded by co-opting wealth managers, changing the incentives for compliance by the professionals—not their wealthy clients**
- **…and cultivate whistle-blowers**
  - **more John Does are out there: protect them from exposure/prosecution so more will come forward**

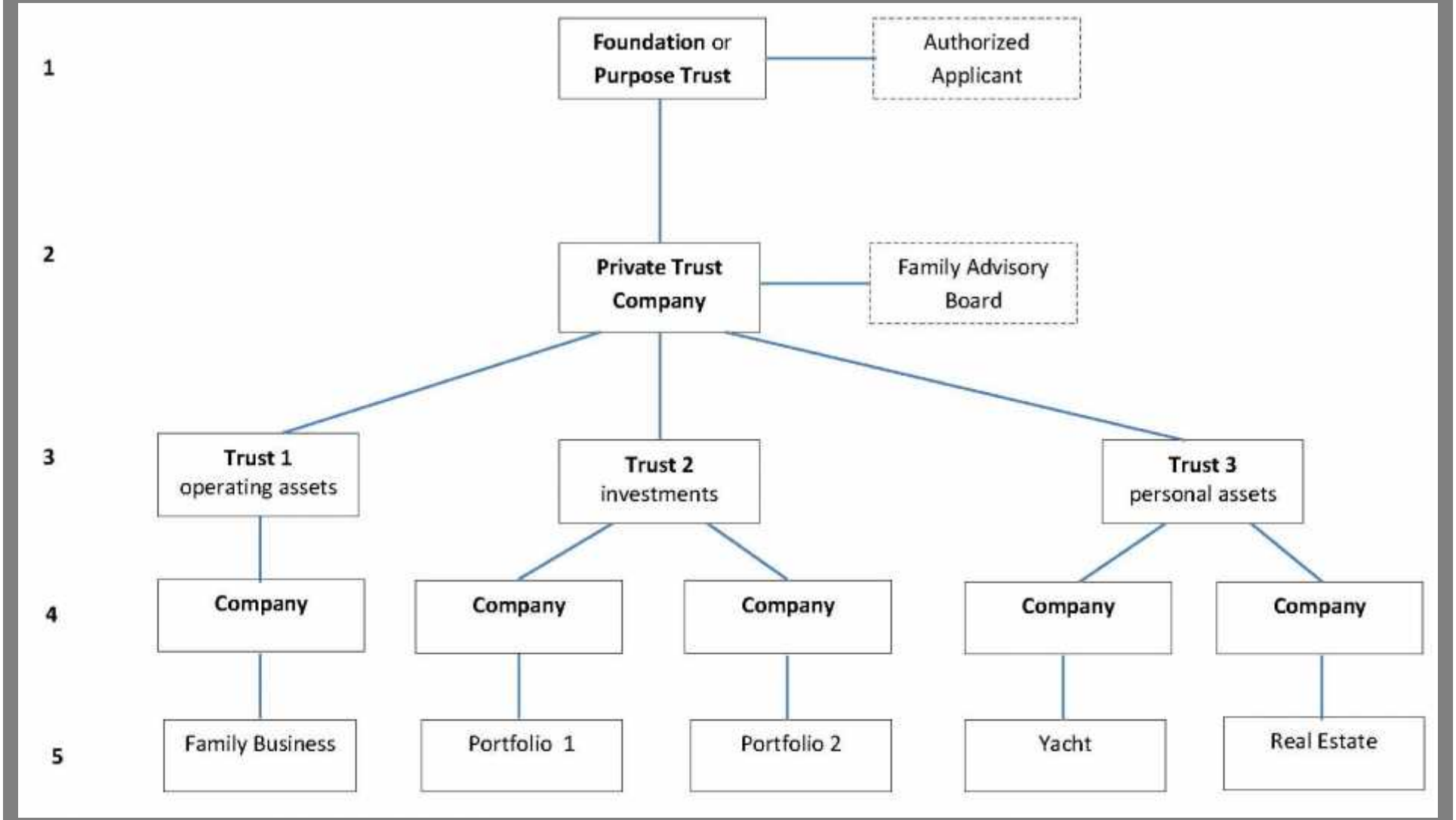
Can also answer questions on

- interpreting data from the Panama Papers
  - reading the patterns like a wealth manager
- structure of the wealth management industry
  - types of clients, types of businesses
- the geography of wealth management
  - where wealth moves around the world, and why
  - the specializations of diverse offshore centers
- how the basic tools are deployed to hide $
  - understanding uses of trusts, firms and foundations

Configurations from simple



To complex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2
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Foundation or Purpose Trust
Authorized Applicant
Private Trust Company
Family Advisory Board
Trust 1 operating assets
Trust 2 investments
Trust 3 personal assets
Company
Company
Company
Company
Company
Family Business
Portfolio 1
Portfolio 2
Yacht
Real Estate

Your questions?

Daniell HALL

Director and co-head of Burford's Global Intelligence - Burford Capital

Hello, my name is Daniel Hall and I'm a director of Burford Capital's corporate intelligence and enforcement team. I am grateful to be asked here today and I look forward to giving my views on this important topic.

To give you a little background, I am a qualified solicitor in the UK but I have left the law and do not practise. For a little over a decade now, I have primarily been involved in asset recovery work, formerly on a consultancy basis in the corporate intelligence community, but now in the financial services industry where I work for the largest litigation finance firm in the world. I mention this background as I have seen the offshore world and its facilitators from a variety of different viewpoints in my career, so I hope I have something to add to this discussion. For me, the Panama Papers are fascinating and whilst the leak itself and the specific details were unexpected, the type of revelations have been unsurprising.

Frankly, I am delighted that the practices of some parts the offshore world have reached the public consciousness and caused the outrage that they have. I have spent the majority of my career chasing well resourced, hardened, recalcitrant debtors who happily use the corporate veils of convenience provided by many secrecy jurisdictions, so I have some understanding of the difficulties faced by national tax authorities, let alone many commercial creditors who lack the funds or wherewithal to make headway in this opaque world.

As you can imagine, my casework (both active and historic) is bound by a multitude of non-disclosure agreements, legal privilege and in some cases, court imposed confidentiality orders, so I can't give as many details as I would like. However, I will give this Committee a flavour of what I have seen on a regular basis and highlight examples that have made it into the public domain, where I can.

