

Sharing case study

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RECOVER Project (GA 101091375)



Study-Case

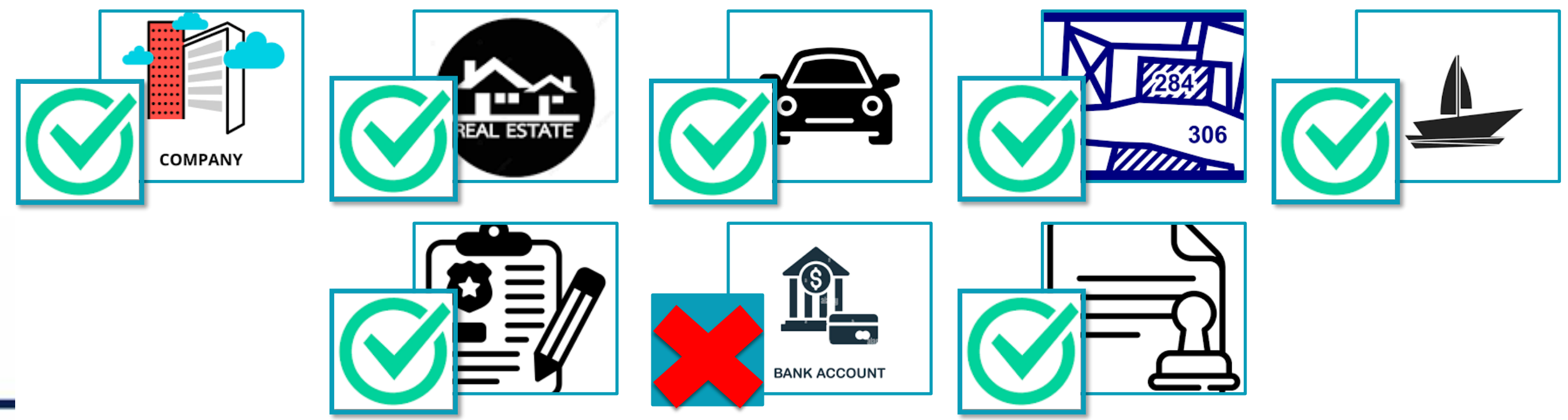
- ✓ January 2010. X and A were convicted by the Criminal Court in Switzerland for a money laundering offence.
- ✓ January, 2010. A second MLS request was issued against X and A by the Swiss Judicial Authority aimed at confiscating a property located in Empuriabrava, Spain.

