If ‘opportunities create the thief’ then how can opportunities be shut down ?

David Sogge

Die Kosten der Korruption für Angola

Herbsttagung der Angola-Runde

Angola-Runde deutscher Nichtregierungsorganisationen

30 September 2020

Where are most opportunities created?

Within Angola, or beyond ?



Today's set-up

- *Outward orientation, 'extraverted'*
- *'Onshore' and 'offshore' embrace each other*
- *So that*

  Resources drain away →
  public sector stays fragile, distorted →
  'social contract' gets weaker →
  → social & political instability

- Did yesterday's (colonial) set-up really end ?

Angola's Money Flows

Cumulative capital flight 1986-2018 estimated at $60 billion (in dollars of 2015)

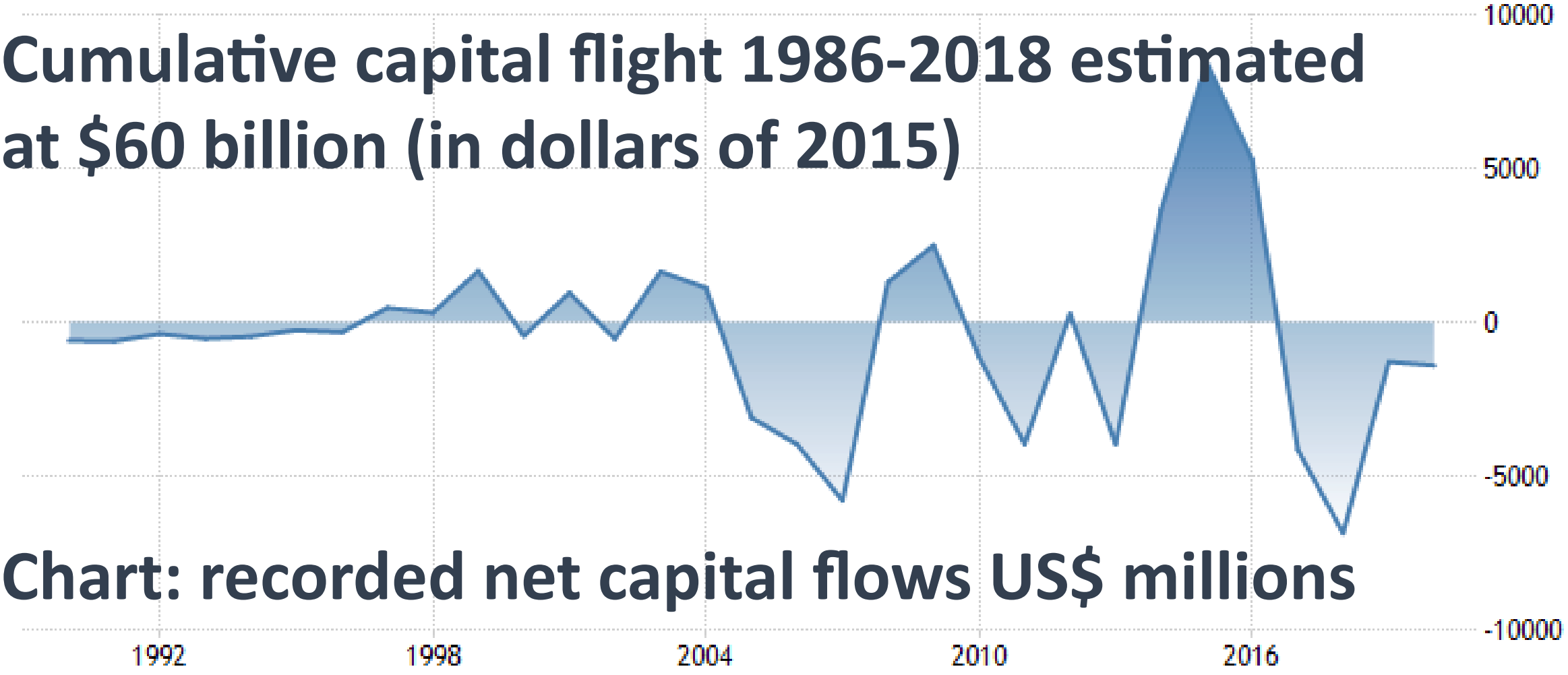


Chart: recorded net capital flows US$ millions

SOURCE: TRADINGECONOMICS.COM | NATIONAL BANK OF ANGOLA

Overview of this presentation

1. Opportunities for rent-seeking where ‘onshore’ meets ‘offshore’

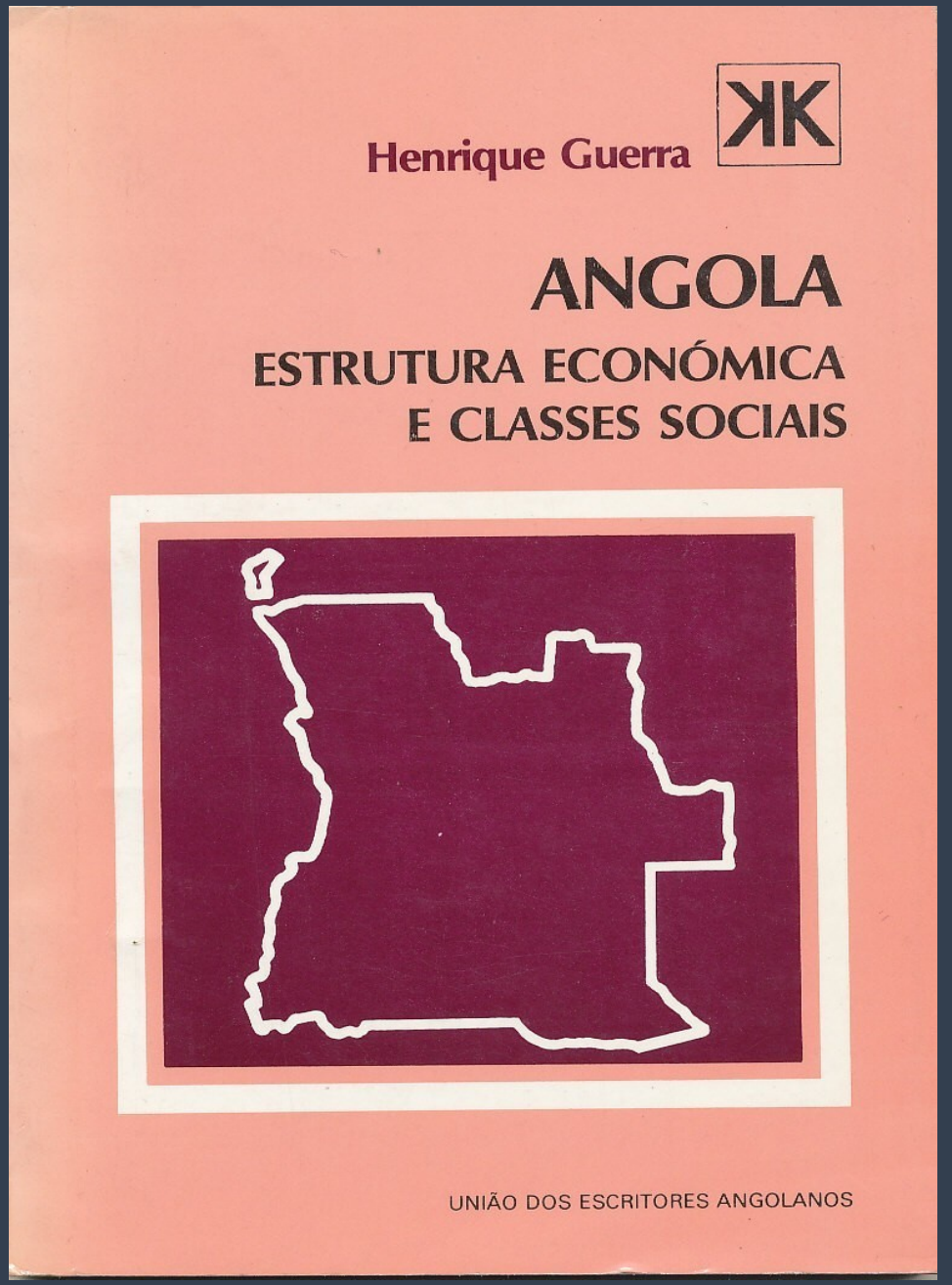
2. Pushback: regulation & protest

3. Three deficits & how to cut them

Rent-seeking began under colonial rule. Dominant class: *non-resident owners/rentiers*