I should point out that I am not here to demonise Panama or the offshore world in general. After all, I do work for a Guernsey domiciled company, and like the vast majority of journalists who have written on the Panama Papers, I think it is important to note that much of what happens offshore is perfectly legal.

However, there is obviously a darker side; as inevitably the secrecy, negligible tax regimes and the low cost of entry to this world means the entire system is prone to abuse. Sadly, much of this abuse is facilitated by groups of well-paid lawyers, accountants and bankers, especially when it comes to professional money laundering and tax evasion.

If you will forgive me being trite for a moment: imagine you are from a poor background, perhaps in a developing nation or a politically unstable country. You end up working for the Govt, a state owned enterprise, or even just a large company, and you are presented with an opportunity to make lots of money; perhaps to make more money than you could possibly hope to for the rest of your life. Maybe it's outright theft, maybe it's a bribe or kickback, but

you do it. Putting aside the morality of this decision for a moment, I urge this Committee to think about the practical logistics of what happens next. Seriously, what would you do? Do you go home and start Googling "How to launder money"? Ask a friend? Imagine that conversation: "I've just been given a suitcase full of money to award a contract to company X, any idea what I can do with it?"

No, none of that happens. Usually, at the same time you're provided with the opportunity to profit you're introduced to the helpful lawyer or fiduciary that makes it all possible. Before you know it, you're enjoying the fruits of your ill-gotten gains, often with the funds having passed through a daisy chain of offshore companies – none of which are ever likely to be linked to you and getting the funds away from the original crime – and its cost you maybe 15%, maybe less. It's just the cost of doing business; and you haven't had to do any of the structuring or money movement yourself.

In some ways it's a silly example. It all sounds a little far-fetched and exotic, with characters that belong in a movie, not the boardrooms throughout the financial capitals of Europe and beyond. We would all like to imagine the kind of professionals characterised here as grotty individuals, running tiny businesses and being on the edge of the professional community. People cite historic example such as Jeffrey Tessler, by his own words "a simple lawyer" from North London, who eventually pled guilty to US corruption charges in the Halliburton bribery scandal where over $182m of bribes were funnelled to Nigerian officials under the Abacha regime, with the help of a number of well-known international banks.

However, the problem today is perhaps larger than it has ever been. The IMF released a report on corruption in 2016, which estimated that the cost of bribery and corruption alone was somewhere between $1.5 to $2 trillion dollars. Per year. So, how are the good guys doing? The Stolen Asset Recovery Initiative of the World Bank estimates that in the 15 years between 1995 and 2010, only $5 billion of stolen funds were recovered and returned. When you think about it on that scale and with that enormous gulf between what is stolen (measured in trillions annually) and what is recovered (measured in the low billions over a 15yr period), you logically know that these transactions aren't being dealt with by a tiny group of ethically challenged lawyers and fiduciaries; it's big business and lots of people are involved. This is bribery & corruption alone don't forget; this doesn't take into consideration the fund flows from other criminal activities such as drugs, prostitution, people smuggling etc – and that's before we get to 'just' tax evasion. The Panama Papers have shined a very small spotlight on to one small part of a truly vast industry.

So how and why does this happen? Easy answer: it's good business for the professionals. No firm generally wants to lose paying client work, especially when the competition is happy to do it and there is virtually no fear of sanction. This is often the moment when many of the intermediaries are quick to cite the robust Know Your Client and compliance procedures they have in place, how these kind of practices couldn't happen at their venerable institution – but it's often a convenient fiction. The majority of KYC is 'compliance theatre' with the relevant lawyer or accountant merely seeking to ensure that they are not legally exposed in a particular circumstance, as opposed to actually preventing the flow of illicit funds. I've seen lawyers from prestigious firms happily smirk that their client is not the Russian sanctioned individual

on the EU list, it's a BVI company associated with his wife, all the time with knowing nods and grins.

If you'll permit me another odd aside: my favourite strained analogy involves the old landing cards for foreign travellers entering the US. For those who don't know, one of the questions you had to answer prior to entering the country was that you were not a terrorist, or a Nazi, nor had you been involved with genocide somewhere. It always struck me as odd that someone could be involved with a genocidal regime, yet feel compelled to tell the truth on a form. I'm betting that the confessions via immigration form were pretty low.

The parallel here is that the KYC used by the intermediaries we are discussing today depends on two things (i) the self-reporting of the individuals concerned; and (ii) the scrutiny or lack thereof by the professional adviser. In the trillions of dollars stolen in the last 5 years, most would have been laundered, often via the offshore world, and wound up 'clean' somewhere and probably used to invest most asset classes imagine-able. How many of the KYC docs filed currently in banks, law firms and accountancy firms do you think – under the source of funds section - say "kickback, "bribe" or "theft"? Again, I'm guessing zero. To expect self-reporting by the criminal is as pointless as hoping a terrorist identifies himself on an immigration form. So, the only line of defence we really have is the professional adviser; who in turn is faced with a dilemma: do they refuse the work based on gut instinct, a moral compass and common sense even though there is no formal evidence of wrongdoing in front of their eyes; or do they use that very same lack of evidence as a reason to proceed? They have no evidence anything improper has happened, so why not proceed? Turning a blind eye is all too commonplace; most intermediaries aren't egregious examples like Jeffrey Tessler; but most know that something isn't right, but proceed as they don't feel exposed and they can make some easy money.

A recent US example exemplifies this perfectly. In January 2016, Global Witness released a report called Lowering the Bar, which was covered in the US media and the undercover videos appeared on 60 Minutes. In the investigation, an individual posed as an advisor to an African minister of mines who wanted to bring millions of dollars of suspect funds into the US, to buy a jet and a yacht amongst other things He met with lawyers from 13 New York City law firms and only one turned him away. Of the 12 seemingly willing to offer advice as to how this African minister could bring his funds anonymously into the US, one of them was the serving President of the American Bar Association. Some of the lawyers suggested using their law firms' own bank accounts to help prevent the US Banks detecting who the funds truly belonged to.

