

PROFESSIONAL FACILITATORS

ASIA-PACIFIC ACADEMY IN TOKYO, JAPAN

VAT/GST FRAUD INVESTIGATIONS (SPECIALTY PROGRAMME) 2022

PROGRAMME COURSE LEADER - BRENDON NORMAN-ROSS

PROFESSIONAL FACILITATORS

Essential reading – 46 pages of valuable information and guidance.



Ending the Shell Game

Cracking down on the Professionals who enable Tax and White Collar Crimes

THE ISSUE — PROCEEDS OF CRIME IN CIRCULATION

USD\$2trillion

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USD\$2trillion

Increasing year on year.

THE ISSUE

The estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or \$800 billion (inclusive of VAT/GST).

United Nations
Office on Drugs and Crime

- Consider the variant between 2 - 5% then you understand the challenge in just determining even a 'rough' estimate of global VAT/GST loss.
- EU Member States lost an estimated €134 billion in VAT revenues in 2019, according to the 2021 Report on the 'VAT Gap' released by the European Commission.

FRAUDULENT EVASION OF VAT – UK SENTENCING

- The deliberate evasion of VAT is an offence under section 72(1) of the Value Added Tax Act and the maximum penalty for offences tried (indictment) in the Crown Court is 7 years imprisonment and an unlimited fine.
- On summary conviction by a fine of the statutory maximum (£20,000) or three times the amount of the VAT owed (whichever is greater), or six months imprisonment.



UK SENTENCING – CULPABILITY AND HARM

Culpability demonstrated by one or more of the following:

A – High culpability

A leading role where offending is part of a group activity

Involvement of others through pressure/influence

Abuse of position of power or trust or responsibility

Sophisticated nature of offence/significant planning

Fraudulent activity conducted over sustained period of time

B – Medium culpability

Other cases where characteristics for categories A or C are not present

A significant role where offending is part of a group activity

C – Lesser culpability

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Opportunistic 'one-off' offence; very little or no planning

Performed limited function under direction

Limited awareness or understanding of extent of fraudulent activity

Harm – Gain/intended gain to offender or loss/intended loss to HMRC

Category 1

£50 million or more

Starting point based on £80 million

Category 2

£10 million–£50 million

Starting point based on £30 million

Category 3

£2 million–£10 million

Starting point based on £5 million

Category 4

£500,000–£2 million

Starting point based on £1 million

Category 5

£100,000–£500,000

Starting point based on £300,000

Category 6

£20,000–£100,000

Starting point based on £50,000

Category 7

Less than £20,000

Starting point based on £12,500

7 Years

6 months

UK SENTENCING – CULPABILITY AND HARM

Harm	Culpability		
	A	B	C
Category 4 £500,000–£2 million	Starting point 5 years 6 months' custody	Starting point 4 years' custody	Starting point 2 years 6 months' custody
Starting point based on £1 million	Category range 4 years' – 6 years 6 months' custody	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody
Category 5 £100,000–£500,000	Starting point 4 years' custody	Starting point 2 years 6 months' custody	Starting point 15 months' custody
Starting point based on £300,000	Category range 2 years 6 months' – 5 years' custody	Category range 15 months' – 3 years 6 months' custody	Category range 26 weeks' – 2 years 6 months' custody
Category 6 £20,000–£100,000	Starting point 2 years 6 months' custody	Starting point 15 months' custody	Starting point High level community order
Starting point based on £50,000	Category range 15 months' – 3 years 6 months' custody	Category range High level community order - 2 years 6 months' custody	Category range Low level community order – 36 weeks' custody
Category 7 Less than £20,000	Starting point 15 months' custody	Starting point 26 weeks' custody	Starting point Medium level community order
Starting point based on £12,500	Category range 26 weeks' – 2 years 6 months' custody	Category range Medium level community order – 15 months' custody	Category range Band C fine – High level community order

UK SENTENCING – REDUCING SENTENCING

- Guilty plea's can reduce a sentence by one third (maximum). The later the plea is entered, the smaller the reduction (The Court Steps).
- Summary Conviction - If a plea is entered 14 days after the first hearing, the maximum level of reduction is 20% or one fifth of the sentence.
- Indictable offences - the limit for a guilty plea to be made is within 28 days after the prosecutor has stated compliance with section 3 of Criminal Prosecutions & Investigations Act 1996. The Judge has discretion to apply whatever credit is deemed appropriate.
- This goes down to one tenth on the first day of the trial and to zero if entered during the course of the trial.

