



OECD International Academy for Tax Crime Investigation
Bribery and Corruption Specialty Programme



Criminal Investigation of Bribery and Corruption

Aims of Criminal Investigation

Aims?

- ▶ Prove the elements of the offence to ensure a successful criminal prosecution
- ▶ Provide a realistic and provable narrative explaining the offence (case theory)
- ▶ Recover assets

How?

- ▶ Collect evidence to establish the true events
- ▶ Pursue all reasonable lines of enquiry in and outside of your jurisdiction to ensure a fair trial for the accused person
- ▶ Trace and freeze assets

Corruption Offences

...when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

UN Convention against Corruption 2003, Art 15.



186 parties – Kenya, Uganda,

What is an “undue advantage”?

Not permitted by law, irrespective of local custom or tolerance of such payments by local authorities

Terminology

Briber = Initiator, offering bribery as a means to promote interest,

Bribee = the person who has received the offer of bribery as a means to promote interest

Bribery – the offence of offering, paying, soliciting or accepting an advantage which would not otherwise be due to him/her in order to act/refrain from acting in a certain way in their official capacity

Elements of the Offences

- ▶ Promising, offering or giving, soliciting or accepting (directly or indirectly)
- ▶ A public official
- ▶ An undue advantage for the official or another or entity
- ▶ Act or refrain from acting in the exercise of their official duties

BREAKOUT

Using the case study:

- ▶ What information provided by the confidential informant would meet each of these elements?
- ▶ What evidence might you seek to prove these elements?

Element	Information from Confidential Informant	Likely sources of evidence
Undue Advantage		
Soliciting/Accepting Promising/Giving		
Public Official		
Act in exercise of Official duties		

BREAKOUT EXERCISE

Element	Information from Confidential Informant	Likely sources of evidence
Undue Advantage	5% Upfront 2% Kickback	Banking Unexplained wealth calculation Total monthly billings
Soliciting/Accepting Promising/Giving	John instruction to Antonio where to wire 'fees' and 'kickbacks' Antonio wiring kickback Agreement	All messaging formats Evidence of association A T Maintenance Bank accounts
Public Official	Director of Procurement for City of Riverlance	Code of Conduct Expert/HR Witness Employment contract
Act in exercise of Official duties	Provision of inside information Contract award to AT Maintenance and Supplies Ltd	Job description Witness evidence Digital footprint Documentary evidence

Investigation Strategy

- ▶ Choosing the scope of your investigation
- ▶ Know your legal powers
- ▶ Managing information and preserving the chain of evidence
- ▶ Case analysis
- ▶ Asset Tracing
- ▶ Information security
- ▶ Defence tactics

Scope

Beware the investigation that can get too big to analyse or present at court. Keep it simple stupid! Resources must be considered.

Legal Powers

Open-Source information gathering, production orders/subpoenas, search and seizure, surveillance, wiretapping, banking analysis, asset investigation, unexplained wealth

Managing Investigations

Electronic database, description of evidence, tracking the evidence, secure store (preserving the chain of custody)

Case analysis

Diagrams, timelines, good fact vs bad fact, identifying evidence for each element of the offence

Information security

Anonymised communication between investigators and prosecutors and outside entities like the defence lawyers

Witness anonymity order – anonymise the identity of officers concerned as well as any whistleblower, (voice distortion, screening/video links, using pseudonyms), could involve masks being used during arrest and search, citation of officer numbers rather than names, pseudonyms

Secure storage of information

CASE STUDY 5

You requested information from the Cayman Islands under a Tax Information Exchange Agreement. This provided you with JC Consulting LLC's returned accounts, the company registration details and tax calculations.

The company registration details show that JC Consulting LLC were incorporated using an agent in North America called Thomas Richard and Harrison LLP. They are a law firm specialising in tax and corporate international law. It appears that they are also they have filed the tax returns and company accounts for JC Consulting LLC.

You are aware of Thomas Richard and Harrison LLP's reputation for facilitating tax avoidance schemes. You suspect that this firm may be knowingly assisting John to hide the funds from corruption.

Question:

What information do you think that Thomas Richard and Harrison LLP will hold?

CASE STUDY 6

You decide that you need the information which the firm may have relating to JC Consulting LLC and suspect that they will hold the information you need prove the link between John and the company. You decide to attend the premises of Thomas Richard and Harrison LLP as you suspect that if you request the documents, they may fail to provide it or at worst, destroy it. Your options are an order for the immediate production of the documents or to search the premises.

Question:

What are the issues will you need to consider if you wish to search the premises?

Risk assessment

Warrants

Specialist skills (cash dogs, IT expertise, specialist counsel)

LPP

What to seize? How far to seize and not to seize? Disclosure?

Disclosure (Discovery)



Schedule,
Review and
Reveal

Disclosure/Discovery

Information – 1TB is 83million pages of word documents

Legal Professional Privilege

Legal Professional Privilege (Attorney-Client Privilege) and Third Party Collateral Intrusion

- ▶ Measures to prevent collection of legally professionally privileged (LPP) or third-party information
- ▶ Removal of LPP or Third-Party material from seized material by an independent legal professional
- ▶ Challenges to the process and duties to collaborate with the defence

Legal advice privilege

Protects communications between a lawyer and client that are for the purpose of giving or receiving legal advice

Litigation privilege

Protects communications between lawyers or their clients and third parties for the purpose of obtaining information or advice for litigation

Third party collateral intrusion

If you are conducting a search of a lawyer's office, your warrant will limit the material that you are allowed to collect. But what happens if you inadvertently remove material which relates to a third party – return it! Take no copies.

Outline process for dealing with LPP material – request an indication from the document owner what they consider contains LPP, sift the material on the premises using an independent lawyer to review it, remove additional material found within seized documents and isolate them from the rest of the investigation (if a file is found to contain suspected LPP material, investigators would stop their review of the material, then seek independent review of all of the material within the file.

Challenges

If defence disagree with assessment made, they may apply to the court to prevent the investigators from using the material (i.e. injunction).

False claims that LPP material is contained within the seized documents as this will slow

down the investigation.

CASE STUDY 7

You executed the search warrant at the premises of Thomas Richard and Harrison LLP. You ensure that you take all precautions to prevent the seizure of legal professionally privileged information.

During the search, you recover banking information which shows that John had instructed Thomas Richard and Harrison LLP to incorporate JC Consulting LLC. They also recover some of the bank statements from JC Consulting LLC which shows a large number of payments to a bank account in Jersey.

You make an enquiry regarding the account. The intelligence you received reveals that the account is registered to “The 1959 Trust”. The Trust is registered in Jersey. The signatory on the account is David Booker.

David Booker is the father of Sarah Carson. David is a high-profile government minister in North America.

Question:

Does that information change the way you approach the case? If so, how?

Sensitive handling

Belt and braces approach

Limit information to prevent leaks

Consider clearances of individuals concerned

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International Cooperation

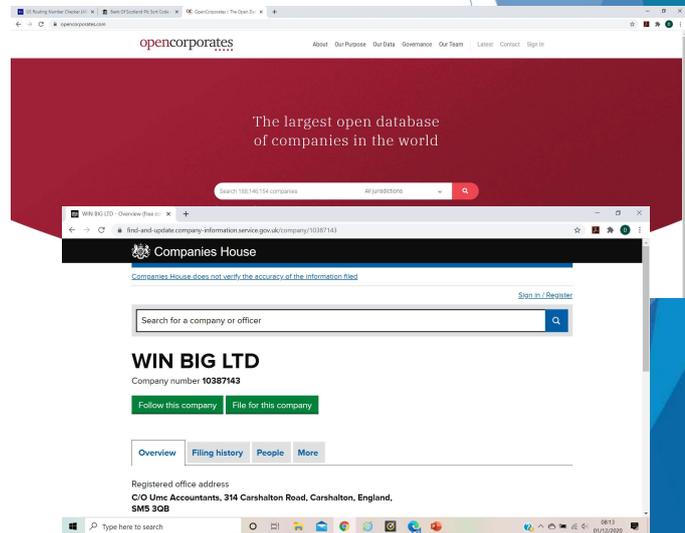
SOURCES OF INFORMATION

Open Sources:

- ▶ Corporate registries
- ▶ Property registers
- ▶ Google maps
- ▶ Social media
- ▶ Banking codes

Closed Sources:

- ▶ Suspicious activity/transaction reports
- ▶ Bank records
- ▶ Tax records
- ▶ Intelligence sharing by banks