Rent: ***an unearned reward gained via power & privilege***

De facto illegal, rents are often legalized. Laws and policies lock in access to rents.



Rent-seeking by

Angolans positioned to capture rents

- e.g. heads of banks, telecom and other businesses; 34 ministers, 50 deputy ministers, 18 governors, 54 deputy governors, heads of state-linked firms

Non-Angolans dealing in

- goods and services
- loans and other financial products
- secrecy and ‘reputation’

Sources of rents

a) *Export of oil, diamonds*
b) *Import / procurement of goods & services*
   - *Construction*
   - *Military/security hardware & services*
c) *legal/accounting services to avoid/evade taxation*
d) *Sub-contracting, e.g. for 'local content'*
e) *Loans/debt; trade credits, &c*
f) *Real estate*
g) *Angolan investments abroad*
h) *Payments for 'intellectual property'*
i) *Market power – monopoly, oligopoly &c*

Who enables rent-seeking ?

Politicians - some examples:

Durão Barroso, EU Commission Chair & Manuel Vicente, Angolan Vice-President

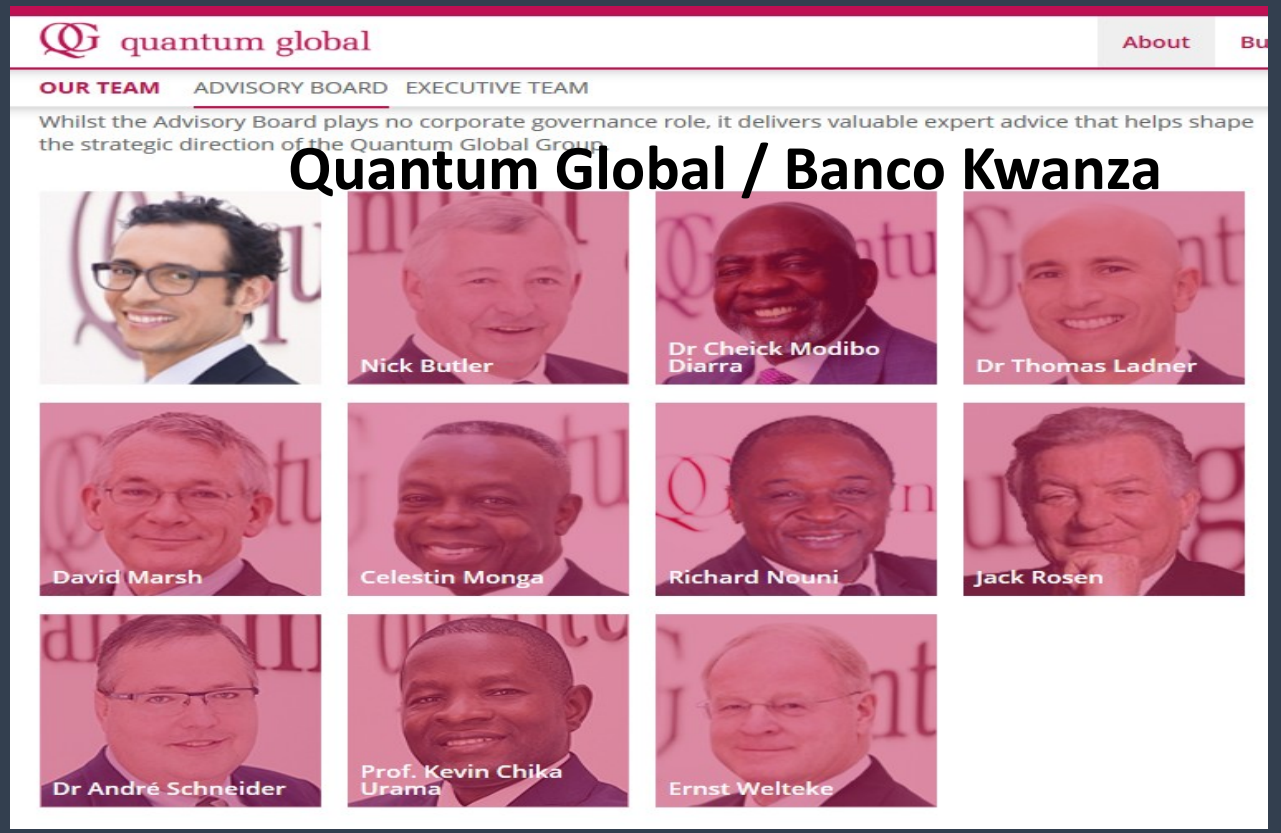


Public/Private business people – some examples:

Ernst Welteke, ex-Bundesbank

André Schneider, directeur de Genève Aéroport

Thomas Ladner, corporate lawyer, Switzerland

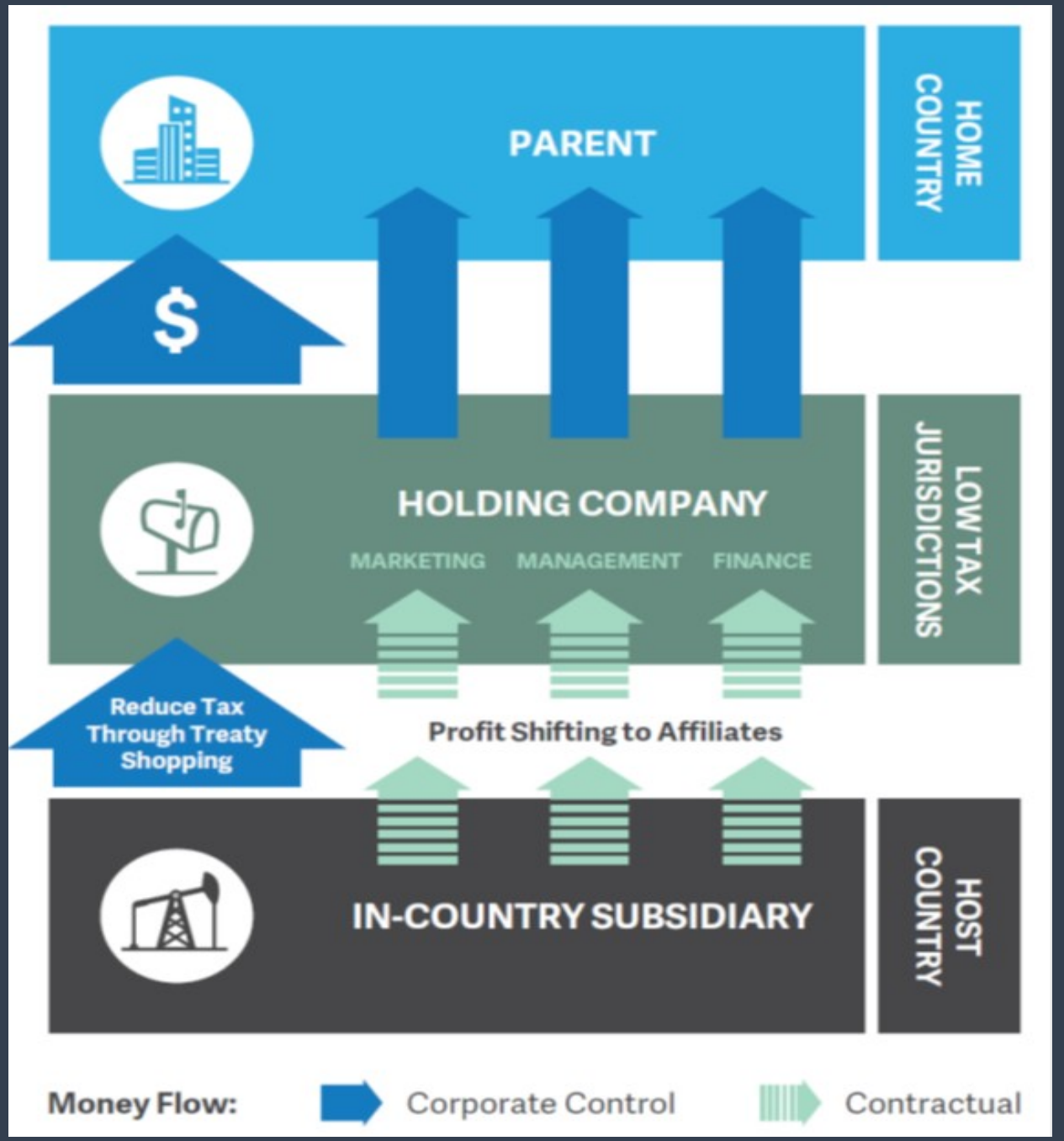


Quantum Global / Banco Kwanza

What enables rent-seeking ?

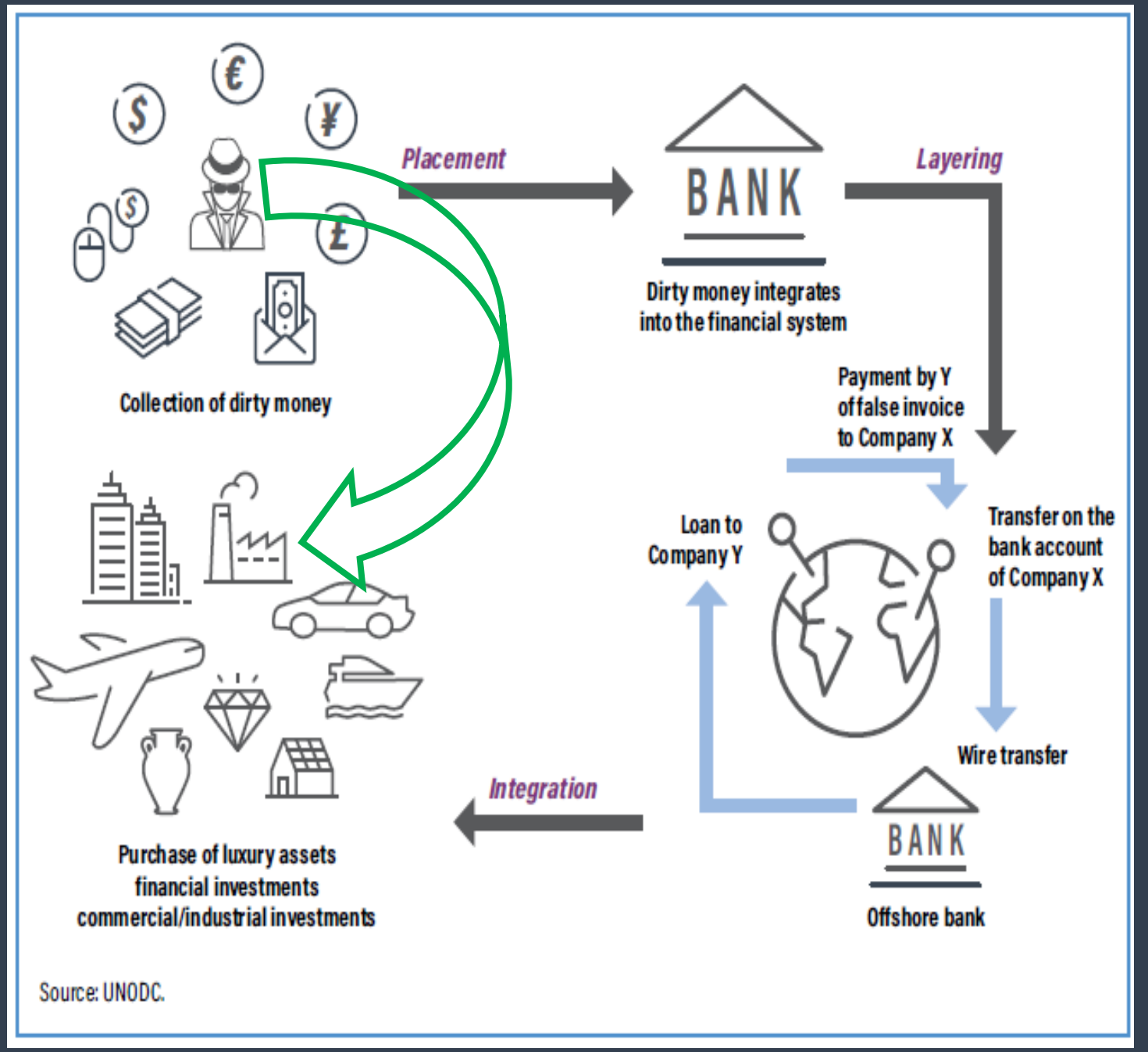
Under laws of OECD countries:

- Companies as ‘legal persons’
- Offshore financial centres, secrecy jurisdictions
- Tax treaties → ‘treaty shopping’ → competitive ’race to the bottom’