ANCILLARY ORDERS - VAT FRAUD CONVICTION

A court can make ancillary orders on a defendant if they are found guilty and convicted of an offence (requirements that affect a dependent's finances, property or activity.)

Ancillary orders that are typically added to the penalty for those who are found to be guilty of VAT fraud include:

- Disqualification from operating a a company director.
- Serious crime prevention order (like predicate offence - breach – sentence up to 5 years).
- Restraint orders (preservation of assets).
- Financial reporting order (post conviction – provision of financial statements).
- Confiscation orders (ordering him to pay the amount of his benefit from crime).
- As part of your investigation, assets may be frozen (also known as Mareva injunctions) with the possibility of having cash or other assets seized.
- The entire costs of the prosecutor, including fees for the use of external Barristers used by the CPS, can be recovered from the defendant.

THE BASEL INSTITUTE ON GOVERNANCE

Four things holding back the global fight against money laundering:

1. **A strong response to threats from virtual assets** - The use of virtual assets such as cryptocurrencies is exploding
2. **Effective prevention, not just enforcement**
3. **Beneficial ownership transparency** - ineffective implementation of beneficial ownership transparency measures continues to provide safe havens for dirty money
4. **Addressing ML/TF vulnerabilities beyond the financial sector** - weak application of AML/CFT preventive measures by lawyers, accountants, real estate agents and other designated non-financial businesses and professions non-financial entities (DNFBPs).

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PROFESSIONAL FACILITATORS & SHELL COMPANIES - UK

- Flat above a West Country takeaway that is home to 761 international firms.
- 11,000 companies registered in the UK in 2020. Most of the firms are registered to only 18 addresses.
- Registering 30 new companies a day on average.
- 'The soft-touch system for registering companies in the UK is a fraudster's paradise.'



PROFESSIONAL FACILITATORS & SHELL COMPANIES - UK

- According to the National Crime Agency, these types of shell companies – which have no staff and do not trade but move assets on behalf of individuals or other businesses – are being used to launder £100 billion of stolen and illicit money through Britain each year.
- While it can take weeks of form filling to get the bogus company removed, it takes less than 15 minutes and costs just £12 to register the company and needs neither proof of address, passport nor driving licence.



PROFESSIONAL FACILITATORS & SHELL COMPANIES - UK

UK Initiatives:

Corporate Directors – UK Proposal - *‘Businesses will only be able to operate as corporate directors on the boards of other companies in the UK if all of their directors are real people whose identity has been verified by Companies House. Evidence suggests that the use of corporate directors can muddy the waters around ownership and provide a screen behind which to conduct illicit activity,’*

Beneficial Ownership Register - The UK beneficial ownership registry has more than 5.1 million names of people with significant control over UK registered companies. The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, effective; 15 August 2017.

- More than 25% of shares in the company
- More than 25% of voting rights in the company
- The right to appoint or remove the majority of the board of directors

PROFESSIONAL FACILITATORS - FINE ART MARKET

- Of the approximate USD 67.4 billion global art market, UNODC estimates USD 6.3 billion are linked to transnational crime. Financial crimes account for approximately USD 3 billion. That's circa 10% of trading in Art. (Think Sotheby's, Christies etc.)
- Veil of secrecy on transactions in the art market with no stable or predictable pricing.
- Buyers and sellers seek privacy, relying on intermediaries and shell companies.
- Art easily transported - extremely difficult to trace.



'LONDONGRAD' & PROFESSIONAL ENABLERS

- Over the past two decades, London became one of the preferred investment locations — if not the favoured destination — for Russian oligarchs, as well a key financial centre for Russian companies.
- Critics have dubbed it the “London laundromat”: an apparatus that allowed billions of pounds — some of it obtained through illegal or questionable means — to be siphoned out of the Russian economy and into trophy assets in the UK.
- Transparency International has identified £1.5bn worth of UK property — nearly 150 land titles — bought by Russians who have been accused of corruption.

PROFESSIONAL ENABLERS AND SAR'S (STR'S)

An aggravating factor, notwithstanding their explicit regulatory obligations, is the failure by facilitators to submit Suspicious Activity Reports (SARs), as identified by Donald Toon, Director of Economic and Cybercrime at the NCA:

'Lawyers are failing in their duty to combat suspected money laundering and have ignored repeated warnings to increase their reporting of suspicious activity by clients. There are cases where banks had reported dubious property deals for which there had been no corresponding alert from solicitors involved in the same transaction.'