To conclude, how can these practices be stopped and how can we change the calculus for intermediaries. The answer broadly has to be 'make it bad for business'. When instances of money laundering or tax evasion are identified, the various professionals involved should be placed under severe scrutiny; they should have to disgorge a multiple of any fees earnt, they should be struck off or personally affected; ie you have to make the individual think twice. As long as wilful blindness continues to be a valid defence for the intermediaries, the problem will persist. A small fine for a person or firm combined with the ability to continue earning

fees just means it becomes a heightened cost of doing business – the reward will still be worth the risk. That's the calculus that needs to change.

European Parliament Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA)

24 January 2017

Statement from the Council of Bars and Law Societies of Europe (CCBE)

Good morning.

I am here today on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE represents the Bars and Law Societies of all EU Member States, as well as Norway, Iceland, Liechtenstein and Switzerland, and a further 13 associate and observer countries, and through them more than 1 million European lawyers.

The CCBE is delighted to have the opportunity to assist the Committee of Inquiry. In the allotted time, I would like to provide you with a brief introduction on the CCBE, with a focus on the CCBE's work in the area of anti-money laundering, and comments on tax avoidance and tax evasion matters.

To begin, the CCBE supports the fight against money laundering and has been actively engaged in countering existing and potential risks. Lawyers are covered by the obligations included in the EU anti-money laundering Directive and the International standards set by the FATF. A legal professional is an "obliged entity" in the sense of the money laundering Directive, and required to have anti-money laundering systems in place. Lawyers are subject to customer due diligence, so called CDD requirements, and reporting obligations when they carry out a number of financially related activities. The current anti-money laundering Directive make it very clear under which circumstances a full CDD procedure must be carried out. Moreover, legal professionals use, for many reasons (such as liability, invoicing, communication with clients, banking requirements), formalistic client intake procedures to control their ongoing client relationship even in areas not covered by the EU Directive.

In addition, lawyers operate according to the "know your client" principle. A client is not anonymous to the lawyer. A lawyer has the duty to identify the client and is obliged to do so. This was a deontological duty before becoming a legal one. The lawyer will always know who the client is. If a lawyer is prevented from identifying a client, a lawyer must withdraw from professional activity.

Lawyers are subject to a set of European harmonised rules in the area of anti-money laundering. National legislation, as well as national Bars and Law Societies, have implemented the applicable EU Directive and apply the specified measures to address money laundering risks. The profession is making every effort to detect money laundering and to raise awareness amongst its members. As an example of a few of these measures:

- Bars and Law Societies have developed lists of indicators which illustrate risk situations which a lawyer should be aware of.
- Bars and Law Societies carry out onsite inspections of client accounts held by lawyers, and these accounts are usually subject to an annual audit (in the jurisdictions that have client accounts).

- Bars and Law Societies provide training on anti-money laundering (AML) issues to both admitted and trainee lawyers.
- Up-to-date guidelines have been developed and promoted to assist lawyers in relation to complying with their AML obligations.
- AML Toolkits have been developed which provide lawyers and law firms with practical 'need to know' information and contain a mixture of draft policies and procedural checklists.
- Advice has been developed for new money laundering reporting officers.
- There are numerous email alerts about emerging money laundering typologies/red flags and AML-related policy developments.
- There are "Hotlines" whereby many jurisdictions have a dedicated AML support phone line for their members.
- There is engagement with the relevant national ministry and law enforcement agencies and many other actions.

I would like today to make it clear that the CCBE and its member Bars and Law Societies do not and never will condone the actions of any lawyer who knowingly participates in any criminal activity of a client, whether relating to money laundering, tax evasion or any other criminal activity.

Members of the legal profession are subject to strict sanctions (both civil and - in certain jurisdictions - criminal) for any failure to adhere to AML obligations. There are strict disciplinary procedures which can lead to being struck-off the list of lawyers, and severe fines for failure to adhere to AML procedures.

Lawyers are professionals, and yes, while there might exceptionally be some individual "crooked lawyers" as with other professions, this must be kept in context. Criminals exist in every profession and take part in money laundering schemes. There is a significant difference between a lawyer or any other professional being complicit in any illegal activity and a lawyer being unwittingly involved. Any lawyer that knowingly participates in illegal activity is treated like any other criminal. They are not acting as lawyers. This is a position which we the CCBE and Bars and Law Societies have always maintained and made very clear. In contrast, the low level of prosecutions across EU Member States of lawyers being unwittingly involved in money laundering activities is testament to the successful measures which Bars and Law Societies take.

It is also very important to understand that professional secrecy does not apply if a lawyer takes part in illegal actions of the client. Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence.

The legal profession is highly regulated at a national level in all EU Member States. There is no European Regulator or Supervisor like that which exists, for example, for the financial services sector, as the tasks of lawyers vary across EU Member States. Differences exist between common and civil law systems regarding how lawyers are regulated at a national level. However, each Member State's legal profession is governed by national law, and is well regulated by national law and national supervisory or self-regulatory bodies. Those bodies issue very clear and encompassing guidance, take their regulatory duties seriously and provide extensive training. Moreover, there is also guidance and ethical rules at a national, European and international level.

The profession is united in efforts to educate its membership regarding money laundering risks and assist them with meeting their AML obligations. The legal profession is alert to the threat of money laundering and is actively taking it on. We support any clear, workable and proportionate measures and will continue to do so. No profession wants its members to be involved in illegal activity. The legal profession is no different. It is in our interest to protect

the reputation of the legal profession, and any lawyer that is involved in illegal activity hurts the reputation of the entire profession. That is why we are so committed to fighting money laundering.

We understand the inquiry is focusing on a number of issues, including the use of trusts. The formation of companies and trusts can be an area of vulnerability for legal professionals, as criminals may seek to abuse their professional services by involving them in the management of those companies and trusts in order to give the appearance of respectability and legitimacy to the entity and its activities. This is why the creation or management of trusts and companies by lawyers is an AML regulated activity across the EU, and also one of the reasons why in some European countries lawyers are not permitted to act in the management of companies. This is an area of potential risk that is well recognised and regulated by FATF, EU and Member State rules, and an area on which we have provided much guidance to our profession. In this regard, we have already identified and communicated situations where red flags should be raised.