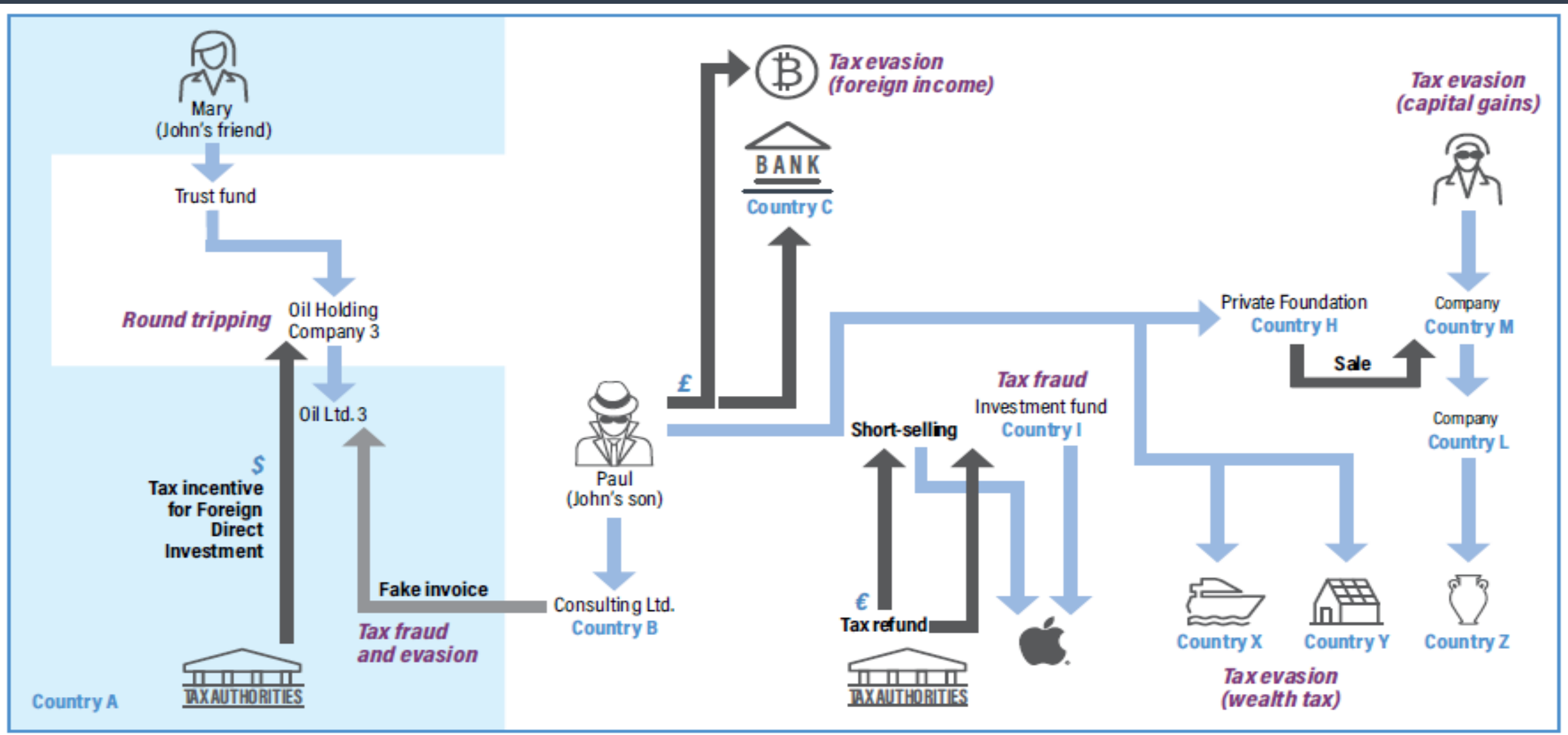


Concealing, moving and transforming rents

Example: money-laundering



How it works (example: tax abuse)



Can’t find a vehicle to move money?
Then create your own.

Example: Banco Privado Internacional (BPI) in Cape Verde, created in 2006 by figures linked to BAI (‘Sonangol’s bank’): Manuel Vicente, Mario Palhares & General Joao de Matos

BPI is not a real bank, but a ‘letterbox’, *based on the Dutch Model*

‘Shells’

Anonymous shell company:

hides ultimate beneficial owner (UBO)

Letterbox company:

registered in one state while its activity takes place elsewhere

Special purpose entity:

group financing or ‘holdings’: little or no physical presence, staffing, in the host economy; assets and liabilities elsewhere

Created to dodge taxes and protect rich & powerful, they are all ***completely legal.***

Amsterdam ‘letterboxes’: rich opportunities





Shell provider: The Netherlands

Its ‘tax planning’ industry has “a share of 25% in the worldwide market for tax-driven FDI (foreign direct investment) diversion”

“The sum of tax and legal advisors’ fees plus Dutch tax payments added up to 0.5 % of GDP in the mid-1980s, and increased to over 3 % of GDP in recent years.”

“The current government is clearly feeling the full heat of international pressure but ...

On balance, it is still hard to say whether more-than-cosmetic changes are being achieved.” - tax experts, Leiden University Law School

Enablers / Promoters

- International law firms e.g. Mossack Fonseca (Panama)
- Accounting firms e.g. Deloitte Touche Tohmatsu, PricewaterhouseCoopers, Ernst & Young, KPMG (worldwide)
- Private banks e.g. Banco Espirito Santo (Portugal)
- Real estate brokers e.g. Countrywide Estate Agents (Great Britain)

Supposed guardians and gatekeepers of law…

"Enablers may be a politically powerful vested interest group, benefitting from money-laundering and financial crime in general, and blocking stronger financial integrity rules." - UN FACTI Panel September 2020

Promotors of fiscal policies:
OECD, World Bank, IMF & donors

Angola faces incentives to

Lower tax rates

'Tax sweeteners' to investors; e.g. exemptions for interest on debt

Weaken tax base

Mis-invoice -- under-invoice exports, over-invoice imports – to facilitate outflow

Borrow money abroad

Eases capital flight



These arrangements are complex, non-transparent and badly-regulated.

And that is intentional.

2. Push-back

Shutting off opportunities : Challenges & possibilities

Angolan arenas for pushing back

- Public, deliberative: Parliament, e.g. Public Probity Law (2010); Law on Preventing and Combating Money Laundering &c (2020)
- Public executive & judicial: Procurador, Tribunal de Contas, Provedoria de Justiça (Ombudsman)
- Opposition parties
- Independent media / voices (including diaspora)
- NGOs, churches
- Universities, think-tanks

‘Offshore’anti-corruption - governmental

USA: Foreign Corrupt Practices Act of 1977 (FCPA).

Halliburton (2017): fined $29.2 m. to US govt for bribery in Angola

Dutch oil services firm SBM (2017): fined $238 m. for bribery in Angola &c.

Fresenius Medical Care AG of Germany (2019): fined $231 m. for bribery of Angolan military &c.

Financial Crimes Enforcement Network (known as FinCEN). Can use Geographic Targeting Orders (GTOs) to identify ultimate beneficial owners of houses and other real estate.