PROFESSIONAL ENABLERS AND SAR'S

- The scale of the problem UK National Crime Agency investigators are required to tackle is vast. The government estimates £90bn of cash is laundered in Britain every year.
- The increase is being fuelled by banks, which flagged up almost 350,000 transactions in the year to March 2017 (reported SARs).
- Concerningly law firms, including those specialising in property conveyancing, filed just 3,020 SAR alerts (circa 0.01%).
- Consider the fact that these are the lawyers that are part of the conveyancing of property and acting as intermediaries in establishing financial structures – the same assets / structures that banks are externalising SAR's on.

OFFSHORE STRUCTURES

- Corporate entities or arrangements are interposed in different jurisdictions, (shell companies) with complex ownership and control structures.
- Professional enablers facilitate the creation of instruments used to obscure beneficial ownership; bearer shares / nominee directors / shareholders. They enable the creation of such instruments, thus concealing the identity of those involved in tax or other financial crimes.
- An example of this can be where “dummy” directors, trustees, shareholders etc., are provided by the professional enabler to disguise their client’s beneficial ownership.

TAX HAVENS - (IMF)

- Tax havens collectively cost governments between \$500 billion and \$600 billion a year in lost corporate tax revenue, depending on the estimate through legal and not-so-legal means. Of that lost revenue, low-income economies account for some \$200 billion—a larger hit as a percentage of GDP than advanced economies and more than the \$150 billion or so they receive each year in foreign development assistance.
- American Fortune 500 companies alone held an estimated \$2.6 trillion offshore in 2017, though a small portion of that has been repatriated following US tax reforms in 2018.

(Crivelli, de Mooij, and Keen; Cobham and Janský)

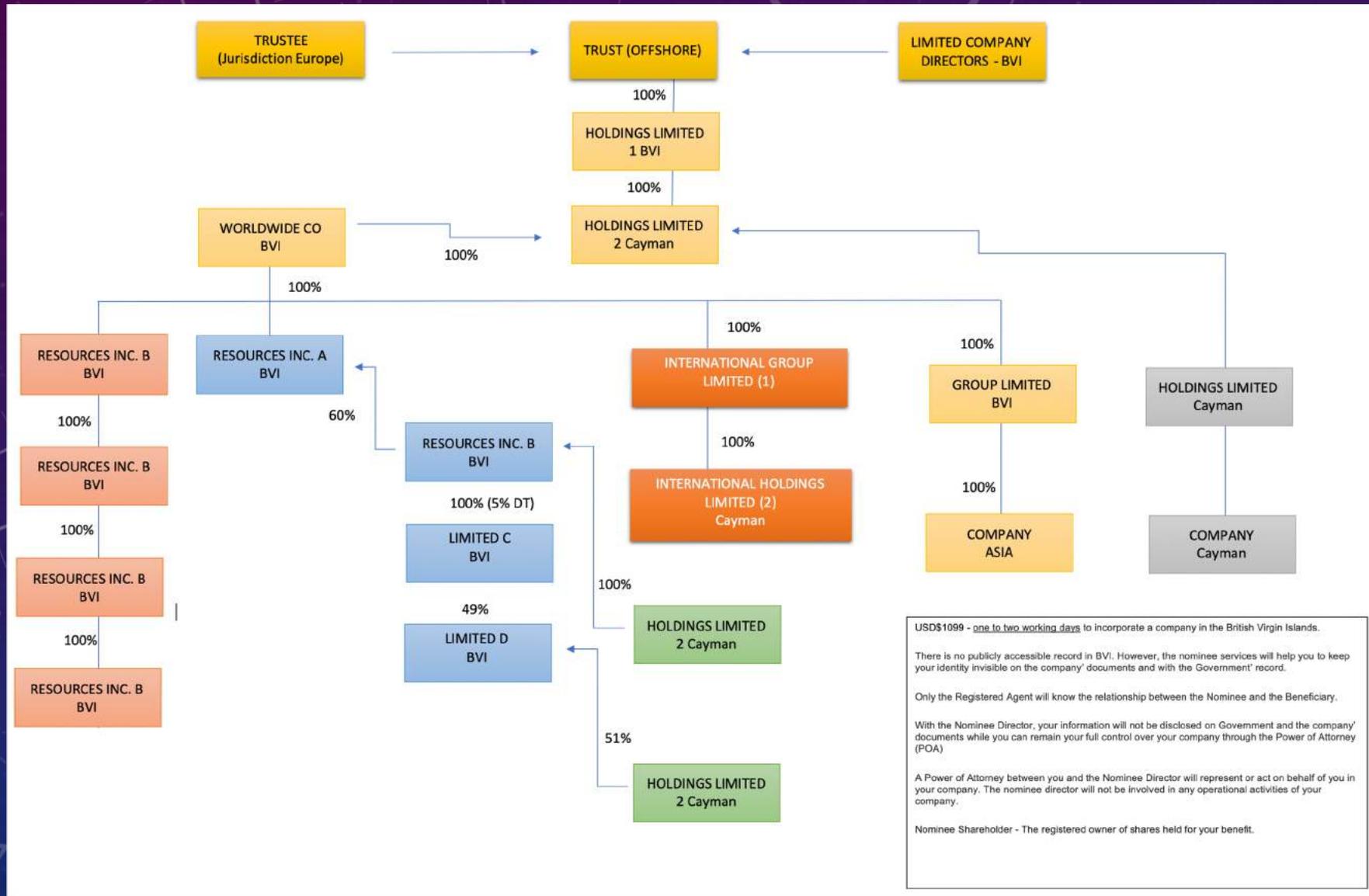
TAX HAVENS - (IMF)

