



**Consequences of facilitating financial crime**

**12th ICC FIB International Financial Crime Forum**

Stephen Baker  
English Barrister &  
Jersey Advocate

4 May 2016  
Corinthia Hotel  
St Georges Bay  
Malta



---

---

---

---

---


---

---

---

**Everyone Knows**

- US send employees to prison
- US impose huge fines
- US impose vast regulatory sanctions
- Pressure to plead guilty
- Are you going to fight? - Raoul Weil



---

---

---

---

---


---

---

---

**Risks Domestically and Elsewhere Abroad**

- Domestic risk of prosecution for involvement in financial crime
- Jurisdiction Specific
- Who are gamekeepers?
- European arrest warrants
- Extradition



---

---

---

---

---

---

---

---

**Big Brother is Watching You**

- What will the Panama Papers reveal that bankers might fear?
- Which banks have been using Mossacks?
- Which have not?



---

---

---

---

---

---

---

**Civil Risks of Dealing with Property which is the Proceeds of Financial Crime**

- Credit Agricole v Papadimitrou (2015) UKPC 13
  - Very valuable art deco furniture misappropriated
  - Proceeds laundered through Panamanian company
  - Use of Liechtenstein Bank and Foundation
  - Funds deposited into CA Gibraltar
  - Back to back transaction
  - Loans advanced to a third party by CA London
  - Loan repaid with funds in CA Gibraltar



---

---

---

---

---

---

---

**Credit Agricole v Papadimitrou (2015) UKPC 13**

- CA Gibraltar sued as holding someone else's property
- CA claimed to be a bona purchaser for value without notice
- In Privy Council CA Gibraltar held liable
- Did CA have constructive notice of a pre-existing proprietary right to the funds?



---

---

---

---

---

---

---

**Credit Agricole v Papadimitrou (2015) UKPC 13**

- Lord Clarke
  - (i) Bank appreciates earlier proprietary right probably exists – actual notice
  - (ii) Reasonable bank should have appreciated a right probably existed-constructive notice
  - (iii) Where bank should have made enquiries and sought advice which would have revealed probable existence of right



---

---

---

---

---

---

---

---

**Credit Agricole v Papadimitrou (2015) UKPC 13**

- What enquiries for (iii)?
- Mere possibility of proprietary right not enough
- Such knowledge as would cause it to conclude that such a right probably existed was excessive
- Line was in middle



---

---

---

---

---

---

---

---

**Credit Agricole v Papadimitrou (2015) UKPC 13**

- *“The bank must make inquiries if there is a serious possibility of a third party having such a right or, put it another way, if the facts known to the bank would give a reasonable banker in the position of the particular banker serious cause to question the propriety of the transaction.”*



---

---

---

---

---

---

---

---

**Credit Agricole v Papadimitrou (2015) UKPC 13**

- Key was the underlying commercial rationale
- Bank was liable
- Ample evidence that a reasonable bank considering entering into such a transaction would carry out inquiries into its underlying commercial rationale
- An inquiry into the commercial purpose behind this complex and expensive transaction could only have alerted the bank to improper motive
- Money laundering



---

---

---

---

---

---

---

---

**Stanford International Bank Limited v The Toronto Dominion Bank**

- For trial in Ontario
- SIB's main correspondent was TD Bank
- SIB - large Ponzi scheme US\$10 billion
- Liquidators of SIB sue TD in negligence and knowing assistance
- From early 1990s to collapse in 2009



---

---

---

---

---

---

---

---

**Stanford International Bank Limited v The Toronto Dominion Bank**

- Raft of regulatory and legal failures pleaded
- One pleading mirrors Credit Agricole
- Failure to understand commercial rationale
- If it had asked questions it would have realised there was no underlying legitimate purpose
- Claim is for US\$5.5 billion



---

---

---

---

---

---

---

---

**Stanford International Bank Limited v The Toronto Dominion Bank**

- Expect an increase in claims against institutions
- Expect further emphasis on regulatory breaches
- Line between innocent facilitator and dishonest assister appears to be shifting
- Breach of Money Laundering provisions to constitute a cause of action?



---

---

---

---

---

---

---

**Consequences of facilitating financial crime**

© Baker & Partners



**12th ICC FIB International Financial Crime Forum**

Stephen Baker  
English Barrister &  
Jersey Advocate

4 May 2016  
Corinthia Hotel,  
St Georges Bay  
Malta



---

---

---

---

---

---

---