It is worth highlighting that trusts are an accepted way of managing assets (money, investments or property) by enabling a third party or trustee to hold those assets on behalf of one or more beneficiaries. Under all common law, including that of England & Wales, Ireland, Australia and most of the states of the United States of America, trusts play an intrinsic role in virtually all transactions.

In the UK, for example, domestic life policies are very commonly held in trust in a way that mirrors the effects of assurance vie in France. In England & Wales, the Land Registry does not record beneficial ownership and thus most land in England & Wales is held in express trust. Problems which confront ordinary EU citizens, which under the laws of Germany or France may be dealt with under the laws of obligations or contract are commonly dealt with under common law by the imposition of a trust.

It should be acknowledged that the creation of a trust is therefore not, in common law, necessarily an indication of risk. In order to further clarify many commonly held misconceptions about trusts we have decided to make a trusts expert available to the Committee this morning.

The CCBE actively promotes the understanding of FATF red-flag indicators and advises legal professionals to be alert to the risk of money laundering whenever clients are instructing them from a distance about transactions without legitimate reason, or engage them although they do not have the requisite competence, or are inexperienced in providing services in complicated or especially large transactions. Our members are also on alert when clients are prepared to pay substantially higher fees than usual. The changing of legal advisor a number of times within a short space of time, engagement of multiple legal advisers without good reason, or the termination or refusal by another legal professional are also red flags that the legal professional is aware of. These are but just a few of the “red flag” situations that legal professions are acquainted with, and there are many more. But it is our job to identify these risks and to educate our profession.

The legal profession is in favour of clear, workable and proportionate rules to fight money laundering and tax evasion. But the legal profession is also aware that fundamental rights and the rule of law are the cornerstone of democracy. The Union is – above all – an area of freedom and a beacon of justice. It is very important to find the right balance between regulation and transparency on the one hand, and fundamental rights and liberties, including the right to a private life, on the other hand. Neither fear nor financial interests should lead to the creation of a Union of surveillance. I am sure, that you, members, share the same concerns about fundamental rights and liberties as foundations of our democracy as lawyers do.

I would like to conclude by saying that

- The legal profession is making every effort to detect money laundering and to raise awareness amongst its members.
- The legal profession has an extensive number of measures in place to address money laundering risks.
- Members of the legal profession are subject to strict sanctions for any failure to adhere to AML obligations.
- Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence.
- The legal profession is highly and effectively regulated at a national level in all EU Member States.
- The legal profession is also actively engaged in protecting fundamental rights and liberties.

Thank you

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13 January 2017

EBF_025134

PANA HEARING OF 24/01/2017 ON "THE ROLE OF LAWYERS, ACCOUNTANTS AND BANKERS IN PANAMA PAPERS - (PART I)"

Provisional draft

Statement by Wim MIJS, Chief Executive EBF

1. EBF mission

Esteemed members of the European Parliament,

Before going into more detail into anti-money laundering, the fight against tax evasion and the European banking sector let me address a number of aspects of the role and the work of the European Banking Federation.

The European Banking Federation represents the banking sector through its members, national banking associations in 32 countries in Europe. This includes the 28 EU Member States as well as the four countries in the European Free Trade Association – Norway, Switzerland, Liechtenstein and Iceland. The EBF and its members together represent approximately 4.500 of the 7.000 banks in Europe, employing some 2.1 million people. In terms of assets, EBF represents about 80% of all banking assets in Europe. Within the EBF, about 100 of the 120 Eurozone banks directly supervised by the European Central Bank are represented.

The EBF was created in 1960 and has always been a very strong supporter of the European Single Market. We as EBF are committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

As EBF we aspire a thriving European economy that is underpinned by a stable, secure and inclusive financial system. We strive for a flourishing society where stable and secure financing is available to finance the dreams of citizens, businesses and innovators everywhere. This vision translates into a mission statement that sees EBF as a partner in prosperity. EBF is a partner for Europe's legislative, regulatory, and supervisory authorities. Our commitment to the policy debate reflects a shared belief in the need for a fully integrated and robust Single Market for banking services.

European Banking Federation aisbl

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2. Core banking activities

Banks are natural funders of the economy, where – in Europe in particular – they hold over 75% of the total private sector credit, based on clear, long-standing and reliable rules. European banks are actively putting their house in order, so they are able to keep playing their part. Banks remain commercial operators in a market economy and while they are generally active financial market players, most focus on traditional banking, such as lending to small and large enterprises and individuals, and take pride in fostering the economy.

3. Compliance requirements and professional ethics

3.1. EBF's full support to the objectives of AML and the fight against tax evasion

The EBF fully supports the objectives of AML and the fight against tax evasion.

Money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction are serious threats to global security and the integrity of the financial system. The EBF particularly shares those objectives of AML which aim to protect the integrity and stability of the international financial system, to cut off the resources available to terrorists, and to make it more difficult for those engaged in crime to profit from their criminal activities.

In the same mindset and also because they create distortions in the single market for financial services, the EBF strongly condemns tax evasion and tax fraud.

Concretely, the EBF is deeply involved in international expert groups on anti-money laundering and tax transparency at both OECD and EU levels. In these fora, the EBF assists Government bodies in developing efficient and workable solutions, seeking clarity of the legal and compliance requirements imposed on banks and taking into account operational constraints, the competitive dimension and potential de-risking.

3.2. Due diligence requirements

Over the last decade, the role of banks as tax collectors, reporting financial institutions and obliged entities under AML has increased dramatically.

The EBF continuously urges its member banks to be fully compliant with international AML and tax standards.

At the same time, the EBF is in favor of a more purposive cooperation between relevant authorities and the obliged entities from the private sector with a view to optimizing their efforts in a consistent way rather than unilaterally imposing administrative burdens on obliged entities which may prove to be inefficient.

The EBF also considers intrinsically legitimate the objective to seek synergies between AML and the fight against tax evasion, particularly regarding due diligence requirements, in order to boost tax transparency and to tackle tax abuse. However, such synergies should be exploited consistently considering that any inappropriate mix-up may prove to be

counterproductive and may eventually hamper the implementation by banks of international standards.