- Individuals have deposited \$8.7 trillion in tax havens. Economist James S. Henry's more comprehensive estimates a yield of circa \$36 trillion.
- Both, assuming very different rates of return, put global individual income tax losses at around \$200 billion a year, which must be added to the corporate total.

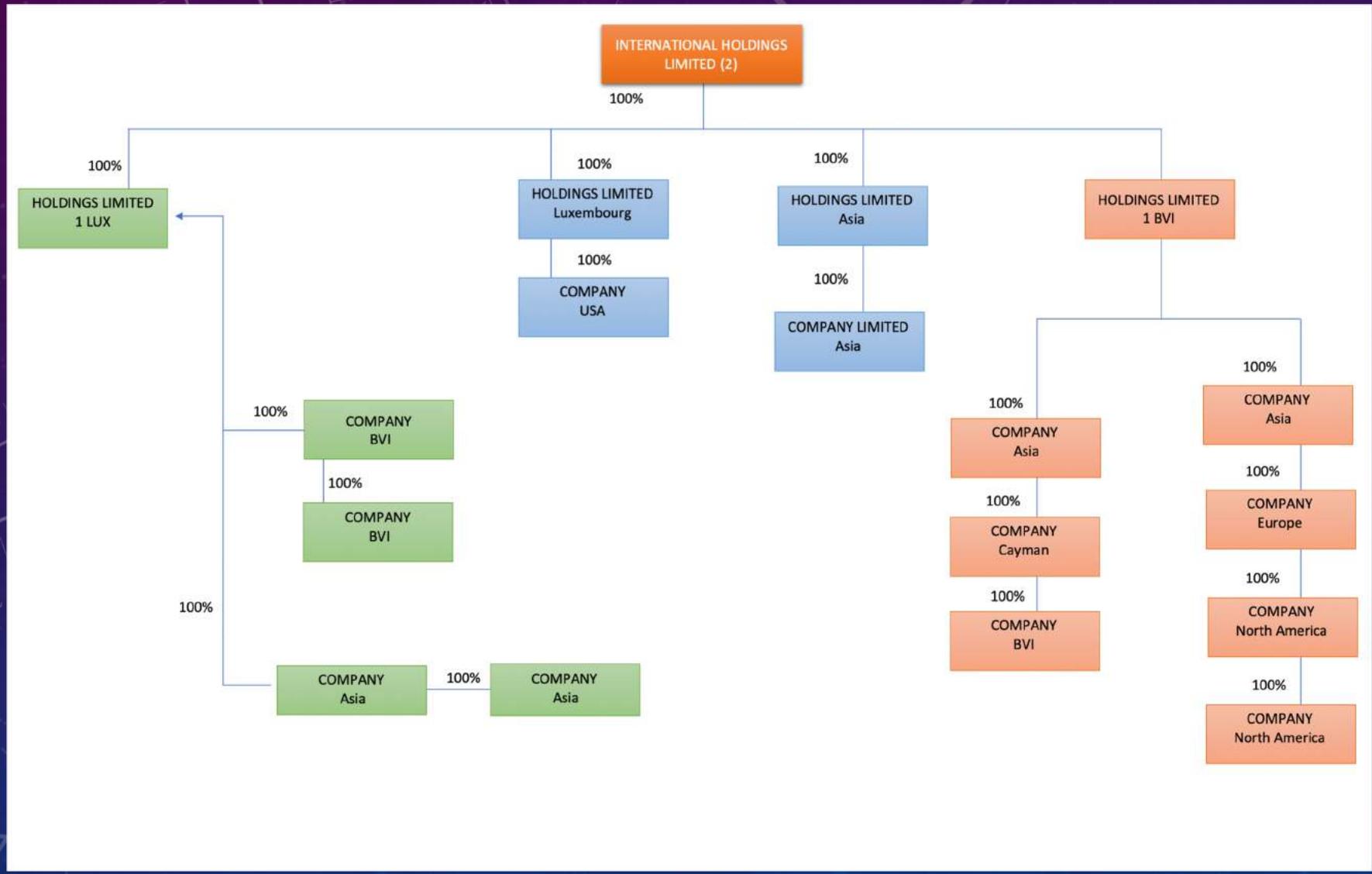
'To grasp why rich jurisdictions top the lists, ponder how many rich Nigerians might stash secret assets in Geneva or London—then consider how many rich Swiss or Britons would hide assets in Lagos. Offshore capital tends to drain from poor countries to rich ones.'