Canada: Corruption of Foreign Public Officials Act (1999)

UK: Bribery Act 2010 - British National Crime Agency in 2017 returned $500 million to Angola. The attempt to loot involved José Filomeno dos Santos ‘Zenú’ and former BNA governor Valter Filipe da Silva

In London, ‘Politically Exposed Persons’ (PEPs) must explain their wealth

Unexplained Wealth Order :

an order of the court that requires a person to explain their interest in a given property



Official - sanctions on persons:

USA: Global Magnitsky Human Rights Accountability Act (2016)

Canada: Justice for Victims of Corrupt Foreign Officials (2017)

UK: Global Human Rights Sanctions Regulations 2020

EU: EC President van der Leyen proposes a Magnitsky law for the EU

EU official anti-corruption
Self-assessment: compliance is weak

"There is an abundance of anti-corruption laws and policies both at EU and at Member State level, and the focus should be on their effective enforcement."

- EU Council memo 2019

Expert assessments: No prizes for scope or speed of EU anti-corruption efforts

- EU has followed others in shifting from ‘bad business’ to focus on ‘bad government’.
- resistance mainly from EU member states.
- slow to move, slow to adopt hard law.

EU: more tax transparency thanks to independent research

EC *Review of country-by-country reporting requirements for extractive and logging industries (2018)* found:

- “limited monitoring and oversight of …compliance with the reporting requirements”

- “issues with the reporting requirements were identified mostly through the efforts of civil society organisations, focused on trans-parency and accountability, and of academics.”

inter-governmental anti-corruption

OECD: Convention on combating bribery of foreign public officials in international business transactions (1999), 44 parties. See: OECD Working Group on Bribery (the "WGB")

Council of Europe (COE) Criminal & Civil Law Conventions on Corruption (1999) + policy networks GRECO, Moneyval &c.

G7: Financial Action Task Force (FATF) (1989) – to set standards, promote and monitor laws against money laundering & 'terrorism financing'.

Anti-Money Laundering regime: "a weak governance instrument for regulating financial crimes such as tax evasion or corruption, but a strong one for security-related crimes."

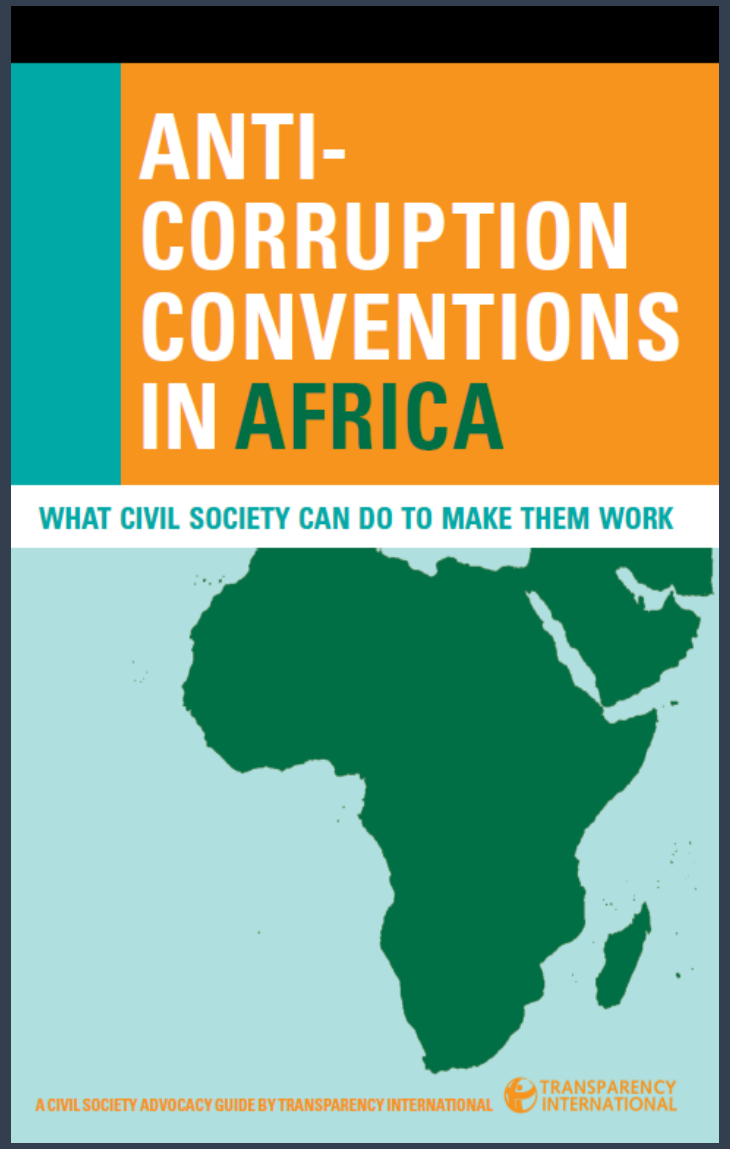
inter-governmental: African

- FATF affiliate: Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). Angola is a member.
- Southern African Development Community (SADC) *Protocol against Corruption* (since 2005).
- African Union *Convention on Preventing and Combating Corruption* (since 2006) – Angola ratified 2017
- Both SADC & AU conventions call on states to pursue **prevention, criminalisation, and cooperation** and to involve NGOs &c.

Publications for NGOs re corruption

Transparency International (2006)

ENACT www.enact.africa (2018)