3.3. Transparency of customers and beneficial owners

While recognizing the need to ensure transparency of customers and beneficial owners, the EBF would like to emphasize that a risk-based approach is pivotal in the AML processes and is considered a key factor of efficiency and success.

Some of the recent proposed amendments to the AMLD, including the proposals regarding centralized payment and bank account registries, may lack proportionality and could lead to potential infringements to data protection and fundamental rights of citizens which may result in legal uncertainty for financial institutions.

3.4. Future-proof solutions

The EBF considers that any adaptations to AML measures and tax transparency measures must be future-proof. This is particularly the case of customer e-identification means in the AML framework. The EBF welcomes the possibility to identify customers and to verify their identity also on the basis of electronic identification means. A truly digital agenda must keep the door open to further progress to ensure technology neutrality and smooth transition to new technologies. There must be an option to use also alternative technologies at least when they are approved by the competent authority.

3.5. International cooperation

Money laundering, terrorist financing, tax evasion and tax fraud are global problems which require global solutions. Money launderers, terrorist financiers and tax evaders exploit loopholes and differences among national systems and move their funds to or through jurisdictions with weak or ineffective legal and institutional frameworks.

A global approach to fight against money laundering, terrorist financing, tax evasion and tax fraud in order to ensure the efficiency of the measures and a level playing field for all obliged entities and financial institutions is a must.

Binding lists of High Risk Third Countries and non-cooperative countries, i.e. not complying with international standards in each of the areas concerned (AML, Common Reporting Standard, etc), must be established in a multilateral framework and in a transparent manner.

4. Intervention in the setting-up of offshore constructions

The establishment of binding lists of uncooperative jurisdictions must be complemented with clear indications of which transactions and off-shore constructions are legal and illegal, of any penalties if applicable and of the reporting requirements if any. A differentiated treatment should therefore be applied to non-cooperative countries depending on the nature of the lists on which they are listed.

The EBF is ready to contribute to this work and to encourage its member banks to strictly comply with the related requirements.

The EBF however has no authority to investigate retrospectively the operations of individual member banks.

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PANA

European Parliament

Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion

PUBLIC HEARING

THE ROLE OF LAWYERS, ACCOUNTANTS AND BANKERS IN PANAMA PAPERS - (PART I)

TUESDAY, 24 JANUARY 2017

9.00 - 12.30

Room: József Antall (JAN) 6Q2

REPLIES TO THE WRITTEN QUESTIONS

Public Hearing

The Role of Lawyers, Accountants and Bankers in Panama Papers - (Part I)

Tuesday, 24 January 2017 (9h00 - 12h30)
József Antall (JAN) 6Q2
Brussels

Written questions

to Brooke Harrington, Associate Professor Copenhagen Business School. Author of "Capital without Borders, Wealth Managers and the One Percent"

1. Can you provide us your views on the role of wealth managers in tax evasion, tax avoidance and money laundering activities?

   The whole offshore finance system hinges on the work of wealth managers. Without them, the whole system—and tax avoidance of $200 billion globally each year, as estimated by Gabriel Zucman—would cease to exist. There would still be tax avoidance, but nowhere near on that scale.

   As for illegal activity like tax evasion and money laundering, no reputable wealth manager gets involved in those things. And it's not just a matter of morals: their reputation for discretion and dependability hinges on their staying on the right side of the law. They may be on the right side just by the tiniest margin, but it's essential that they stay "clean," legally speaking, or else most wealthy people will have nothing to do with them.

   The slogan of one wealth management firm, "I want to be invisible," not only encapsulates what the clients of wealth management want, but what the whole

industry tries to achieve. People engaged in illegal activity are constantly in danger of making themselves (or their clients) visible—even if they are never arrested or convicted, merely being exposed is the kiss of death, the end of legitimate clients and business. So most practitioners are very careful, out of self interest, not to get entangled in breaking the law.

That doesn't mean wealth managers don't violate the law in spirit—that happens all the time. But most practitioners take great care to comply with the letter of the law, to the point that the profession is often mocked or disparaged within financial services as being too cautious and compliance-oriented.

2. What are the instruments (e.g. offshore banks, shell corporations, trusts) used to hide private wealth not only from taxation but from all manner of legal obligations? How are such instruments used?

   There are three primary tools of wealth management: the corporation (need not be a "shell"), the foundation, and the trust. The first two will be familiar to most people; the last of the three may not, since it comes from Anglo-Saxon law. The trust is, arguably, the most powerful and most dangerous of the three tools, since it is the least transparent. (For more, please see my article on trusts: https://works.bepress.com/brooke_harrington/44/).

   The three structures are used in combination to obfuscate ownership of assets, making it practically impossible to assign legal responsibility for taxes, debts and other legal obligations. Many offshore jurisdictions create special laws just to enhance the obfuscating potential of these structures; this is the basis for much inter-jurisdictional competition in the offshore world.

   As for specific configurations of the three structures, they are as varied as the constructions that can be made from Lego bricks: from the simplicity of the basic building blocks, tremendous complexity can arise. The greater the complexity, the more time-consuming and costly it is to establish true ownership and responsibility. This is the key strategy—not law-breaking, but using the law to create all-but-impenetrable barriers to ownership identification. For more details on how corporations, foundations and trusts are used in the real world to hide wide, please see chapter 4 of my book, Capital without Borders: http://www.hup.harvard.edu/catalog.php?isbn=9780674743809

3. What is the result of the self-regulating status of legal/tax advisors, in terms of the effectiveness of the disincentives for intermediaries engaged in operations that facilitate tax evasion and tax avoidance?

   I don't understand the question. Could you rephrase?

4. Would you say that it is necessary to regulate intermediaries such as accountants, lawyers, bankers and wealth managers further? Please specify.

   No, I don't think additional regulation of the intermediaries themselves would help.

   The problem is structural conflict of interest, rather than lack of regulation. Right now, wealth managers are put in a highly conflicted position that is, in my opinion, untenable and doomed to fail.

On the one hand, they are required to act as the front lines for law enforcement in that they must certify that any clients that take on prove their identity as well as the legitimate source of whatever funds they wish the wealth manager to administer; they are to refuse anyone who is unable or unwilling to present this evidence.

