

 **ICC Commercial Crime Services**  
*Helping business stay in business*

 **kkforensik**  
Rechtsanwälte

## 2016 Malta International Crime Forum

04 – 05 May 2016

**What to do when you get your fingers burnt - Dealing with multiple jurisdictions - THE LEGAL CHALLENGES**

presented by:  
**Bernd H. Klose, CFE**  
German Member of **ICC FraudNet**  
Lawyer and Specialised Lawyer in Insolvency Laws (Germany)  
klose@kkforensic.com

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## No Crime in Malta

### Malta 2015 Crime and Safety Report

 **OSAC**

Product of the Research & Information Support Center (RISC)

The following is based on open-source reporting.

**May 8, 2015**

**Overall Crime and Safety Situation**

Crime Rating: Medium

Crime Threats

Crime rates are comparatively lower than those in most other first-world countries, including the U.S. But analysis has shown a steady increase of criminal activity since 2009.

Theft remains the predominant criminal offense, with a steady increase in reported occurrences since 2009.

Assaults (including homicides) average 1,111 cases per year: three incidents per day (average 2004-2012). This statistic has been relatively consistent year-to-year.

Fraud is on the increase, averaging one case per day (360 in 2012), up from 160 in 2004.

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### Step 1

1. Do not become hyperactive – **THINK!!!**
  1. What has happened?
  2. What do we know for sure? What are assumptions only?
  3. What is the impact for us?
  4. Who has to be informed? When?
  5. Do we want/need to take action?
  6. Secure financing for first steps to be taken
  7. Analyze which jurisdictions are or could be involved
  8. Build your initial team, internal and external, inter-disciplinary approach
  9. Determine the plan of action

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### Step 2

2. Follow the law and the money
  1. Ensure compliance with local and foreign jurisdictions
  2. Do not concentrate on the persons involved at this stage, follow the money
3. Keep number of people involved limited
  1. You never know if there is a co-conspirator within your organisation
  2. Ensure inclusion of top level management
  3. Determine chain of command („A camel is a horse designed by a committee“)
  4. Control information, prepare for leaks
4. Take initial decisions
  1. Actions to be taken
  2. Attribute tasks and responsibilities
  3. Organize and limit information sharing
  4. Overall: Move diligently, at high speed and by stealth

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### Step 3

5. Gather intelligence
  1. Dig the internet, not only Google
  2. Avoid to alarm the fraudster
  3. Stick to the law; investigators have to be guided
6. Analyze intelligence
  1. Keep team involved
  2. Cross-check and verify information/intelligence
  3. Organize intelligence
7. If advisable „secure“ money
  1. Use international AML standards
  2. „Mareva by Letter“
  3. Liase with local counsel first!

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### Step 4

- 8. Transform intelligence into evidence
  - 1. Coordinate throughout the jurisdictions
  - 2. Legal challenges = Different jurisdictions – different approaches
    - 1. Anglo-Saxon/Common Law World:
      - 1. Norwich Pharmacal Order (gagged and sealed)
      - 2. Anton Piller Order
      - 3. U.S.C. Sect. 1782 – subpoena
    - 2. Civil Law World
      - 1. No pre-trial discovery
      - 2. Criminal Complaint
        - 1. Criminal offence = Money laundering
        - 2. Inspection and use of files and evidence allowed
        - 3. Evidence to be used even in civil proceedings

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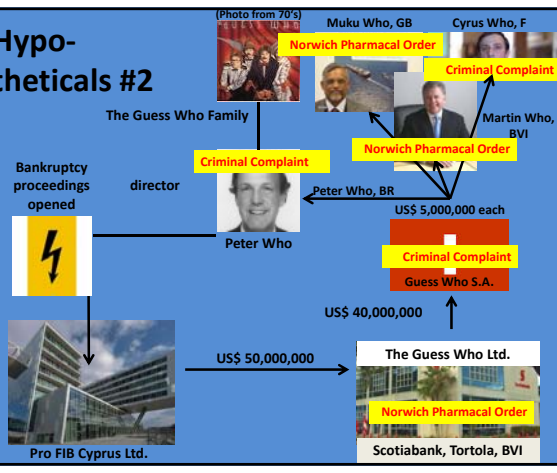
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### Hypo- theticals #2




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### Step 5

- 9. Analyze, organize and structure evidence
- 10. Do not loose your focus
- 11. Prepare for „Final Countdown“
  - 1. Line up your troops worldwide, co-ordination is key
  - 2. Aim: Seperate fraudster(s) from money – totally
  - 3. Decide about surveillance for fraudsters in the critical days
  - 4. Be prepared for fraudster's counteraction

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## Step 6

11. Secure the assets
  1. Anglo-Saxon/Common Law: Worldwide Freezing Order (e.g. English *ex-parte* Freezing Order not to be executed in EU civil law jurisdictions)
  2. Civil Law: Seizure by Public Prosecutor and/or Civil Freezing Order, try to avoid MLAT proceedings, liaise with Public Prosecutors
  3. Co-ordinated approach – simultaneously: same day, same time, everywhere
  4. Hit where it hurts most
12. Bring main action
  1. Where to bring? Choice of *forum*
  2. Insolvency proceedings to be used?

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## Best news ever – John Tobon to follow

Bernd Klose, CFE  
kkforensik Rechtsanwaltsgesellschaft bR  
Wilhelmstrasse 14a  
D-61381 Friedrichsdorf/Taunus  
klose@kkforensik.com

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