Insurance policies
Shareholdings

GALAVOTTI, Mattia

Correspondence address
40 Wood End Lane, Northolt, England, UB5 4JL

Role RESIGNED	Date of birth	Appointed on	Resigned on
Director	January 1979	21 September 2016	29 November 2016

Nationality	Country of residence	Occupation
Italian	Austria	Company Director



40 Wood End Ln
Northolt UB5 4JL
Directions

40, Wood End Lane, Northolt, Greater London UB5 4JL
3 bed, terraced
Previously listed on Rightmove: November 2021



PROPERTY TYPE: Terraced
BEDROOMS: 3
BATHROOMS: 2



Google

Image capture

EXAMPLE MT103

```
HSBC <=> NET-SWIFT 18.10.12 13:19:09
Report Time Zone : +0100 (GMT)
Delivery date & time : 18-OCTOBER- 2012
Message Reference : J05279800C
TRANSMISSION : INSTANT TYPE MT103 Single Customer Credit Transfer
RCVD+DATE : INPUT TIME = 13:19:09 +0100 (GMT)
51A:RCVD+SENDER : MIDLG822
RCVD+SENDER'S BANK : HSBC BANK PLC
RCVD+SENDER'S BANK ADDRESS : 8 CANADA SQUARE, LONDON E14 5HQ, UNITED KINGDOM
RCVD+SENDER'S ACCOUNT NAME : SOFTWORKS CORPORATION
RCVD+SENDER'S ACCOUNT NUMBER : 72000066
RCVD+SENDER'S SORT CODE : 400515
RCVD+SENDER'S SWIFT CODE : MIDLG822
RCVD+ Instant type and transmission
RCVD+NOTIFICATION (TRANSMISSION) OF ORIGINAL SENT
SECURITY CONFIRMATION CODE : 9012880455X
RCVD+ NETWORK DELIVERY STATUS : NETWORK
RCVD+ BRANCH NETWORK : 200496-BARCG822XXX 4890046
RCVD+ MESSAGE INPUT REFERENCE : PSZ00606031WH6021
RCVD+ Message Trailer
57A:RCVD+OWN/ T/B/C ID : 400965-HSBC/BARC.TR84312
RCVD+SWIFT MESSAGE TYPE : (ACK) 103 BOX NETWORK
RCVD+FORMAT MESSAGE : MT 103 INSTANT CREDIT
RCVD+RECEIVER'S BANK : BARCLAYS BANK PLC
RCVD+RECEIVER'S BANK ADDRESS : BARCLAYS HOUSE, 1 WINDBORNE ROAD, POOLE DORSET, UK
RCVD+RECEIVER'S ACCOUNT NAME : BEST GLOBAL PUBLISHING LIMITED
RCVD+RECEIVER'S ACCOUNT NUMBER: 52812722
RCVD+RECEIVER'S IBAN NUMBER : GB19BARC20049652812722
RCVD+RECEIVER'S SORT CODE : 200496
RCVD+RECEIVER'S SWIFT CODE : BARCG822
RCVD+RECEIVER'S BANK OFFICER : MR. MURRY
RCVD+SEND: OUTPUT REFERENCE: HSBC:UK 400515/ 42 9.3633618 MIDLG822XXXG8365684600
SESSION 2012 SEQUENCE: MARK 2012 PAYMENT
RCVD+DATE: 18.10.2012
RCVD+ Value Amount: € 1,000,000,000.00 EURO (ONE BILLION EURO ONLY)
RCVD+ Message Trailer
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Date
Amount
Originator
Originator Address
Originator Bank and BIC
Beneficiary Bank and BIC
Beneficiary
Beneficiary Address (Optional)
References/Memo Field (Optional)

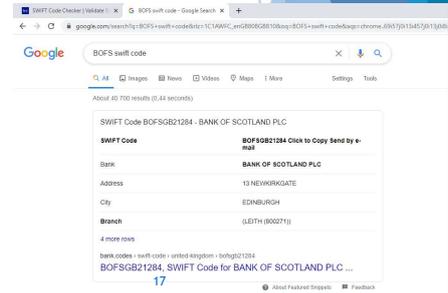
Number of tools available to interpret the available tools

INTERPRETATION



IBAN & Bank Details

Details for IBAN GB36BOFS12110147658903	
Country	 United Kingdom [GB]
SEPA Country	Yes
Checksum	36
BBAN	BOFS12110147658903
SWIFT/BIC Code	BOFS
Sort Code	121101
Account Number	47658903



Sort Codes are branch codes in the UK

If I put "Sort Code" and "121101" into Google – it tells me it's a branch in London



Mutual Administrative Assistance

Mutual Administrative Assistance

“police to police or prosecutor to prosecutor...‘informal assistance’, as it does not involve the issuing of the formal letter of request that forms the basis of a mutual legal assistance request...used when making evidence-gathering requests to a state where no coercive power...it does not mean that the form of the evidence obtained is informal or non-evidential”

Council of Europe

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US Examples
UK Examples

Overseas Intelligence Requests

A number of international avenues exist to facilitate the exchange of information on an intelligence only basis, the most common are:

- ▶ The Egmont Group of Financial Intelligence Units
- ▶ Inter-Agency Asset Recovery Networks
- ▶ Overseas law enforcement liaison officers
- ▶ International law enforcement networks
- ▶ Tax Information Exchange Agreements

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How to find out about the 1959 Trust account in Jersey.

“banking information which shows that John had instructed Thomas Richard and Harrison LLP to incorporate JC Consulting LLC. They also recover some of the bank statements from JC Consulting LLC which shows a large number of payments to a bank account in Jersey. You make an enquiry regarding the account. The intelligence you received reveals that the account is registered to “The 1959 Trust”. The Trust is registered in Jersey. The signatory on the account is David Booker.”

Egmont Group

The Egmont Group is a platform for the secure exchange expertise and financial intelligence to combat money laundering and terrorist financing.

It presently has 170 member financial intelligence units.

- ▶ Information can be obtained from other FIUs on request or shared spontaneously
- ▶ Can only be accessed through the FIC
- ▶ Information is provided on an intelligence only basis meaning that it cannot be used as evidence

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There are four models of FIUs: judicial, law enforcement, Administrative, and hybrid.

The Judicial Model is established within the judicial branch of government wherein “disclosures” of suspicious financial activity are received by the investigative agencies of a country from its financial sector such that the judiciary powers can be brought into play e.g. seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches, etc.

The Law Enforcement Model implements anti-money laundering measures alongside already existing law enforcement systems, supporting the efforts of multiple law enforcement or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.

The Administrative Model is a centralized, independent, administrative authority, which receives and processes information from the financial sector and transmits disclosures to judicial or law enforcement authorities for prosecution. It functions as a “buffer” between the financial and the law enforcement communities.

The Hybrid Model serves as a disclosure intermediary and a link to both judicial and law enforcement authorities. It combines elements of at least two of the FIU models.

Inter-Agency Asset Recovery Networks



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Original network was the Camden Asset Recovery Network with 54 members and 28 EU jurisdictions. Permanent secretariat at Europol in the Hague. Working language is English. Created by a meeting in Ireland in 2005.