- The question; *'is the MLAT in its present form expedient given the effectiveness of instant electronic distribution of assets / cash.'*

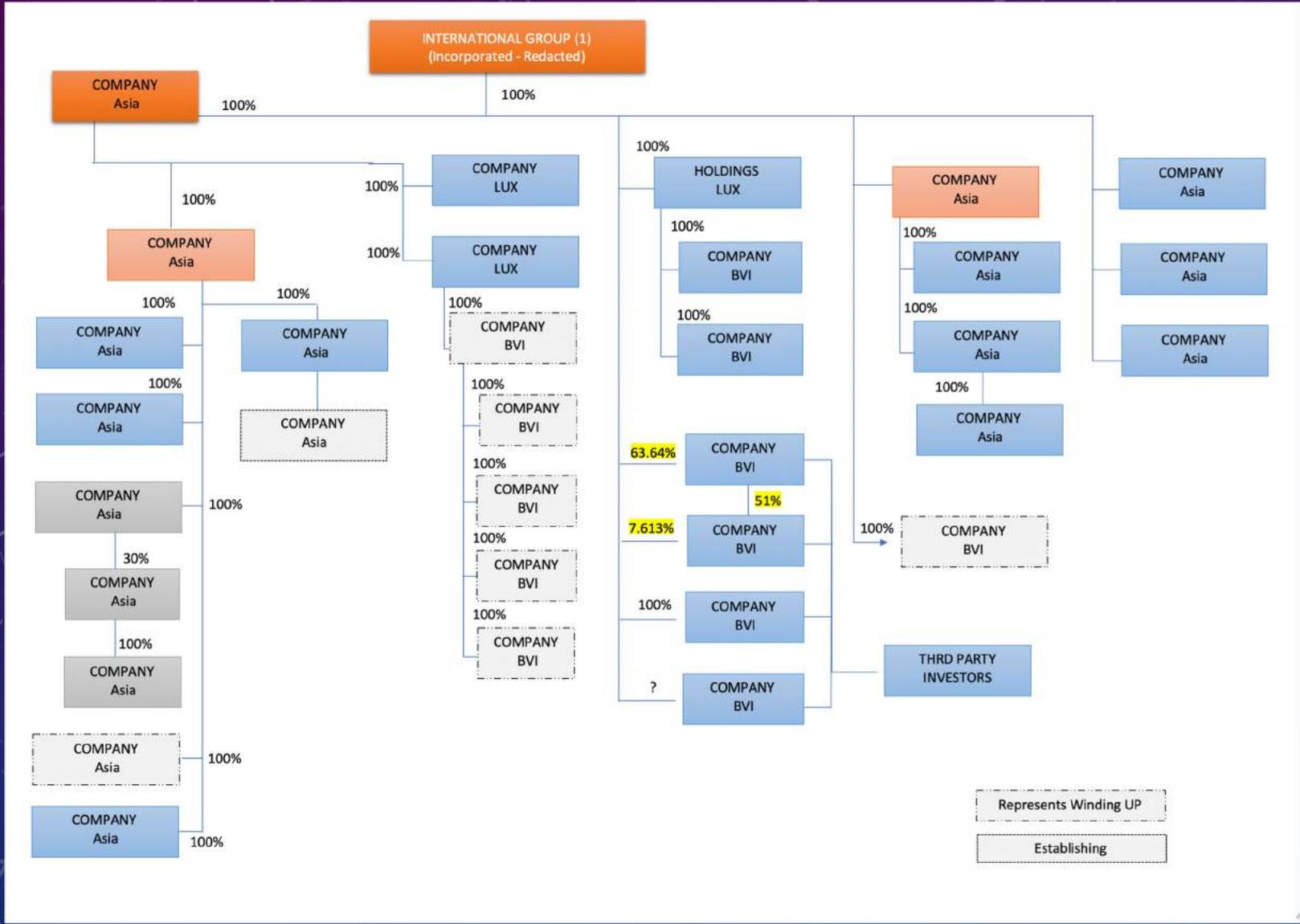
COMPLEX STRUCTURES – INVESTIGATIONS / TIMING