Of course, wealth managers have their own (and their firm's) reputation to protect; no reputable professional wants to risk tarnishing that reputation by taking on criminals as clients—that scares away the good, law-abiding clients, in addition to bringing a host of legal troubles. But what of the marginal cases, or the cases where a client is perfectly legitimate, but simply refuses to disclose the information demanded of him or her? This happens a lot, since wealthy people from many parts of the world have well-founded concerns about their privacy and safety: they come from countries where authorities and institutions are not to be trusted, and when you ask them to show all kinds of documentation about themselves and their wealth, what goes through their mind are scenarios like kidnapping and extortion of themselves and their family members.

So many of the wealth managers I interviewed said that when they demand things from incoming clients that might seem simple and reasonable—like proof of identity and residence—they get clients who just say "no way" and move on to another firm…and there seems to be no shortage of firms willing to accommodate them.

This creates an obvious conflict of interest with the business obligations of the wealth managers: they may lose their jobs if they are "too rigorous" in conducting these KYC (Know Your Client) investigations.

In addition, once a wealth manager takes on a client, the professional must also keep an eye out for any illegal financial activity by their client (such as money laundering). However, the wealth manager may be working in a jurisdiction where blowing the whistle on any suspected illegal activity by a client is a civil offense—potentially a criminal offense.

So wealth managers are already caught, in some places, between conflicting legal imperatives. That's in addition to the conflict between economic incentives to take on clients, with the legal incentive to turn them away.

More regulation on top of this won't be useful, in my opinion. Instead, what's needed is a change in the structure of incentives for and demands on wealth managers. I'd recommend looking at the case of the Israeli tax authorities and how they "coopted" their country's wealth managers with some structural changes to demands and incentives.

5. Were you surprised by any of the methods for tax evasion or secrecy seeking as revealed in the Panama Papers? Did the Panama Papers reveal something new for you or was it mere a confirmation of already known practices?

No, I wasn't surprised. Having trained as a wealth manager—though I never practiced—then having interviewed 65 wealth managers in 18 countries, the Panama Papers confirmed what I'd learned and seen.

It was a bit jolting to find the leak came from the very office in Panama City where I had interviewed a practitioner about three years previously.

6. How can the supervision on the implementation of the EU-legislation be strengthened? Would you say that the member states have relevant supervising authorities or could more be done on EU-level?

   Are you asking whether the EU member states are implementing EU directives as intended? If so, then I don't know the answer. A political scientist or political sociologist specializing in the EU would probably be more helpful; as a sociologist specializing in global finance and professions, I don't really take a country-by-country perspective.

7. The EU does, obviously, not have the power to impose legislation on countries outside of the union. Do you have any suggestions on how the EU could ensure that secrecy havens apply global transparency standards?

   I think that's the wrong question. I'd recommend that you look at Jason Sharman's 2006 book, Havens in a Storm (Cornell U Press) on this subject. He explains why sanctions from international organizations haven't worked in "cracking down" on offshore financial centers.

   Sharman's analysis about the failure of the OECD's attempt to blacklist the secrecy jurisdictions into compliance comes down to three points:

   a) Many of these secrecy jurisdictions are former colonies, and they've been pushed and prodded for years to get on their own two feet economically. Now they've done it through engaging in the offshore financial services business, and they're being condemned for it.

   b) As the offshore centers see it, they have successfully outcompeted onshore states in terms of tax policy—the same states that have for years preached the virtues of capitalist competition. The onshore states seem to be sore losers now, crying "unfair tax competition" now that they aren't in the dominant position.

   c) Many of the onshore countries and leaders complaining the loudest about "unfair tax competition" are themselves deeply enmeshed in providing or using tax avoidance services. The UK and US, for example, are among the biggest and most successful tax havens in the world. As for individuals, the case of French finance minister Cahuzac, who had to resign following revelations that he was committing tax fraud via offshore structures, comes to mind as a recent example. The Panama Papers gave us many other embarrassing revelations of this nature.

   In essence, any onshore state or organization attempting to "impose" legislation or anything else on the offshore states is going to run into these problems of legitimacy. The EU should avoid repeating the problems that the OECD ran into when they tried imposing on the offshore centers.

8. According to you, will money laundering and tax evasion always move to new countries or are there possibilities to force a change, for example by

stricter regulation on which countries European banks and other intermediaries can conduct business with?

To really put a stop to money laundering and tax evasion—or even to legal tax avoidance on a massive scale, as we are seeing now—would require a level of international coordination that I don't think has ever been seen before. Even countries that are seen publicly to agree on measures to combat offshore financial abuses often turn out to be playing a double game: they themselves benefit from providing tax avoidance services to others.

This means that the incentives to "defect" from any international agreement are very strong, even among countries that are otherwise closely allied. How then to bring in countries that are not closely tied to the politics and interests of "onshore?" As long as that problem remains unresolved, there will always be some nations willing to accept financial business that is deemed illegal elsewhere. They have the sovereign right, of course, to make laws that ensure that the activity is legal in their jurisdiction—and they have plenty of professionals worldwide ready to help them write the laws that wealthy people would find most convenient to achieve their objectives.

So, as with question #7 above, I think the language here betrays an orientation that has demonstrably failed: the notion that the EU can "force a change" is as misguided as the notion that it can "impose" laws on countries outside of Europe. "Stricter" measures aren't needed: smarter ones are.

European Parliament Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA)

24 January 2017

Committee of inquiry questions to the Council of Bars and Law Societies of Europe (CCBE)

1. **Your organisation has co-written "A lawyer's guide to detecting and preventing money laundering", containing 40 recommendations. Do you have any indication if - and to what extent - these recommendations are being adhered to by your members?**

   The CCBE is proud to have played an active part in the drafting of the joint publication of the CCBE, American Bar Association and International Bar Association on the drafting of a "*Lawyers Guide to Detecting and Preventing Money Laundering".* This Guide provides practical advice to legal professionals. The Guide has been very well received by our members, and contains information that is of assistance to both experienced and new practitioners.