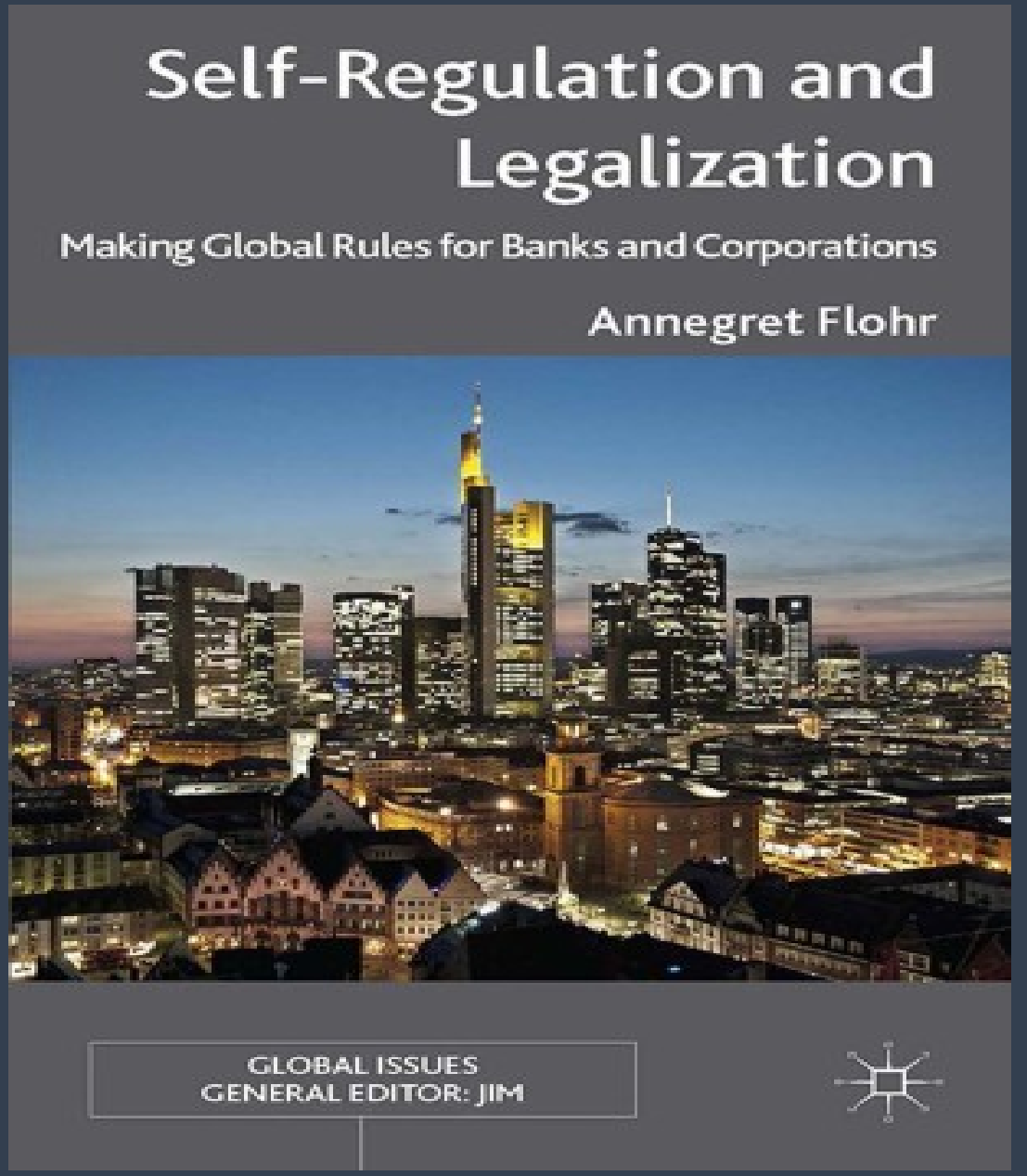


Private Sector

Prefers self-regulation & self-regulatory organizations (SROs)

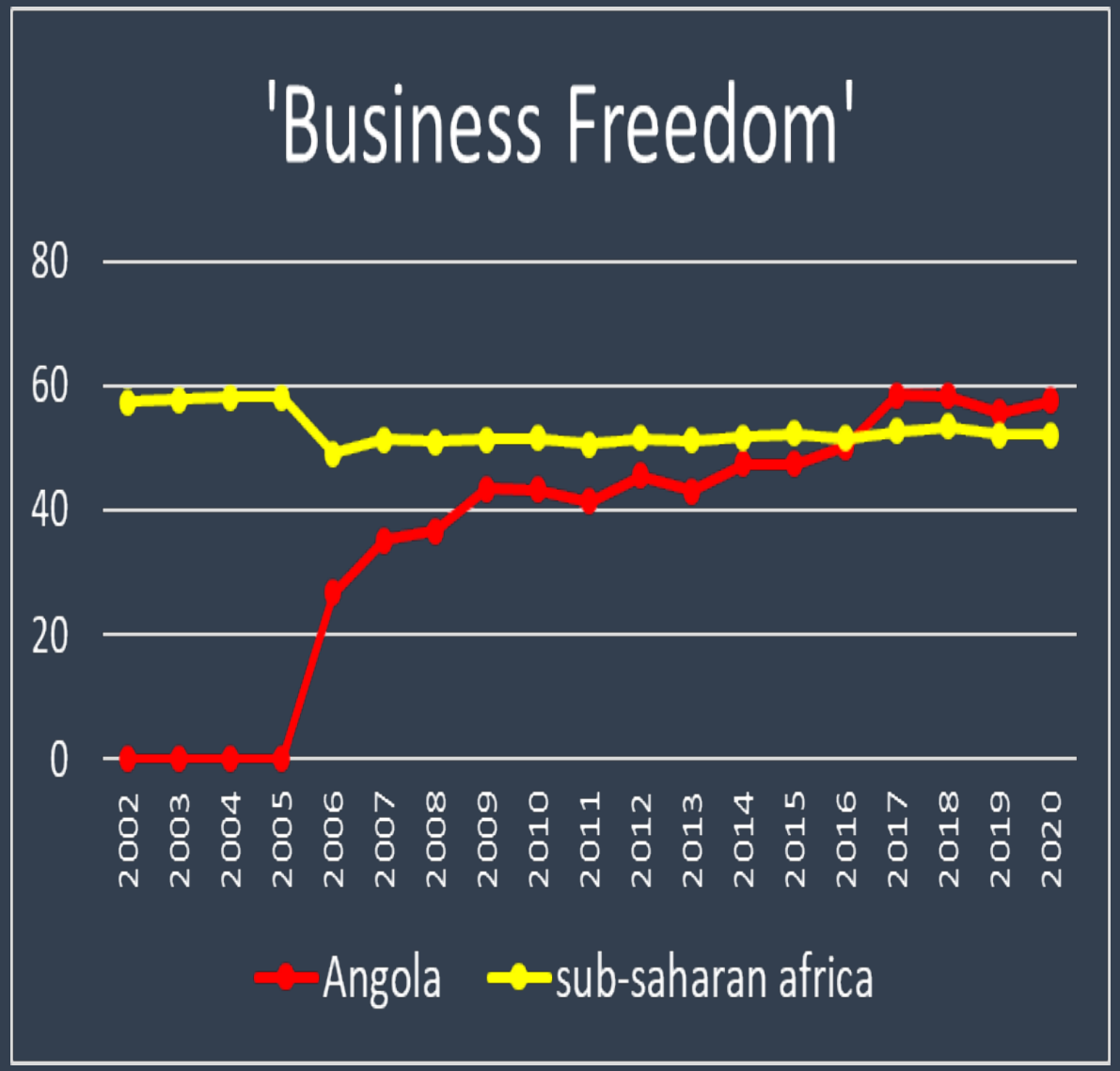
Wolfsberg Group: 13 global banks includes HSBC, Deutsche Bank, Credit Suisse. Publishes guidelines, e.g. *Wolfsberg Guidance on Politically Exposes Persons (PEPs).*