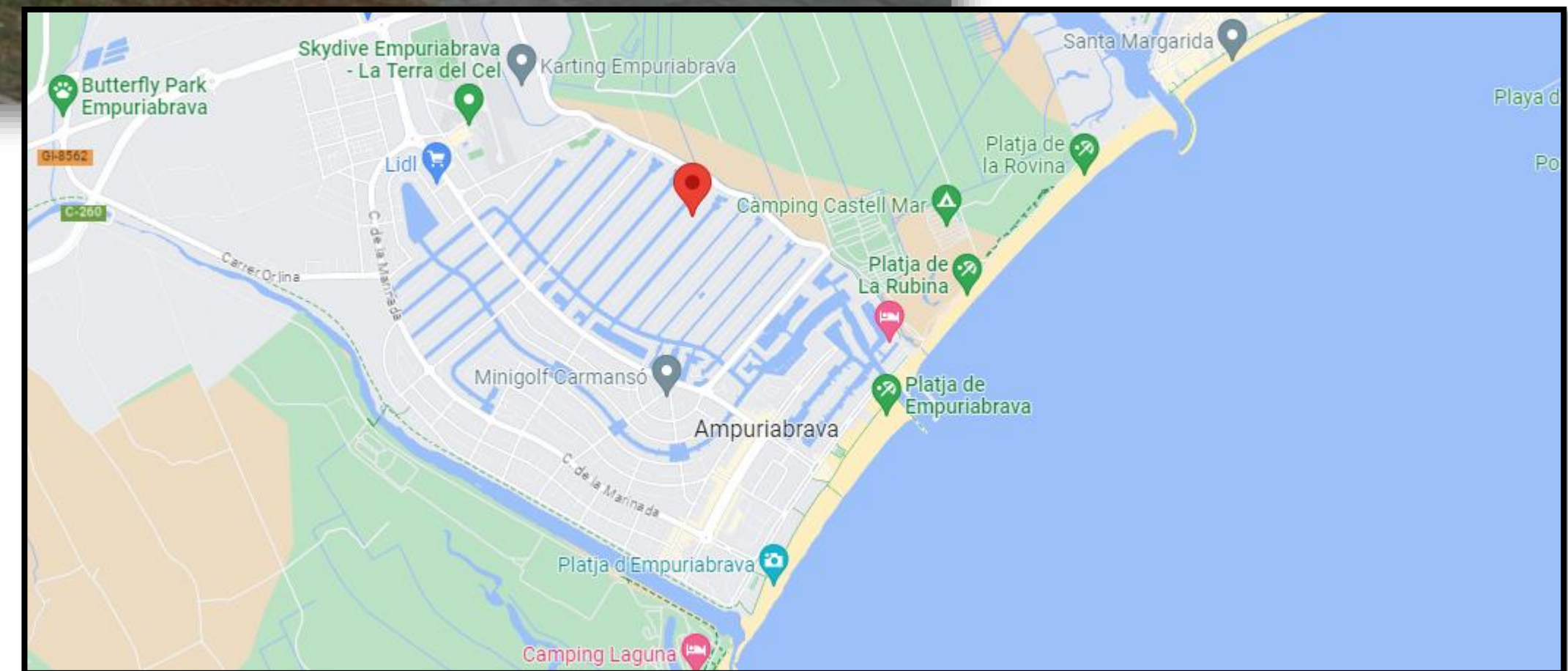




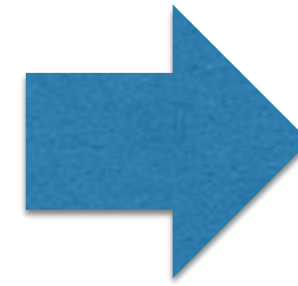
Tracing of assets via CARIN

- ✓ From NCP to NCP.
- ✓ Spain NCP double checked its database to localize any property owned by the suspects
- ✓ The property in Ampuriabrava was already frozen





- ✓ 2nd request with confiscation order was sent to the Spanish Ministry of Justice as Central Authority
- ✓ Ministry of Justice forwarded the request to the Investigating Court in Figueres already dealing with the freezing order
- ✓ However, the National Court in Madrid was the competent authority for the recognition of final judicial decisions issued by Courts in third countries (*exequatur ex Art. 65.2 Spanish Judiciary Law*).



Legal basis:

- European Convention on Mutual Assistance in Criminal Matters Strasbourg, 20.IV.1959 and 2nd additional protocol
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg 1990.



A confiscation order is a final **judicial decision** that cannot be challenged and is mandatory.

National Court as executing authority (finally**) opened an instrumental File for recognition & execution of the confiscation order included in the MLA request in November 2014.**

✓ **Procedural background at Investigating Court in Figueras:**

- ✓ The real estate was judicially frozen on the bases of a court ruling. This decision together with a *cover letter* was sent to the Land Register of Roses by the Investigating Court (so-called preventive annotation)
- ✓ The property was already properly- registered in the Land Registry of Roses.

✓ **Section for the execution of sentences in the Audiencia Nacional**

- ✓ **March 2015:** a Public auction of the property.
- ✓ **The property was officially valued by an expert in the amount of 732.402 Euros**
- ✓ Public auction started with the price of 732,402 €
- ✓ A single bid of 390.000 €
- ✓ **September, 2015.** Allocation decree: the property was finally awarded to the single bidder.

Disposal phase of confiscated property or money obtained after selling of the real state

- ✓ This was a money laundering case. So, no compensation claim by potential victims was at stake.
- ✓ As the Spanish executing authority was not informed of any decision to compensate victims the proceeds of the public auction sale (390.000 euros – costs and expenses=389.173,24 euros) were available to be disposed of in accordance with the legal provisions in place in Spain and in Switzerland (Art. 30 (7) of 2018 Regulation is only applicable to EU Member States)
- ✓ The conclusion of the public action ended up the judicial file of the disposal phase and the Audiencia Nacional forwarded the file at the end of 2025 to the Ministry of Justice for the sharing agreement that should be dealt at a central Authority level as...

Sharing agreement phase at a governmental level

- ✓ The National Court decided that a sharing agreement is **not under its remit of competences** and should be discussed and signed outside the judicial level at a governmental level between the central authorities (Ministry of Justice and the Swiss Federal Office of Justice).
- ✓ **By March 2016** there were no previous sharing agreement between the Kingdom of Spain and Switzerland to be used as a precedent on how to distribute the outcome of the selling.
- ✓ It is not clear the legal nature of this type of international agreements (*Ley 25/2014, de 27 de noviembre, de Tratados y otros Acuerdos Internacionales*) and whether it is an International Administrative Agreement or not...

According to the Spanish Law 23/2014 the result of confiscation will be distributed as follows:

If the value of the goods and effects confiscated (minus the expenses incurred for their location, administration and conservation), **is less than 10,000 euros**, they shall be awarded in full to the Spanish State, and shall be given the destination determined by law or regulation.

In all other cases, (minus the expenses incurred for their location, administration and conservation), **the issuing State shall be entitled to 50 percent** of the value of the goods, securities and effects confiscated when the confiscation decision has been issued by the competent authority of a State that has guaranteed reciprocity with Spain.

The Swiss Confederation and Kingdom of Spain have agreed as follows:

1. The proportion of the confiscated proceeds of crime or property to be shared under this agreement has been determined and agreed upon by the Parties as fifty percent (50%).
2. The Government of the Kingdom of Spain shall transfer to the Government of the Swiss Confederation fifty percent (50%) (approximately **EUR 194'586.62**) of the amounts deposited in a bank account held in the Kingdom of Spain (approximately EUR 389'173.24) resulting from the execution of the above mentioned confiscation order, in accordance with paragraph 3 of this Agreement.
3. The Parties have agreed that any sum transferred pursuant to paragraph 2 of this Agreement shall be paid by the Party where the proceeds of crime or property are located (Spain) to the Party receiving the payment (Switzerland) under the following details:...



January 2010-
Conviction in CH

November 2014
Execution File for
confiscation

September, 2015. Allocation
decree

2013 Confiscation order was
sent from CH to ES

March, 2015. Public
auction

March 2016. sharing
agreement should be
signed

¡Gracias por su atención!

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