CARIN was designed to provide complete asset recovery process, from the starting point of the investigation involving the tracing of assets, to freezing and seizure, management and finally the forfeiture/confiscation, including any necessary asset sharing between jurisdictions.

They also feed into proposals for reforms of legislation in the EU commission.

RRAG: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, México, Panamá, Paraguay, Peru, Uruguay

ARIN-EA: Burundi, Ethiopia, Kenya, Rwanda, South Sudan, Djibouti, and Uganda

ARINWA: Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Guinea, Guinea Bissau, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo, Sao Tome & Principe

ARIN-AP: Cambodia, India, Japan, South Korea, New Zealand, Sri Lanka, Timor-Leste, Australia, CARIN, Indonesia, Kazakhstan, Malaysia, Chinese Taipei, Tonga, Brunei, Cook Islands, Interpol, Mongolia, Pakistan, Thailand and UN

Each network has decided its own path.

ARINSA is an observer member of CARIN and has access to contact points through that Network. Lindy

International law enforcement networks

International Liaison Officers



Command and Coordination Centre



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Command and Coordination Centre = requests for urgent assistance is the first point of contact. Use of databases

The page features an abstract background of overlapping blue geometric shapes, including triangles and polygons, in various shades of blue, ranging from light to dark. The shapes are primarily located on the right side and bottom of the page, with some extending towards the center.

Mutual Legal Assistance

MLA - what is it?

“a process by which States seek and provide assistance in gathering evidence for use in criminal cases”

UNODC

“sometimes known as ‘judicial assistance’ is the formal way in which states request and provide assistance in obtaining evidence located in one state to assist in criminal investigations or proceedings in another state”

Council of Europe

Mutual – between states with an expectation of reciprocity

Legal – engaging the legal mechanisms of the state (i.e not administrative mechanisms)

Assistance – requests for help!

Terminology

“Subject”

Person or body who is the subject of the investigation or prosecution (otherwise, suspect or defendant)

“Requested State”

State who receives the request from another

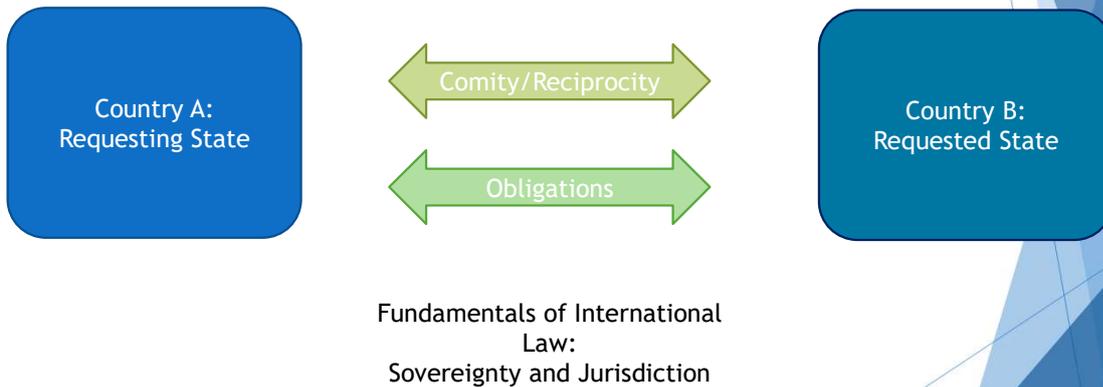
“Requesting State”

State making the request for assistance

“Commission Rogatoire”, “Commission Rogatory” or “Letter of Request”

Other names for a Mutual Legal Assistance Request. Sometimes used to denote that the request is made without a treaty on the basis of reciprocity and comity.

MLA - Why is it necessary?



1. Country A wants to get evidence from Country B. Why can't it just send law enforcement officers to get it themselves?
2. International law - Sovereignty – what does it mean?
3. Jurisdiction at International law
4. Prescriptive jurisdiction - explain
5. Enforcement jurisdiction - explain
6. Adjudicative jurisdiction – explain
7. Mutual respect and friendliness – comity
8. Obligations – agreements, treaties, memberships of international bodies

International Basis for MLA

- ▶ Comity and Reciprocity
- ▶ Bilateral Treaties
- ▶ Multilateral Treaties
 - ▶ UN Convention Against Corruption
 - ▶ UN Convention Against Transnational Organised Crime

Who do you have bilateral treaties with?

MLA - What can it do?

“States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings...”

UN Convention against Transnational Organised Crime (2000 - Palermo), Art. 18(1)

UN Convention against Corruption (2003 - New York), Art. 46(1)

“Taking evidence or statements from persons”

“Examining objects and sites”

“Providing information, evidentiary items and expert evaluations”

“Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes”

“Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records”

“Any other type of assistance that is not contrary to the domestic law of the requested State Party”

“Executing searches and seizures, and freezing”

“Effecting service of judicial documents”

“Facilitating the voluntary appearance of persons in the requesting State Party”

UN Convention against Transnational Organised Crime (2000 – Palermo), Art. 18(3)

UN Convention against Corruption (2003 – New York), Art. 46(3)

Most treaties will have very similar terms for what can be provided
Treaty terms will decide what can/cannot be obtained.

Writing an MLA Request

UNODC MLA REQUEST WRITER TOOL



The screenshot shows the UNODC website with the title "Mutual Legal Assistance Request Writer Tool". The page includes a navigation menu with "Home", "About UNODC", "Quick Links", "Field Offices", and "Site Map". The main content area features an "Introduction" section with the following text:

Mutual Legal Assistance Request Writer Tool

The Mutual Legal Assistance Request Writer Tool (MLA Tool) was developed by UNODC to assist criminal justice practitioners in drafting expeditiously MLA requests, thereby enhancing cooperation between States and accelerating responses to such requests.

In its revised and expanded version, the Tool is an HTML-based stand-alone application, capable of running on all devices. It provides guidance to practitioners through each step of the drafting process and further helps them draft MLA requests by filling in all appropriate and relevant information.

The new guiding elements in the revised text of the MLA Tool are the following:

- The integration of additional specific forms or means of international cooperation in criminal matters, including transfer of criminal proceedings and videoconferencing;
- The inclusion in the part under the title "Any other form of assistance" of references to joint investigations and international cooperation to conduct controlled deliveries;
- The addition of substantive text in the so called "digital evidence module" (taking into account all pertinent developments in the field of international cooperation to combat cybercrime and covering the following forms of cooperation: expedited preservation of stored computer data; ensuring access to stored computer data; and real-time collection of traffic data); and