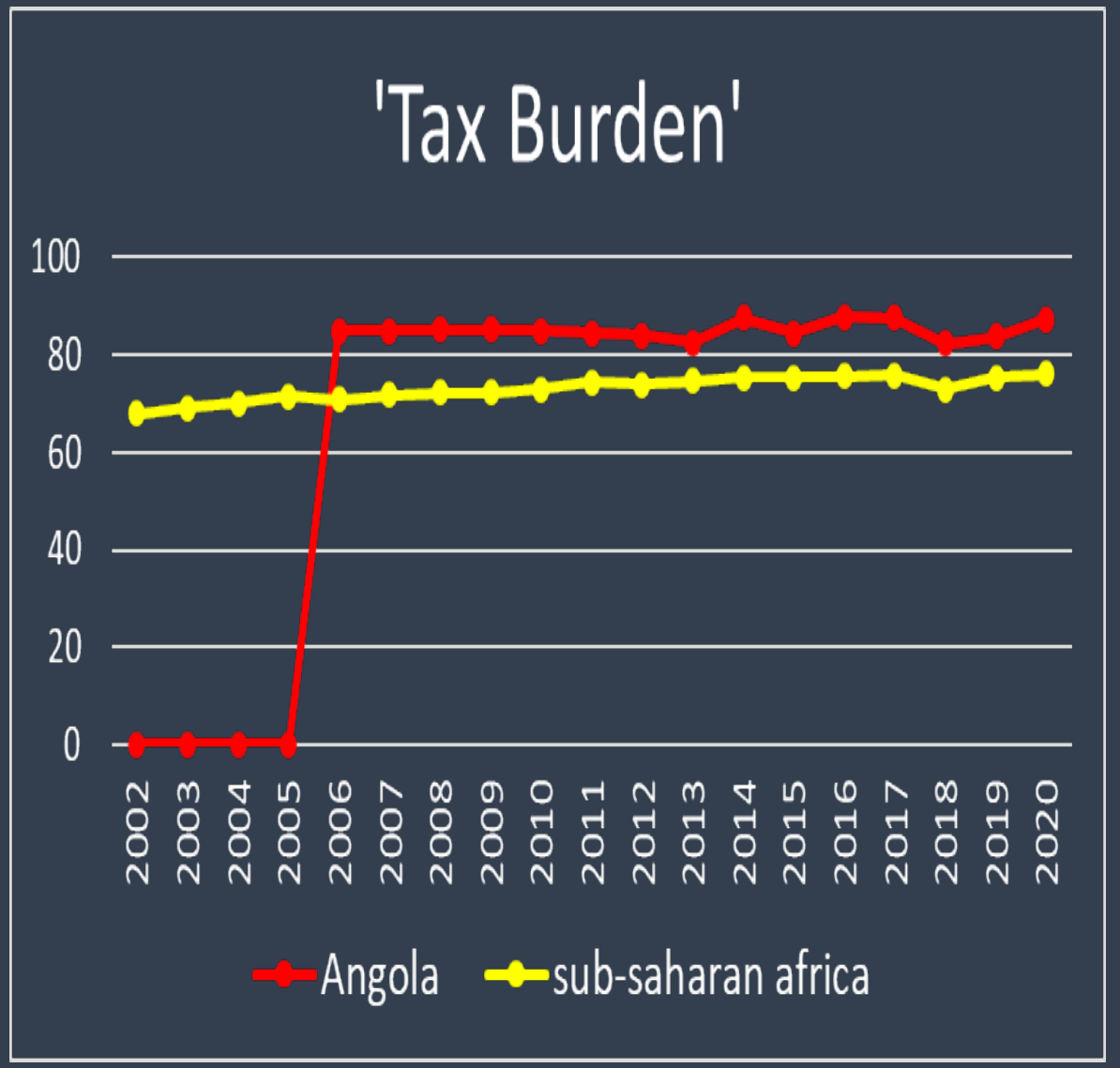
Former investigator called the Wolfsberg group "wolves [...] guarding the sheep"



For private sector, some Angolan rules are o.k.

Rankings by Washington think-tank (Heritage Foundation)





Business concerns about anti-corruption

- Prefers ***voluntary self-disclosure***, not actions required by law
- Sees supply side (‘active’ corruption) emphasized too much, demand side (‘passive’) too little
- Dislikes high costs of compliance with laws, auditing requirements
- Wants to protect business data, personal information

Civil Sector

Who’s pushing back

investigative journalism & ‘leaks’

2013 **Offshore Leaks** ICIJ – report on details of offshore accounts

2014 **Luxembourg Leaks** ICIJ – from tax accounting firm PricewaterhouseCoopers secret tax agreements approved by Luxembourg officials

2015 **Swiss Leaks** – from major bank HSBC, project coordinated by ICIJ; 31 clients associated with Angola. 3% with Angolan passport or nationality

2016 **Panama Papers.** ICIJ – from offshore law firm Mossack Fonseca, exposing hundreds of tax-dodging firms & persons, creating impact, eg Deutsche Bank 2018

2017 **Paradise Papers.** *Süddeutsche Zeitung* / ICIJ - from offshore (tax) law firm Appleby

2019 **Mauritius Leaks** ICIJ – mainly from offshore law firm promoting Mauritius’s “bargain-basement tax rates” & tax treaties (serving Bob Geldorf, Isabel dos Santos; Angola’s Sovereign Wealth Fund &c.)

2020 **Luanda Leaks**

2020 **FinCEN Files** Suspicious Activity Reports (SAR) to US Treasury Dept 2011-2017 e.g. JPMorgan Chase filed a SAR on transactions related to Sindika Dokolo

Civil Sector: some organisations

UNCAC Coalition (est. 2006) - 350 civil society organisations promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC). https://uncaccoalition.org/

Tax Justice Network (2003) – TJ Europe: 50+ organisations, including in Germany : MISEREOR, Global Policy Forum, Netzwerk Steuergerechtigkeit Deutschland. https://www.taxjustice.net/

Global Witness (1993) – initially focused on Angola, GW has moved upstream to New York to focus on 'enablers' https://www.globalwitness.org/shadyinc/

Financial Accountability and Corporate Transparency (FACT) Coalition (2011) more than 100 state, national, and international bodies pushing for a fair tax system. https://thefactcoalition.org/

Sherpa (2001) – French law association https://www.asso-sherpa.org/accueil

3. Deficits in governance

a) **Democratic deficit :** poor knowledge/voice for input; weak output/realization of public preferences & accountability in law & policy

b) **Coherence deficit :** rules & laws not aligned, even contradictory

c) **Compliance deficit :** enforcement lacks capacity, autonomy, powers to sanction

To reduce democratic deficits

- Expand, improve public knowledge, discussion
- Amplify civil sector ‘voice’ in official consultation (but avoid co-option!)
- Protect whistleblowers
- Require transparency in corporate lobbying
- Control ‘revolving doors’ between public offices & corporate life
- … and tax transparency.

Needed for tax transparency : A, B, C

- Automatic exchange of financial account information
- Beneficial ownership (public registers for companies, trusts and foundations)
- Country by country reporting (publicly, by multinationals)

To reduce coherence deficits

- Take ‘whole system’ approach; don’t isolate problems, look for connections
- Link anti-corruption / tax fairness efforts with UN development goals
- End global ‘tax competition’ / ‘forum shopping’ via ‘offshore’ entities
- push for a UN Tax convention
- UN intergovernmental tax body (proposed by the Group of 77 & China)

To reduce compliance deficit

- Public regulation: build it, defend it
- Stop capture of regulators by those they regulate
- Outcomes of enforcement: publicize them
- Carry out public audits of debts and deals
- Control & audit the auditors – PwC, KPMG, Deloitte, EY &c
- Make government procurement open, clean & transparent
- Promote restitution of stolen assets
- Compensate for damages from corruption/tax-dodging, including damage to communities, society at large

If you know there's no landing space to land your plane, you don't take off in the first place.