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COMPLEX STRUCTURES – INVESTIGATIONS / TIMING



1. THE ROLE OF PROFESSIONAL ENABLERS IN TAX AND OTHER FINANCIAL CRIMES

Who are they? - typically an individual or entity with professional expertise to perform a specific service to aid clients in carrying out a tax offence or other financial crime.

Common attributes of professional enablers:

- Professional qualifications or training.
- Expertise in taxation, legal or financial processes.
- Experience in setting up tax structures, or structures with cross-border elements.
- Experience setting up opaque structures for avoiding investigative scrutiny.

1. THE ROLE OF PROFESSIONAL ENABLERS IN TAX AND OTHER FINANCIAL CRIMES

What do they do? - While the types of illegal services provided by professional enablers vary in each jurisdiction, common trends emerge from comparative experience. Some examples include:

- Hiding income or disguising the character and source of profits, for the purpose of tax evasion.
- Obscuring beneficial ownership of assets through complex legal structures involving several jurisdictions.
- Offering advice on how to evade tax obligations using falsified transactions, documents or filings.
- Note: UK Criminal Finances Act 2017 - Corporate criminal offences of failure to prevent facilitation of tax evasion.

2. IDENTIFYING PROFESSIONAL ENABLERS

Organisational awareness of professional enablers:

- In the United Kingdom, electronic learning packages have been created for tax authority staff to explain what is meant by the term 'professional enablers' and what to do if they identify one. Another approach is to designate a lead official in each organisation who is responsible for the issue of professional enablers. This person could also have responsibility for raising awareness in the organisation through briefings, meetings and training sessions.

Measuring the threat of professional enablers:

- Once a country has defined the parameters of its professional enabler definition, it can consider how to identify, record and measure professional enabler activity.

2. IDENTIFYING PROFESSIONAL ENABLERS

Detection through development and analysis of professional enabler indicators:

- Use of data and intelligence is an essential tool to help identify specific professional enablers, as well as the broader pattern of schemes and structures they use. Many countries have collected information on professional enablers connected to offshore service providers or firms for the purpose of utilising it in data analytics and audit strategies.

Data sources for identifying professional enablers:

- Data mining information from offshore leaks, looking for links to professionals active in the jurisdiction, common clients of those professionals, and common structures. Analysing information from suspicious transaction reports (STRs). Creating a reporting mechanism for officials across the tax administration to report suspicions

3. DISRUPTING PROFESSIONAL ENABLERS

Legal sanctions for professional enablers:

- Countries have reported a variety of legal approaches to sanctioning the actions of professional enablers. Jurisdictions should address the issue of criminalising the conduct of professional enablers in accordance with their domestic legal frameworks. Professional enablers represent a distinct type of secondary offenders, whose actions can be criminalised by being defined as the aiding, abetting, facilitating or enabling of a tax offence.

Injunctions:

- Court orders and injunctions against practicing law, accounting or advisory services have been cited as tools that countries can use to disrupt professional enabler's behaviour. Depending on the country and the profession involved, injunctions can be used to require, or restrain an enabler from, specific behaviour upon application to the courts, or can be used to remove professional enablers from operating in their area of expertise all together.