- The streamlining of the asset recovery features of the tool to avoid overlaps and repetition with the traditional MLA features.

https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

Basic Structure

Use the following headings for your request:

- ▶ Introduction
- ▶ Legal Basis of Request
- ▶ Purpose and Subject of the Request
- ▶ Summary of Facts
- ▶ Details of Assistance Requested
- ▶ Format of Evidence Provided
- ▶ Undertakings/Assurances
- ▶ Reciprocity
- ▶ Transmission and Contact Details
- ▶ Appendices

Legal Basis of the Request

International Law Basis NOT domestic law

Which treaty or treaties do you rely on?

Is the requested state a signatory to the treaty?

https://treaties.un.org/Pages/Index.aspx?clang=_en

If there are no treaties, are you inviting the requested state to respond on the basis of reciprocity?

Summary of Facts

Tell the story of the criminality

- ▶ Give a full summary of the relevant facts in chronological order
- ▶ Show a clear nexus to the assistance requested
- ▶ Avoid jargon!
- ▶ Watch your grammar and use sub-headings if needed.
- ▶ What is the value of the information you are requesting to the investigation/prosecution?

Summary of Facts

1. On 26th August 2021, an investigation into NAVE and his State Owned Enterprise employer, QUEIN of Herts, in relation to theft and corruption. QUEIN are a state owned tart manufacturer and NAVE is the finance director.
2. The investigation commenced when another employee, Mr King, called investigators regarding an alleged discrepancy between the standard wholesale price paid for QUIEN tarts and the discounted amount that NAVE was selling them for.
3. An investigation revealed that NAVE had authorised the sale of QUIEN tarts at an undervalue.
4. The investigators recovered business records from QUEIN and obtained copies of NAVE's bank accounts during the period of the sales. Analysis revealed that NAVE had received payments into his account totalling £1m as consultancy payments from a rival manufacturer.

1. On 26th August 2021, an investigation commenced into NAVE and his SOE employer, QUEIN of Herts, in relation to theft and corruption. QUEIN are a state owned tart manufacturer and NAVE is the finance director.
2. The business records for QUIEN showed that tarts were being sold at an undervalue in contracts negotiated by NAVE.
3. NAVE's bank account showed that during the same period he received £1m from a rival manufacturer as consultancy fees.
4. The investigation was commenced following allegations by a fellow QUIEN employee, Mr King.

Do not over complicate.

What do you think of the summary in the green box? Then show blue

Which do you think is easier to understand and translate?

Assistance Requested

Points to consider:

- ▶ Assistance should be specific and clear – no fishing
- ▶ Assistance requested should be justified by the facts given above and the relevance of them to your case should already be obvious
- ▶ Use a description of your request which can be easily translated. Avoid jargon!



i.e. “A statement in writing from an official of X Bank producing banking material for account number 98748742129 held in the name of Mrs Crook (nee Innocent; date of birth, 6 May 1966; UK passport number NK74210902), including but no limited to:

- a) Account opening documents and due diligence records, including identification documents for the account holder;....”

What do you think the consequences are of failing to be specific enough or failing to justify your requests?

Open source materials and informal cooperation

To cover confidentiality...

“On the mutual understanding that matters within this request will only be divulged where it is necessary for the provision of the assistance requested and as a result of the foregoing, the government of South Africa requests the following assistance”

Drafting Deficiencies

Some of the common deficiencies in MLA drafting are as follows:

The request is not specific enough

The request does not contain sufficient information or is unclear

The request does not cite the international law basis



The request has not been translated (or not properly translated)

The request fails to show a clear nexus between the investigation and the assistance requested in the other jurisdiction



When you receive an MLA request, what stops you from providing the assistance requested?

1. The request is not specific enough – do not fish; only ask for evidence that you know exists through MAA or through evidence obtained in SA. What kind of material might that be?
2. The request does not contain sufficient information - sufficient evidence must be included to permit the requested jurisdiction to successfully obtain court orders.
3. The request does not cite the international law basis for the request – domestic authorisation under ICCMA does not bind another jurisdiction. What kind of international law basis are we looking for here?
4. No clear connection between the assistance requested and the investigation – many jurisdictions require a connection – for many it will be part of the legal test that they apply to obtain the court orders that are needed for the evidence. No connection = no court orders = no evidence. Include information on the significance of the evidence that you are requesting at the end of your factual summary
5. Translation – in some countries the language will depend upon the region where the evidence is required. i.e. Swiss Cantons. Translation of legal terminology may be misinterpreted so try to simplify your language. Use short sentences, good grammar and

avoid jargon. All these things make it easier to translate.

How might we overcome these problems?

Grounds for Refusal

The following are grounds upon which States may refuse to assist:

- Lack of Dual Criminality
- Contrary to the legal system or laws of the Requested State
- Prejudice to Sovereignty, security, public order or other essential interests
- Human rights considerations or severity of punishment
- Political Offences
- Double jeopardy
- Fiscal Offences and Banking Secrecy

1. Lack of dual criminality - does not matter that the description of the criminality is not the same in the Requested State, as long as the conduct would constitute an offence under the laws of the Requested State.