It's the same with money: if there's nowhere to land it once you've stolen it, you can't steal it.

- Nigerian anti-corruption investigator

Horst Köhler

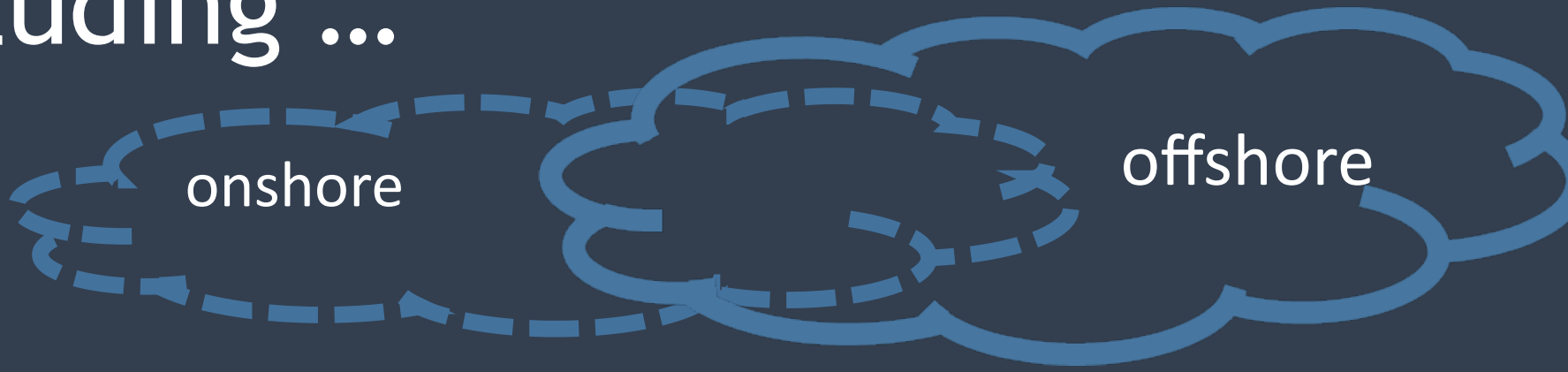
(ex head of EBRD, IMF; ex-Bundespräsident)



"We cannot ignore the global kleptocratic model of capitalism that is sucking obscene amounts of capital out of Africa…

"Chief among the beneficiaries of this flight of capital are the European banks where African despots and tax-evading corporations stash their billions. If we finally brought order to the international financial system and allowed the tax havens to wither away, that would be credible!" - speech in Berlin 2014

Concluding …



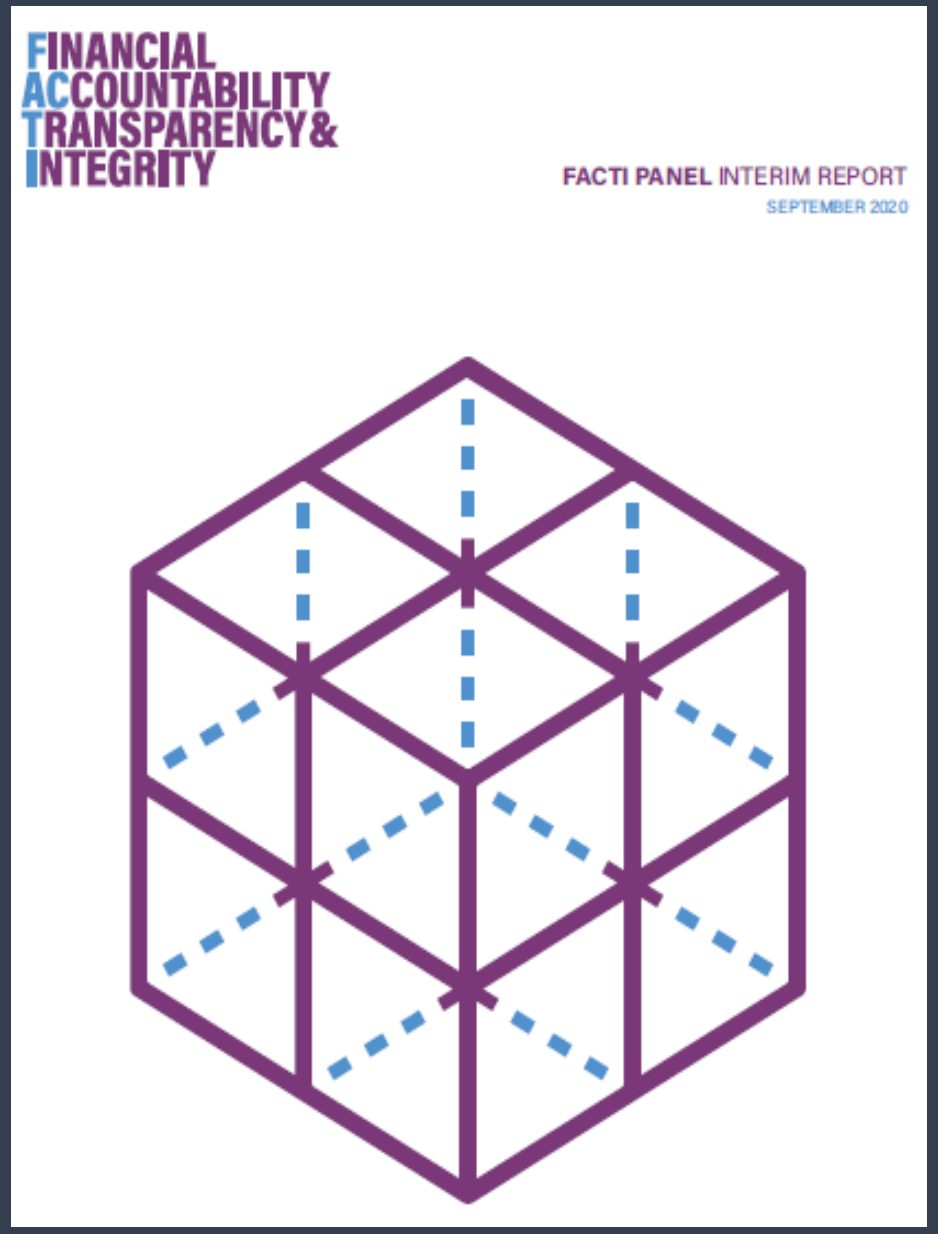
- Angola is extraverted: ‘offshore’ opportunities create incentives.
- Power over them rests with ‘Futungo’
- But also with ‘Davos’, ‘Wall Street’, ‘Amsterdam’ ‘Zug’, ‘City of London’ &c.
- Opportunities have ‘made the thief’ but
- Investigations & activism have begun to limit opportunities for rent-seeking

New, essential reference

FACTI Panel Report

The High Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) for achieving the 2030 Agenda.

Responding the UN General Assembly & supported by the UN Dept of Economic and Social Affairs/Financing for Sustainable Development Office.



Obrigado.