3. DISRUPTING PROFESSIONAL ENABLERS

Professional supervision and regulation:

- Most countries have regulatory and supervisory bodies for AML and CFT purposes, and professional bodies that self-govern their members through a code of conduct or similar set of ethical obligations. This could include for example, a bar association or law society for lawyers, or a chartered accountancy or international ethics and standards board for accountants.
- A country's strategy and legal framework for professional enablers should therefore include co-operation with and the usage of regulatory and professional bodies or other supervisory bodies to ensure disbarment or disqualification of enablers where there is misconduct, so that these enablers can no longer continue their harmful services.

4. DETERRING PROFESSIONAL ENABLERS

Preventing abuse:

- Provide clear and accessible guidance on the operation of the tax and criminal laws. Pre-emptive communication strategies can include clear communication and guidance on the parameters of tax rules and consequences for non-compliance.
- Criminal Finance Act 2017 - failure to prevent the criminal facilitation of tax evasion.



4. DETERRING PROFESSIONAL ENABLERS

ATO– usage of taxpayer alerts to address new tax schemes:

- The Australian Taxation Office (ATO) publishes taxpayer alerts regarding new or emerging high-risk tax schemes. Where intelligence is received by the ATO of a risky arrangement that may not be compliant with the law, the ATO is able to respond with immediacy to warn the community.
- Through taxpayer alerts, the ATO is able to share with tax practitioners and taxpayers its concerns regarding an arrangement that is legally ineffective, involves exploitation or a deliberate misapplication of the law, or which may constitute tax evasion or tax fraud.
- Furthermore, the ATO can indicate what the applicable penalties are for taxpayers who use the tax scheme, or enablers who promote usage of the tax scheme.
- Disclosure facilities / Mandatory disclosure rules (UK Criminal Finance Act 2017)

4. DETERRING PROFESSIONAL ENABLERS

The results of such voluntary disclosure programmes can bring significant amounts of revenue to tax administrations:

- *As of November 2019, voluntary disclosure programmes and tax investigations helped to identify about EUR 102 billion in additional revenue (tax, interest, penalties). Voluntary disclosure programmes have been the largest contributor to this figure with nearly 40 jurisdictions having reported some form of disclosure between 2009 and 2019.*
- *For instance, voluntary disclosures brought EUR 462 million in Australia, EUR 13.6 billion in Brazil, nearly EUR 6 billion in Germany, EUR 29 million in Hungary, EUR 54 million in Luxembourg and over EUR 900 million in Mexico. Over 1 million of taxpayers have come forward to voluntarily disclose their assets.*

5. EFFECTIVE INVESTIGATIONS: ACROSS GOVERNMENT AND ACROSS BORDERS

Domestic whole government approaches:

- In order to have the most coherent and robust approach to preventing, identifying, disrupting and prosecuting professional enablers, mechanisms should be in place to enable information sharing between the relevant agencies.
- International co-operation.
- Group requests / Spontaneous exchange of information / On-sharing of tax information with other law enforcement agencies.
- The Joint Chiefs of Global Tax Enforcement (the “J5”).

STRATEGIC CONSIDERATIONS

- Data mining information from offshore leaks, looking for links to professionals active in the jurisdiction, common clients of those professionals, and common structures.
- Analysing information from suspicious transaction reports (STRs), including STRs on international electronic funds transfers, to identify repeat transactions, professions or persons that are the subject of the reports.
- Creating a reporting mechanism for officials across the tax administration to report suspicions or queries with respect to intermediaries that are involved in suspect structures or transactions.
- Information from voluntary disclosure programmes.
- Anonymous or whistle blower reports.
- Information on the internet advertising tax schemes or offshore structures.