2. Contrary to legal system or laws of the requested state - slightly unusual or specialist, it is advisable to check with the Requested State through informal channels that it can be provided
3. Prejudice to sovereignty - most likely scenario is where it would harm national security or an essential public interest i.e. they have their own investigation (no proceedings) which might prevent on the basis of double jeopardy once the proceedings are commenced
4. Human rights - some States may refuse to provide assistance if the penalty for the offence(s) could constitute torture, inhuman or degrading treatment or death. Diplomatic assurances.
5. Political offences - subject has been involved in political dissent (not extending to terrorist acts) against the Requesting State and the rights of the subject of the request cannot be guaranteed if the requested evidence were provided
6. Double jeopardy - defendant should not be prosecuted twice for the same offence

7. Fiscal Offences and Banking Secrecy - usually used to refer to tax offences but has been broadly construed as money laundering and proceeds of crime matters in the past. Most treaties signed since 2000 now include an obligation to respond in fiscal matters. If problems with banking secrecy are encountered, it is advisable to try to resolve it with the central authority

Useful Links

UN Sharing Electronic Resources and Laws on Crime

<https://sherloc.unodc.org>

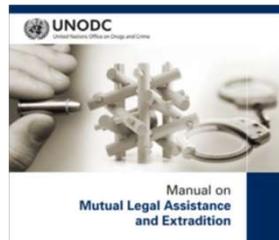


European Judicial Network Atlas

<https://www.ejn-crimjust.europa.eu/ejn/AtlasChooseCountry.aspx>



Useful Guidance



https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

CASE STUDY 8

You write a mutual legal assistance request to Jersey. You need the information for the Trust accounts to show the payments which are being made by JC Consulting LLC. It would be useful to obtain the trust documents as this would show the trustees, the beneficiaries and the trust documents.

Task:

1. Draft a paragraph for your mutual legal assistance request setting out one of the pieces of information that you are requesting from Jersey.
2. What evidence would you need to include in your case summary to prove the connection to Jersey?

JERSEY MLA REQUEST TASK EXAMPLE

TASK 1

Requests:

1. A witness statement from an official of Jersey Bank setting out information relating to account 138438598 held in the name of “The 1959 Trust” and supported by documents as follows:
 - (a) Bank statements for the period 1 January 2021 to 31 December 2023 showing all transactions on the account;
 - (b) Identity documents provided during the account opening process;
 - (c) Documentation relating to the signatories on the account including those which prove the identity of the signatories;
 - (d) Transaction vouchers (such as swift or payment messages) which relate to transactions in excess of \$5000.

JERSEY MLA REQUEST TASK EXAMPLE

TASK 2

Evidence to include:

- (a) The full details of the corrupt act - award of contracts where the tender process was subverted by John and Antonio in return for payments to John.

- (b) The payments made from A T Maintenance to JC Consulting, payments from JC Consulting to The 1959 Trust in Jersey.

Money Laundering

Money Laundering Explained



Just in that short explanation there are different methods and enablers of ML

Money Laundering Typologies

Common Typologies:

- ▶ Trade based money laundering
- ▶ Strawmen, shell companies, false invoicing, loans and secrecy jurisdictions
- ▶ Controller-led syndicates
- ▶ Cuckoo smurfing
- ▶ Informal funds transfer systems
- ▶ Virtual currencies

When we talk about money laundering typologies, we mean identifiable methods, types, of money laundering activities. There are a number of typologies which have been identified by law enforcement across the world. On our whistlestop tour we are going to consider some of the most common.

Trade based money laundering



This can incorporate a number of different types of activity. Traditionally, cash businesses are used to integrate the money into the banking system so it can be legitimised.

Cash businesses??

What kind of crimes generate cash?

TBML: Strawmen, shell companies, trusts false invoicing, loans and secrecy jurisdictions



On a central London street renowned for high-class healthcare sits a property that houses 2,159 companies. Why has this prestigious address been used so many times as a centre for elaborate international fraud?
by [Oliver Bullough](#)



What is meant by Strawmen?

Shell companies – empty companies, no assets, no real business, often at the same address, same directors - Guardian Newspaper 19th April 2016

Trusts – what do we mean by trusts?

Secrecy jurisdictions – jurisdictions which allow individuals and companies to escape regulation and associated liabilities. Lack of transparency – no beneficial ownership register for companies or trusts, banking secrecy

Now to consider what this looks like in practice...

Example: Simple VAT Fraud

VAT FRAUD £5m (R100m)



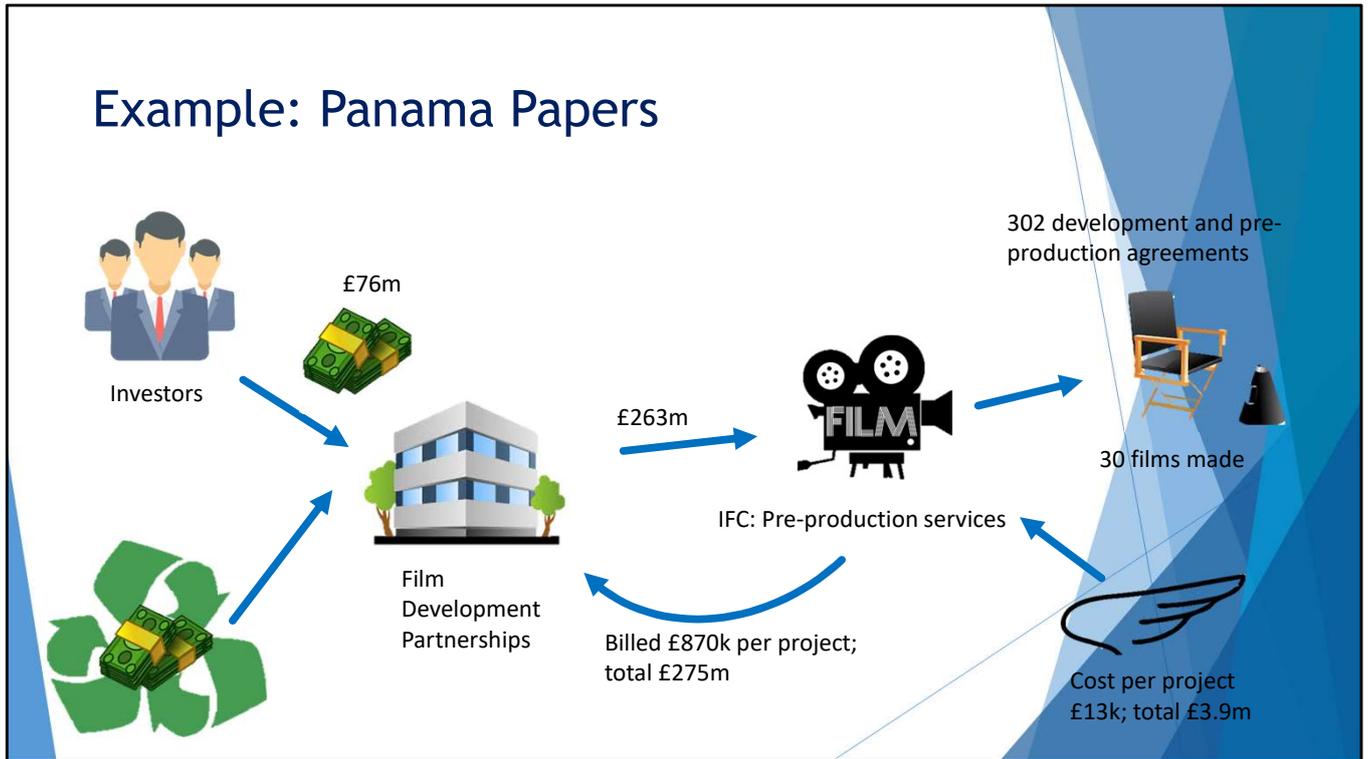
In this case, false invoicing was used to commit the offence and launder the money at the same time!

Fraud committed by using the hijacked details of foreign companies to falsify invoices which justified VAT repayments to the value of £5m

D purchased a property in Spain.

AI Ltd issued a false purchase invoice which used the details of Spanish Notaries. The invoice claimed to be a purchase of memory stick for the amount of £365,000 (R7.3m). The money was transferred in support of the alleged payment for the goods. But actually went to pay for the Spanish property. Meanwhile, the invoice with the money transfer was used as proof of purchase from the overseas and used as part of the claim for a VAT repayment.

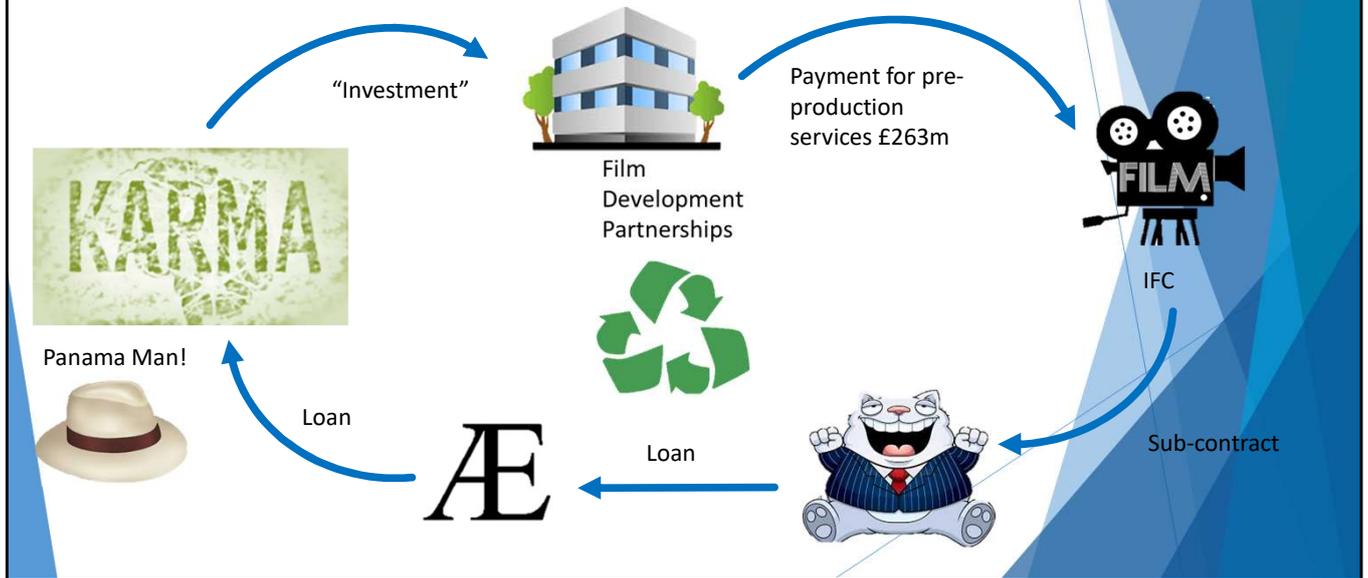
Example: Panama Papers



3 defendants – Keith, Robert and Charles. Keith is the brains!

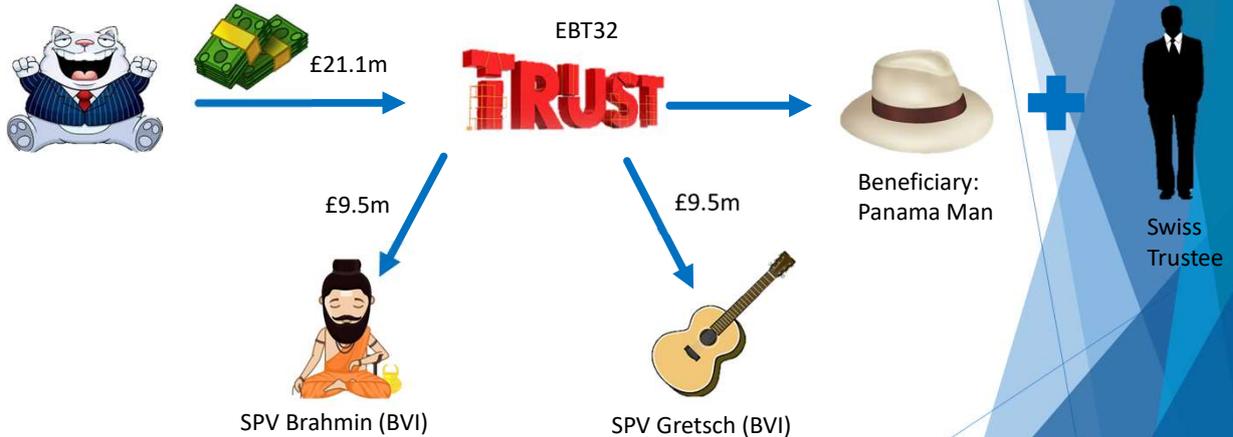
Total tax loss £98m

Example: Panama Papers



Not the only routing they used. They used 3 others with a mixture of the same and different companies.

Example: Panama Papers