   The Guide is an example of one of the proactive measures which the legal profession has taken towards increasing awareness amongst the profession with practical examples (red flags) of money laundering risks which our members should be aware of. The Guide highlights vulnerable areas that have been identified by the FATF, and the Guide is constantly being promoted by our membership (it is also available in a number of languages due to the efforts of our Bars and Law Societies).

   The Guide is but one of the many measures which the legal profession has in place. The legal profession is making every effort to detect money laundering and to raise awareness amongst its members. The following is an example of other measures:

   - Bars and Law Societies have developed lists of indicators which illustrate risk situations which a lawyer should be aware of.
   - Bars and Law Societies carry out onsite inspections of client accounts held by lawyers and these accounts are usually subject to an annual audit (in the jurisdictions that have client accounts).
   - Bars and Law Societies provide training on AML issues to both admitted and trainee lawyers.
   - Up-to-date guidelines have been developed and promoted to assist lawyers in relation to complying with their AML obligations.
   - AML Toolkits have been developed which provide lawyers and law firms with practical 'need to know' information and contain a mixture of draft policies and procedural checklists
   - Advice has been developed for new money laundering reporting officers.
   - There are numerous email alerts about emerging money laundering typologies/red flags and AML-related policy developments.
   - There are "Hotlines" whereby many jurisdictions have a dedicated AML support phone line for their members.
   - There is engagement with the relevant national ministry and law enforcement agencies, and many other actions.

Essentially, the profession is united in efforts to educate its membership regarding money laundering risks and assist them with meeting their anti-money laundering (AML) obligations.

The legal profession is alert to the threat of money laundering and is actively taking-it on. We support any clear, workable and proportionate measures and will continue to do so. No profession wants its members to be involved in illegal activity. The legal profession is no different. It is in our interest to protect the reputation of the legal profession and any lawyer that is involved in illegal activity hurts the reputation of the entire profession. That is one of the reasons why we are so committed to fighting money laundering.

2. Do you have information as to what extent lawyers are involved in the creation, maintenance and/or governance of entities in tax havens mentioned in the Panama Papers[1]?

The only information we have on the extent of involvement is information that has been reported in the media. However, the creation, maintenance and governance of structures in the countries listed by the Committee is not illegal (particularly in the UK which is an EU Member State). The Committee should be careful not to infer that any links with these countries (or indeed the Panama Papers) implies that criminal activity has occurred. Further, we are not aware of any convictions (or indeed charges) of lawyers resulting directly from links to the Panama Papers.

3. Can you tell us to what extent lawyers are regulated when it comes to anti-money laundering and anti-tax evasion? Is this only regulated at the national level or is there also European oversight?

Lawyers are subject to a set of European harmonised rules in the area of anti-money laundering. Lawyers are covered by the obligations included in the EU anti-money laundering Directive. A legal professional is an "obliged entity" in the sense of the money laundering Directive and required to have anti-money laundering systems in place. Lawyers are subject to customer due diligence, so called CDD requirements, and reporting obligations when they carry out a number of activities. The current anti-money laundering Directive makes it very clear under which circumstances a full CDD procedure must be carried out. Moreover, legal professionals use, for many reasons (such as liability, invoicing, communication with clients, banking requirements), formalistic client intake procedures to control their ongoing client relationship, even in areas not covered by the EU Directive. In addition, lawyers operate according to the "know your client" principle.

The legal profession is highly regulated at a national level in all EU Member States. There is no European Regulator or Supervisor like that which exists, for example, for the financial services sector, as the tasks of lawyers vary across different EU Member States, in addition to differences which exist between common and civil law systems regarding how lawyers are regulated at a national level. However, each Member State's legal profession is governed by national law, and is well regulated by national law and national supervisory or self-regulatory bodies. Those bodies issue very clear and encompassing guidance, take their regulatory duties seriously and provide extensive training. Moreover, there is also guidance and ethical rules at a national, European and international level.

[1] Bahamas, Belize, British Anguilla, British Virgin Islands, Costa Rica, Cyprus, Hong Kong, Isle of Man, Jersey, Malta, Nevada, New Zealand, Niue, Panama, Ras Al Khaimah, Samoa, Seychelles, Singapore, United Kingdom, Uruguay, and Wyoming.

4. Do you think the existing national guidelines and conduct codes are adequate to prevent money laundering and tax evasion? Do you identify any loopholes?

The CCBE believes that existing national guidelines and codes of conduct are sufficient. In the CCBE's view, we do not need more regulation, or more additions to codes of conduct. The level of regulation has reached a peak which we could not imagine a few years ago. More time is needed to look at the application of the existing regulations in practice. What we need is better cooperation among national authorities. While the cooperation between Bars and Law Societies within Europe is outstanding, the flow of information, e.g. about new threats and emerging trends, from national authorities and law enforcement to Bars and Law Societies is too slow.

It should also be mentioned that a highly important concept concerns the actual proportionality of regulation. Regulation needs to be both effective and proportionate to the intended goal.

5. Do you have information about the nature and numbers of sanctions by national bar associations for activities related to money laundering and tax evasion by their members?

We do not have information on the "*nature and numbers of sanctions by national bar associations for activities related to money laundering and tax evasion by their members*" on a Member State by Member State basis.

Regarding sanctions that our members face, members of the legal profession are subject to strict sanctions (both civil and - in certain jurisdictions - criminal) for any failure to adhere to AML obligations. There are strict disciplinary procedures which can lead to being struck-off the list of lawyers and severe fines for failure to adhere to AML procedures.

6. Does your Council consider it important that lawyers see themselves as legal gatekeepers? Should lawyers report suspicious transactions? Should this be regulated at a European level?

In November 2001, the European Parliament and the Council of Ministers agreed on a text for amending Directive 91/308/EEC, the principal EU money laundering Directive. The new text, the 2001 Directive (Directive 2001/97/EC), resulted in new money laundering obligations which were to be incorporated into national legislation before 15 June 2003. The 2001 Directive obliged Member States to combat laundering of the proceeds of all serious crime. This was in contrast to the 1991 Directive, in which obligations applied only to the proceeds of drug offences. The 2001 Directive (the 2nd Money Laundering Directive) extended AML/CTF obligations to a defined set of activities provided by a number of service professionals, including accountants, real estate agents and lawyers. These defined activities consisted of mostly transactional work, such as the purchase of real estate, formation of trusts and companies, opening bank accounts and the management of client assets.