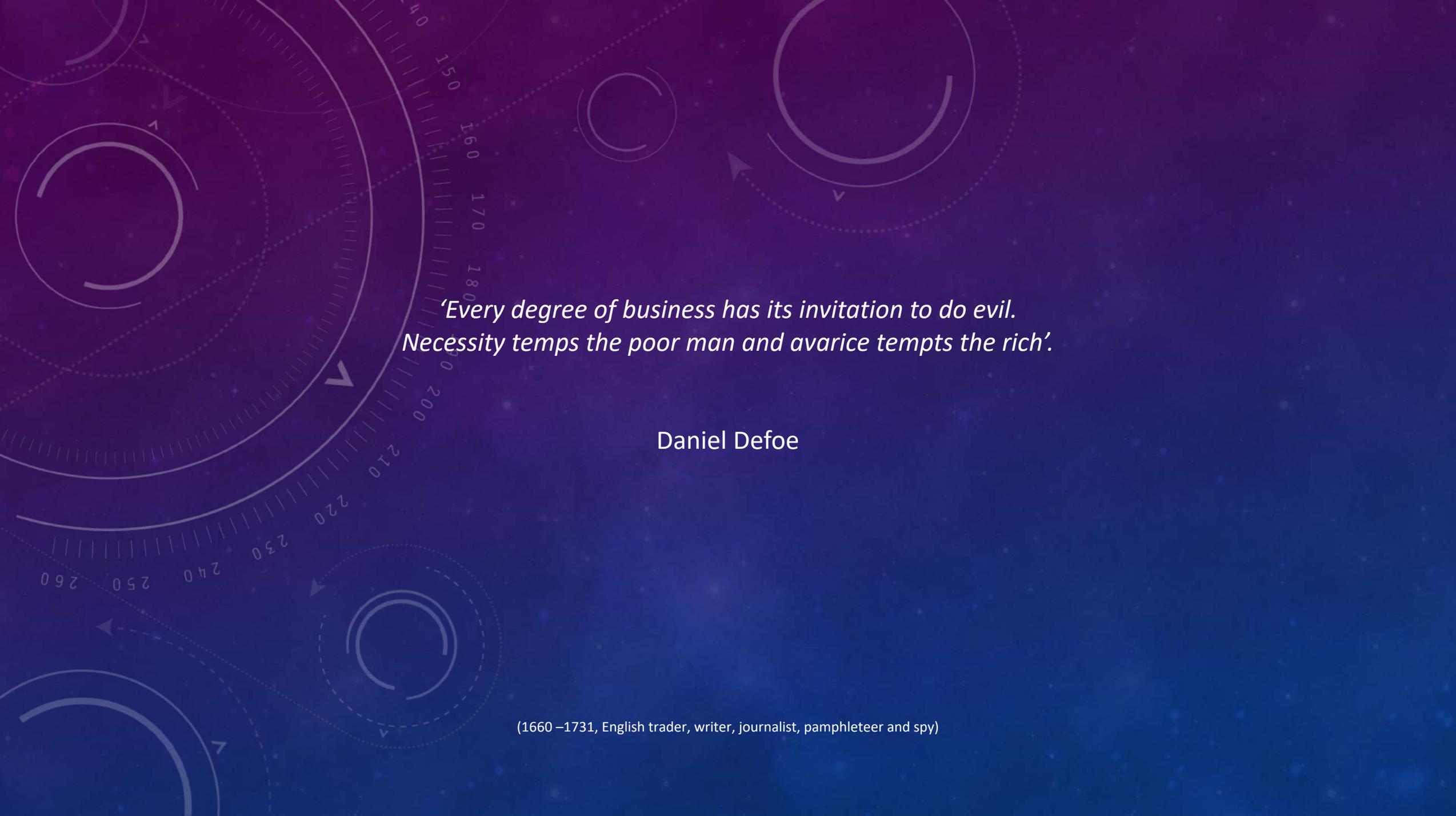
STRATEGIC CONSIDERATIONS

- Statistics on companies that have been struck off and cross-matching that information to companies served by the same service provider.
- Statistics on disqualified directors and cross-matching that information to those that work for the same service provider. Creating a database of known professional enablers and known associates.
- Creating an internal database of shell companies, suspicious addresses, suspicious directors and persons etc. to query or use for data mining.
- Validating the authenticity of documents with relevant government agencies (e.g. passport office, company registrar, financial regulators, other law enforcement authorities etc.) Validating the identity of taxpayers through signatures, photos or fingerprints in tax authority or government records.
- Consulting the OECD ATP Directory, a confidential database of over 400 aggressive tax planning schemes.

THE 6TH ANTI-MONEY LAUNDERING DIRECTIVE

The directive can be broken-down into four component parts:

- Harmonised definition of a “predicate crime” to include cybercrime and environmental crimes.
- Expanded regulatory scope.
- Extension of criminal liability to organisations.
- Tougher punishments.
- Increased co-operation between Member States.

The background features a dark blue gradient with faint, light blue circular patterns and a scale. The scale is a large, semi-circular arc on the left side, with numerical markings from 140 to 260 in increments of 10. Several smaller circles and arcs are scattered across the background, some with arrows indicating direction. The overall aesthetic is technical and analytical.

*'Every degree of business has its invitation to do evil.
Necessity tempts the poor man and avarice tempts the rich'.*

Daniel Defoe

(1660 –1731, English trader, writer, journalist, pamphleteer and spy)