How did they take the money out?

Trustee – Mark; also director of IFC

Keith, Robert and Charles were all implicated in the beneficial ownership of this trust. They each had their own individual trusts into which the money was subdivided.

Panama man as the beneficiary had allegedly written a “letter of wishes” – instructions of what to do if he died. He died the day after it was signed, and was in a coma at the time of the alleged signing

The letter of wishes delegated control of the trust to Keith.

In addition, Karma ownership passed into the control of EBT32 on his death.

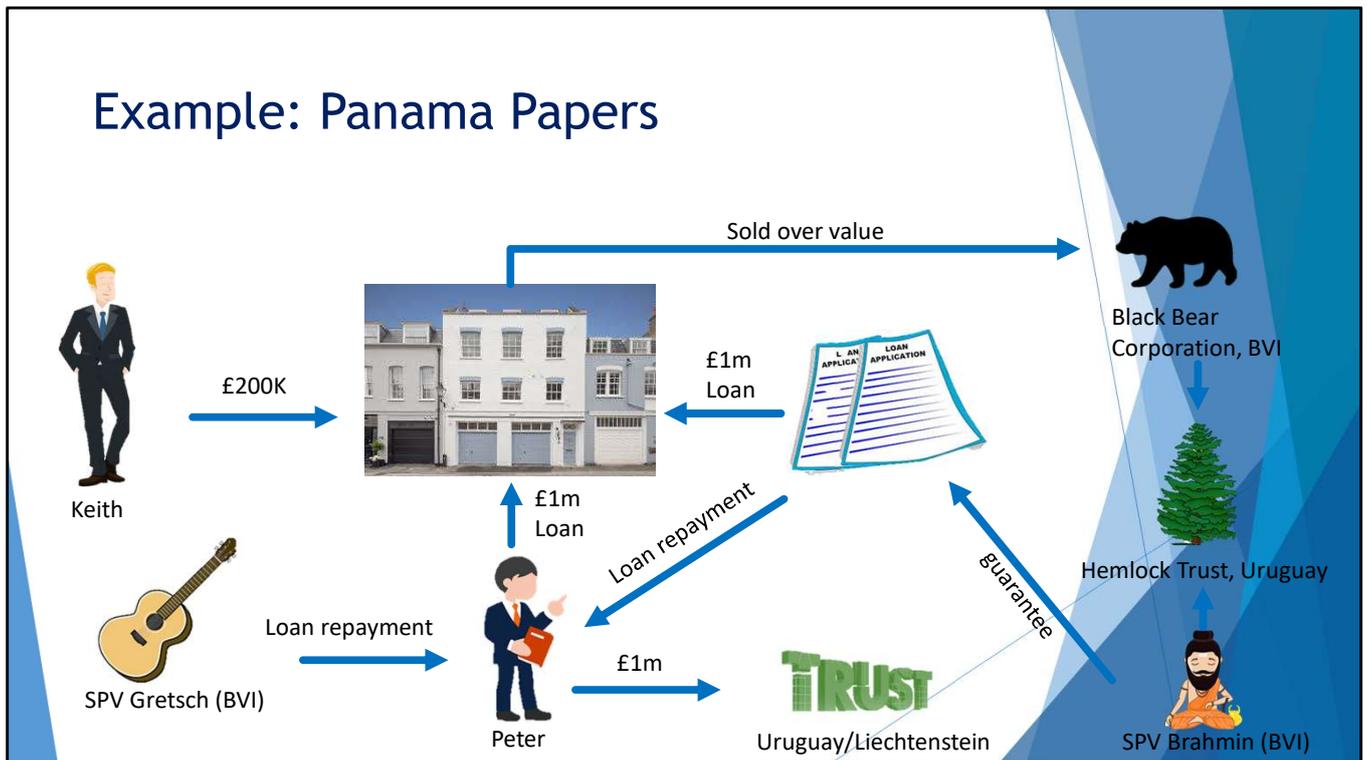
Immediately after his death, Keith set about moving the trust to Liechtenstein and onto Uruguay.

EBT32 made investments in Panamanian companies, and Spanish Property and UK property using sub-trusts.

Brahmin & Gretsch = SPV, Trust 32 was sole shareholders and the two companies were administered by the same Swiss trustees

Concentrating on one or two illustrations of the lengths that they went to, to conceal the proceeds of their enterprise... focus on Keith

Example: Panama Papers



House now worth around £5m

Peter has been paid back several times over. Money laundering tactic.

Brahmin guarantee the loan and back the guarantee with evidence of funds to support it in their account.

Black Bear – solicitor in Uruguay. No proper valuation conducted. Over priced because it had been valued the year before for £300k less. Keith needed this excess out of the property.

Once Brahmin no longer needs the money in its account, it moves the funds to Hemlock

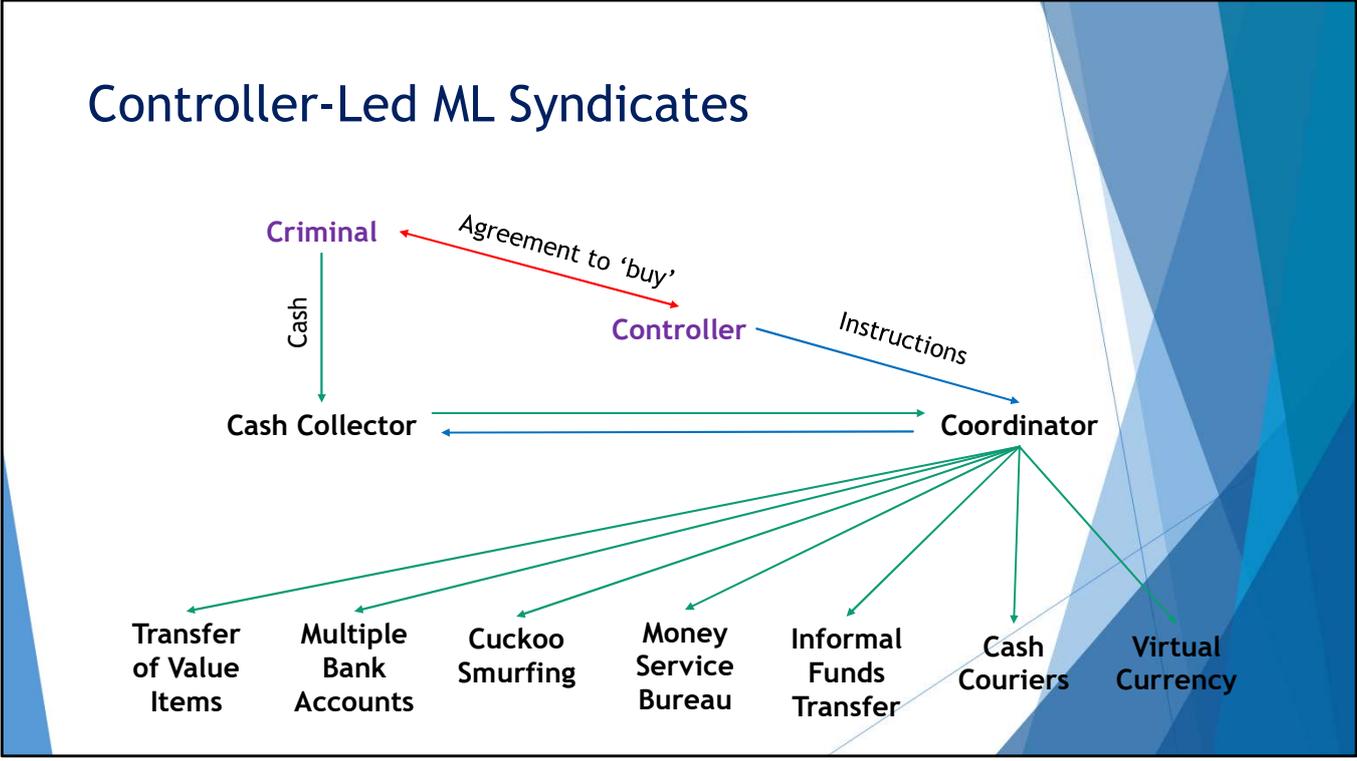
Hemlock also owns Black Bear and received funds from EBT32.

Then let – monies paid through a third party company and back to Keith

In this case we obtained a restraint over all assets (£47m), we listed a number of overseas parties. We were proceeding to confiscation when some of the investors won a civil court case against the defendants, valued at £45m plus interest.

Ultimately, the investors will reclaim, but they are having to pay back the tax. It can be enforced in full against the investors because they will have the means to pay. We agreed that we would recover anything which the investors were unable to.

Controller-Led ML Syndicates



Controller – may be in a third country – South Asia/Middle East

Local coordinator

Cash Collectors

In red - enablers

Transfers of Value, Cash Couriers and Multiple Bank Accounts



Wrinkly raiders

 Brian Probert, 76 Pleaded guilty Known as 'the governor', said to be suffering from cancer	 Terry Perkins, 67 Pleaded guilty Career criminal whose boasts about the heist were recorded by police. Electric	 John Collins, 74 Pleaded guilty Fed asleep on lockup duty that drove his sentence to the same. Described as 'winked friend'	 Carl Reed, 58 Convicted of a bid to catch his way through the heist. Inflammatory blood disease suffered
 David Jones, 56 Pleaded guilty Building experts who credited the heist to break into the vault. Not his share in a cemetery	 Hugh Dwyer, 48 Convicted of a bid London prisoner who moved to Hatton Garden to help. His gang disposed of the proceeds	 William 'Nicky the Fish' Lincoln, 60 Convicted of a bid to help his gang. He was a regular. He got the heist. He got the heist. He got the heist.	 David 'the even' whereabouts unknown The missing eighth man got away with gold and foreign currency

EJB/031115/12

EJB/031115/4

EJB/031115/6



Hatton Garden – transfers of value

'Basil' was caught and is now serving his sentence Michael Seed, 58
£6.5m confiscation orders

Cash couriers – across country or internationally. Token may be used

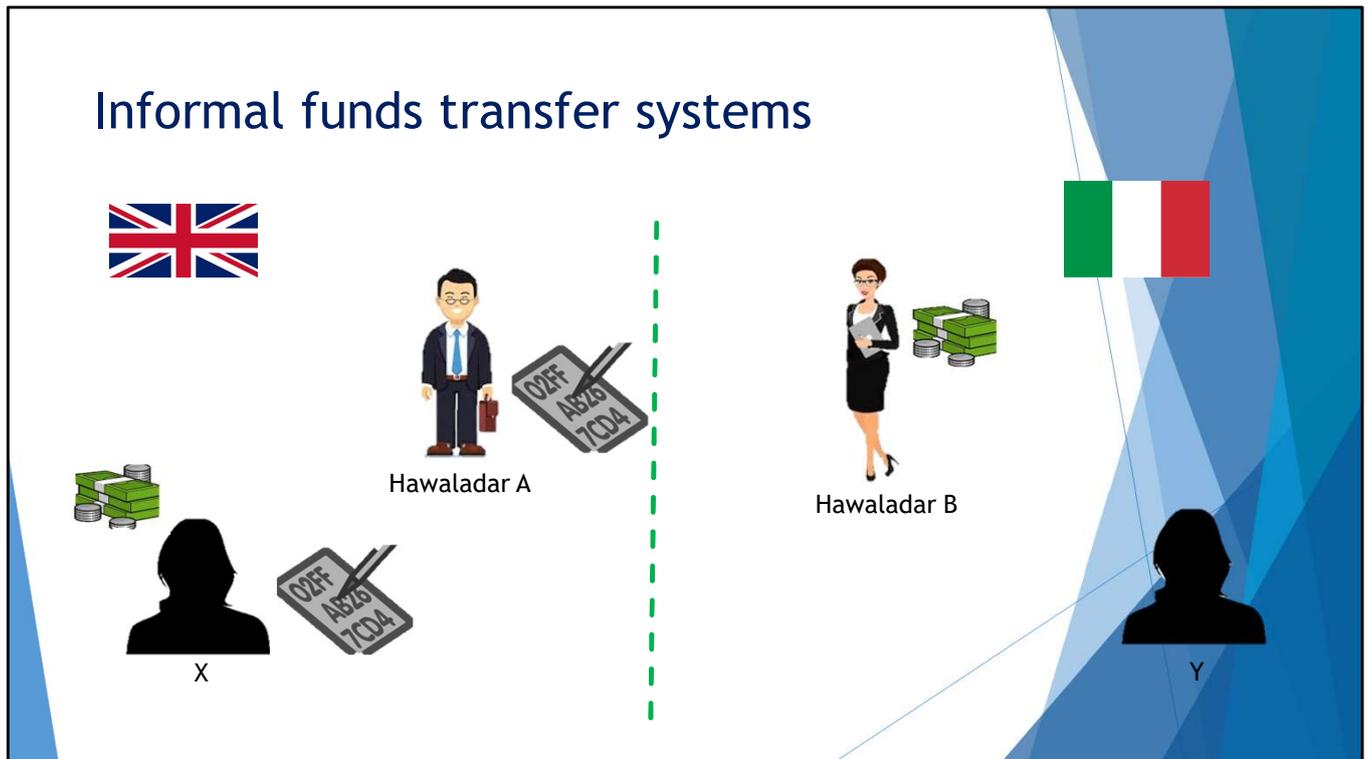
Cuckoo smurfing



Transfer of criminal funds through the accounts of unwitting customers who receive funds or payments from abroad having a genuine reason to receive money.

1. Launderer has arrangement with innocent third party to pay them money (i.e. loan, investment)
2. OCG transfers funds to launderer (our cuckoo). Here it is mixed with other funds under the launderer's control.
3. Launderer transfers amounts into the unwitting third party accounts (i.e. loan amount, capital for an investment) below amounts that would increase detection (i.e. reporting thresholds)
4. Launderer reclaims money from unwitting third party and returns money to the OCG, probably through shell company or false invoicing or direct payment from unwitting third party

Informal funds transfer systems



There are a number of different informal funds transfer systems in use in different regions. These have the ability to transmit domestically and internationally.

Hawala banking is one of the best known. However, there are other systems which are used widely across China and South East Asia - Fei-Ch'ien (China), Padala (Philippines), Hundi (India), Hui Kuan (Hong Kong), and Phei Kwan (Thailand).

I'm going to use Hawala as the example here as it is one of the most common. It is not to be confused with Islamic Banking. Islamic Banking complies with regulatory obligations and contractual norms but also complies with Sha'ria law. Hawala is not solely a money laundering method. Legitimate transactions may also take place through it. It is associated with expatriate communities who migrated to Europe, the Persian Gulf region, and North America and who want to send money to their relatives on the Indian subcontinent, East Asia, Africa, Eastern Europe, and elsewhere. The term hawala means "transfer" or "wire" in arabic banking jargon. Although the Hawala system is associated with confidentiality, in some cases they are caught by regulatory provisions which means that if they conduct their trade without abiding by anti-money laundering regulations (kyc, record keeping etc), then they commit an offence. Often however, the transactions are anonymous and minimal records are kept; where they are kept they are often in code. This leaves it open to abuse.

Virtual Currencies



UNODC offer whole courses on this topic! So this is not intended to tell you everything but it will give you a flavour.

Also referred to as Cryptocurrency – Bitcoin, Ethereum, LiteCoin. Today, 1 bitcoin was worth \$65489. They can be traded in fractions of a bitcoin. Characterised by large fluctuations in value.