The 2001 Directive imposed upon financial institutions and professionals, obligations with regard to client identification, record keeping and the reporting of suspicious transactions. The European legal profession has continuing and serious concerns with regard to the reporting of suspicious transactions and other obligations under the 2001 Directive and the Directives since then. The requirements on a lawyer to report suspicions regarding the activities of clients based upon information disclosed by clients in strictest confidence is in the view of the CCBE a violation of a fundamental right. As a result, the essence of the lawyer/client relationship has, in our view, now been infringed upon as a result of the 2001 EU money laundering Directive.

In 2006 the European Union agreed their 3rd Money Laundering Directive (which remains the current basis of AML legislation for EU Member States) which brought lawyers fully into the scope of the AML regime. The 4th EU Money Laundering Directive was passed in June 2015. Each Member State has until June 2017 to transpose this Directive into their national law.

We oppose the recent trend of European institutions seeking to establish and impose new AML standards without taking the necessary time to fully understand the risks and to ensure that proportionality is maintained.

7. In your view, do activities such as assisting in the setting-up of offshore constructions fall under the attorney-client privilege? Does your answer change if there would be involvement of the client in criminal activities? Are there differences in interpretation between member states?

Professional advisers and lawyers are governed by their professional bodies to advise clients within the law. The rule of law, access to justice and legal certainty (all vital principles in every member state) require that a person be able to seek legal advice on any issue, including tax issues. A citizen must be entitled to take legal advice in any area, and his lawyer must be entitled to provide that advice. Professional secrecy/legal professional privilege is the right of the client to consult a lawyer in confidence – it is not the right of the lawyer. Professional secrecy is a privilege that ensures that any information you provide to your lawyer is kept confidential.

Professional secrecy/legal professional privilege do not apply if a lawyer takes part in illegal actions of the client. This is the case in every EU Member State. There is no 'difference in interpretation'. Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence. The CCBE and its member Bars and Law Societies do not, and never will condone, the actions of any lawyer who knowingly participates in any criminal activity of a client, whether relating to money laundering, tax evasion or any other criminal activity.

8. To what extent is it possible for these confidentiality rules to be overridden by other ethical rules, such as conflict of interest rules?

As mentioned, professional secrecy/legal professional privilege do not apply if a lawyer takes part in illegal actions of the client. Privilege and professional secrecy do not apply if a lawyer is facilitating an offence.

9. Can you inform us if - and to what extent - lawyers should know their client. Are the current rules on client due diligence adequate in your view or should they be updated, given the findings in the Panama Papers?

A lawyer has a duty to identify the client, and is obliged to do so. This was a deontological duty before becoming a legal one. A lawyer will always know who the client is, but the client may wish to remain anonymous to the public. The client has the right to remain anonymous towards the public, but not towards the lawyer. If a lawyer is prevented from identifying a potential client, a lawyer must withdraw from professional activity.

The current anti-money laundering Directive make it very clear under which circumstances a full CDD procedure must be carried out. A lawyer cannot act for a client when they carry out a number of activities without undertaking AML due diligence on the client.

The EU AML rules apply to the following obliged entities:

> *…….. independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the:*
>
> *(i) buying and selling of real property or business entities;*
> *(ii) managing of client money, securities or other assets;*
> *(iii) opening or management of bank, savings or securities accounts;*
> *(iv) organisation of contributions necessary for the creation, operation or management of companies;*
> *(v) creation, operation or management of trusts, companies, foundations, or similar structures;*

The view that current rules are sufficient is also shared by the FATF. In their September 2016 report to the G20 on beneficial ownership in the wake of the Panama Papers they state:

'The large-scale misuse of legal persons and arrangements which was exposed in April 2016 focussed attention on the need to strengthen controls against the misuse of corporate structures. Our analysis to date does not point to specific gaps or inadequacies in the international standards.'

10. If a client wants to remain anonymous, should that be a reason for a lawyer to refuse him/her as a client?

Certainly not. There are many legitimate reasons why a client may wish to remain anonymous. However, it is important to understand, and appreciate, that a client is not anonymous to the lawyer. As mentioned in response to question 9 above, a lawyer has the duty to identify the client and is obliged to do so. This was a deontological duty before becoming a legal one. A lawyer will always know who the client is, but the client may wish to remain anonymous to the public. The client has the right to remain anonymous towards the public, but not towards the lawyer. If a lawyer is prevented from identifying a potential client, a lawyer must withdraw from professional activity.

11. Are there any rules on the conduct of lawyers in any Member States that have the effect of prohibiting lawyers from advising clients on developing or implementing tax planning schemes that have the effect of (illegally) evading any Member State taxes? Are these rules legally binding?

Any lawyer who knowingly participates in any criminal and illegal activity of a client, whether relating to money laundering, tax evasion or any other criminal activity, is complicit in a crime. Tax evasion is a crime in every EU Member State.

12. In terms of numbers of practitioners and/or turnover, do you have an indication of the importance of the offshore services business for the law profession?

CCBE member Bars and Law Societies do not have statistics on off-shore work of their members, as lawyers do not transmit such information to Bars. This is also true for other areas of law.

13. Is there any (European) supervision on national bar associations?

As indicated in response to question 3, the legal profession is highly regulated at a national level in all EU Member States. There is no European Regulator or Supervisor like that which exists, for example, for the financial services sector, as the tasks of lawyers vary across different EU Member States, in addition to differences which exist between common and civil law systems regarding how lawyers are regulated at a national level. However, each Member State's legal profession is governed by national law, and is well regulated by national law and national supervisory or self-regulatory bodies. Those bodies issue very clear and encompassing guidance, take their regulatory duties seriously and provide extensive training. Moreover, there is also guidance and ethical rules at a national, European and international level.

14. Amongst your members, do you see differences in the codes and guidelines for lawyers from EU member states and countries that are not in the EU?

The CCBE can only comment on what exists within its members. We can only imagine that in all countries where the rule of law applies, the obligations for lawyers are very comparable to those applicable in the EU.