It is anonymous and has therefore been used to enable dark web transactions and has been widely used in ransomware attacks.

As it is not located in any particular jurisdiction, it is usually considered to be outside national legislation and completely unregulated. There are now attempts by national governments to regulate the companies who operate the virtual currencies but there are logistical problems with this (such as the location of the data being different to the location of a company – if the company even exists in the traditional sense, which it often does not).

Miners decrypt the bitcoin and then add to the blockchain to make the transaction. This process takes a huge amount of energy (same amount as Switzerland). Bitcoin might therefore be limited by the number of transactions that can be made on a single blockchain. Many believe that bitcoin and other cryptocurrencies will eventually collapse. Others believe that it is a type of Ponzi fraud.

Either way, at present it allows the owner to transfer huge values to someone else in a

manner which is unregulated, anonymous, extremely quick and convertible into a currency of your choice. Even accepted in certain Starbucks in the US!

This could be the subject of a whole course and I believe UNODC have been running them so if you have an interest, I would encourage you to take them up on the opportunities!

Useful links

FATF Publications on ML Methods and Trends

[https://www.fatf-gafi.org/publications/methodsandtrends/?hf=10&b=70&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/methodsandtrends/?hf=10&b=70&s=desc(fatf_releasedate))

FATF Trade-Based Money Laundering Webinar (on YouTube)

<https://www.fatf-gafi.org/publications/methodsandtrends/documents/webinar-trade-based-money-laundering.html>

The background of the slide features an abstract design with various shades of blue. On the left side, there is a solid blue triangle pointing towards the center. On the right side, there are several overlapping, semi-transparent blue polygons of different shapes and colors, creating a layered, geometric effect. The central area is white, providing a clear space for the text.

Asset Recovery

Asset Freezing

- ▶ Court orders to prevent the dissipation of assets belonging to a particular individual
- ▶ Provisional measure
- ▶ May involve seizure or placing the asset under the control of a receiver/curator.



Asset Recovery

Common Legal Requirements

- ▶ Proceedings have been instituted or are about to be instituted
- ▶ A risk that the assets will not be available ('risk of dissipation')
- ▶ The assets are potentially subject to confiscation
- ▶ Undertaking in damages

Elements which need to be proved in the application.

Stage of proceedings will depend upon the legal system – ranges from the commencement of a criminal investigation to charging stage as the earliest point at which an application can be made. “are about to be instituted” sometimes interpreted very broadly.

Risk of dissipation is the way that the law in general will balance the suspect or defendant’s human rights. Art 1 Protocol 1 of the European Convention of Human Rights entitles each person to enjoyment and possession of their property. In freezing or seizing assets the state interferes with that right. The justification for interference is two fold – 1. the reasons for the proceedings and 2. the fact that the state will not freeze assets unless it is in the greater good and necessary for the effectiveness of the proceedings.

Using criminal legal requirements here but civil requirements for obtaining a freezing order are very similar. Generally require that there is a “good arguable case” in other words that the proceedings are not doomed to fail.

Freezing Orders

Scope

- ▶ Normally limited to assets controlled, held or gifted by the defendant to include:
 - ▶ Beneficial ownership of Property
 - ▶ Property held by corporate entities owned or controlled by the defendant
 - ▶ Property gifted to associate, company or family member
- ▶ Piercing/Lifting the corporate veil may be required
- ▶ Definition of ownership may change between different jurisdictions



Freezing Orders

Exceptions

- ▶ Common exceptions:
 - ▶ Living expenses
 - ▶ Legal expenses (including/excluding those arising from related criminal or confiscation proceedings)
 - ▶ Bona fide debts
 - ▶ Business expenses

- ▶ Often discretionary and dependant on non-availability of other assets which could be used for this purpose



CASE STUDY 9

Your investigation has revealed that since 2021, The 1959 Trust has purchased property in London, Rome and New York. The purchases were facilitated by Thomas Richard and Harrison LLP. The trust is owned by David Booker. The beneficiaries of the trust are Sarah Carson and Caroline Booker (David's other daughter). The trustees are a Swiss firm specialising in Trust management.

Question:

You want to freeze the assets of the trust as you believe that these represent the proceeds of the bribes received by John. What must you consider?

ANSWERS:

- (a) Cooperating with international partners
 - (b) Timing and awareness of the investigation
 - (c) High profile government minister – go carefully, double check your grounds, expect legal challenges
 - (d) Who gets included on the order?
 - (e) Who would you need to serve the freezing order on?
 - (f) Do you consider Thomas Richard and Harrison for money laundering?
- What actions can you take? (Report to regulatory body/ treat as suspect)

Confiscation

International Models

Two main methods of adopting international standards:

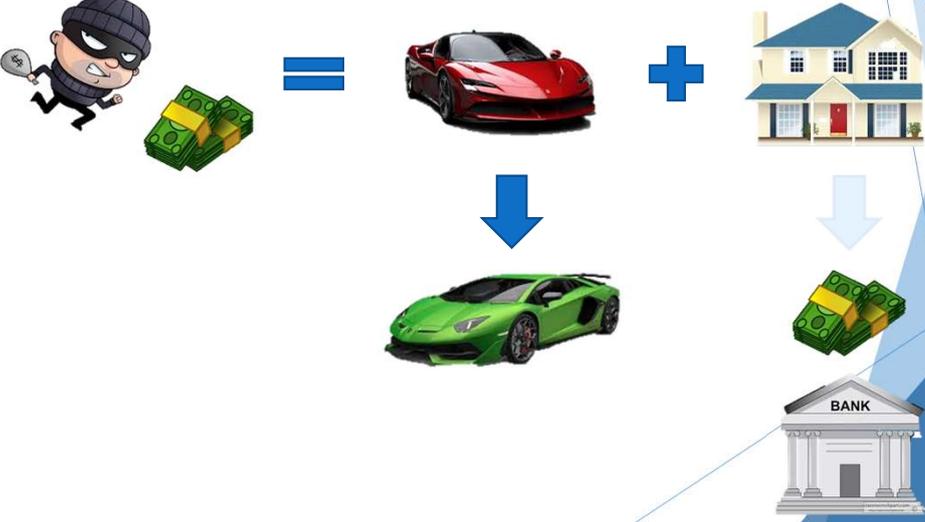


Property Based Systems



Value Based Systems

Property Based Systems



What is the amount of the benefit obtained?



\$1,000,000.00

What is the amount of the benefit?

Differences

	Property Based	Value Based
Requires tracing?	Yes	No
Confiscates direct/indirect proceeds only?	Yes	No
Expert evidence required?	Not Often	Sometimes
Choice of charges affects confiscation?	Not often	Yes
Money laundering prevents confiscation?	Sometimes	No
Confiscation of intangible benefit?	No	Yes

Extended confiscation

Increase in the value of money

May require separate legislation for instrumentalities

Definition of ownership in value based systems may provide a limitation

CASE STUDY 10

The financial analysis reveals that John received \$2,122,437 in payments from A T Maintenance and Supplies Ltd. It also shows that all of the money in the Cayman Investment and Trust Bank Account in the name of JC Consulting LLC derived from the bribes paid by Antonio. In addition, the money sent to The 1959 Trust derived from the bribes.

Groups 1 & 2: The money which went into The 1959 Trust account was paid in and then paid out in exact amounts for the purchase of the properties in London, Rome and New York within a very short period of time.

Groups 2 & 3: The money which went into The 1959 Trust account was one of a number of payments into the account around the same time. The other payments appear to result from legitimate sources. The funds were mixed with these other funds. There were payments out of the account to various purchases which included the property purchases in London, Rome and New York.

Questions:

What would be confiscated in a property-based system? What would be confiscated in a value-based system? Which system would you prefer to be using in this case? Why?

The background of the slide features an abstract design of overlapping, semi-transparent blue triangles and polygons in various shades of blue, ranging from light to dark. The text is centered on a white rectangular area within this design.

Alternatives to Prosecution

Non-Conviction Based Asset Recovery

Confiscates:

- ▶ Proceeds of or instruments of crime
- ▶ Property based



Common uses

- ▶ Offender dead, fled jurisdiction or is immune from prosecution
- ▶ Owner of the asset is unknown
- ▶ Acquittal or lack of prosecution
- ▶ Civil law jurisdictions may use it to confiscate assets in large or complex cases where criminal investigation is ongoing.

Unexplained wealth order

- ▶ Assets valued at £50,000 or more
- ▶ Reasonable suspicion that assets cannot be explained by legitimate income
- ▶ PEP or involved in serious crime

Politically Exposed Persons

An individual entrusted with prominent public function by an international organisation or a state other than the UK or another EEA (extends to family, close associates or connected persons)

Unexplained wealth order

The screenshot shows a press release from GHERSON LLP. The header includes logos for 'The Telegraph' and 'Evening Standard'. The main text of the press release reads: 'We are pleased to announce that our client, Mrs Zamira Hajiyeva, has reached a settlement with the National Crime Agency in respect of proceedings involving the first Unexplained Wealth Order'. Below this, it says '05 Aug 2024, 28 mins ago' and 'Share' with social media icons. At the bottom, there is a small headline: 'Zamira Hajiyeva has lost her challenge over the UK's first unexplained wealth order (PA)'. Below that, a sub-headline reads: 'Zamira Hajiyeva is attempting to overturn an Unexplained Wealth Order against the property in central London'.

A woman who spent £16m at Harrods in a decade can now be identified as Zamira Hajiyeva - the first target for the UK's new anti-corruption law.

The NCA believes the assets were obtained as a direct result of large-scale fraud and embezzlement, false accounting and money laundering.

In 2018, the NCA applied for unexplained wealth orders (UWOs) in relation to the two UK properties, as well as interim freezing orders to ensure that they could not be sold, transferred or dissipated. The UWOs were the first ever granted in the UK.

Hajiyev was the Chairman of the Board of the International Bank of Azerbaijan (IBA) until March 2015. The following year, he was convicted by a court in Azerbaijan of various offences, including misappropriation, abuse of office, fraud and embezzlement in connection with his tenure. In 2019, he was convicted of further embezzlement from the Moscow subsidiary bank of the IBA. He is currently serving a 16-year jail sentence in Baku.

NCA investigators subsequently identified numerous examples of funds derived from the Bank being transferred through multiple accounts in ways consistent with common money laundering practices. This was done by a close associate of Hajiyev, acting on his behalf.

Substantial sums were moved through a network of accounts and companies in a host of different jurisdictions – including the British Virgin Islands, Saint Kitts and Nevis, Panama, Cyprus and Luxembourg – and channelled into luxury assets for the family.

No reasonable explanation was provided to the NCA for the source of funds used to purchase either property. A significant proportion could be traced directly to sums generated by promissory notes and loan agreements used to conceal the theft of Bank monies.

The purchase of the golf club was conducted through a complex structure of Luxembourg and Guernsey-registered companies, and by using offshore trusts in Guernsey and later, Cyprus.

Virtually all of the funds used to purchase the Knightsbridge house are believed to have come from two specific Bank accounts. They were directed to the UK by an associate of Hajiyev via bank accounts set up in Cyprus, Estonia and Switzerland in the names of companies with no recorded link to Mr Hajiyev. A British Virgin Islands company solely owned by the same associate was used to purchase the house, before the property was transferred into an offshore trust also set up in the British Virgin Islands.

In March 2021, the Agency applied for a property freezing order over the two properties.

In June 2023, the NCA filed a claim for civil recovery at the High Court.

On Thursday 1 August, the civil recovery order was granted, resulting in the forfeiture of 70% of the value of both properties.

Facts from the newspapers:

Boucheron jewellery: £3.5m

Cartier jewellery: £1.4m

Dennis Basso, US fashion designer: £402,000

Sandwich by Tom: £332,000

(This spending may be a combination of cafe stops and high-end designer furniture by Tom Dixon)

The Harrods perfume counters: £160,000

Total spending: £16,309,077.87

NOT A TOTAL SUCCESS...NCA v Baker [2020]

Case against the son of a former Kazakh president in relation to property in London has failed. The court held that there was insufficient evidence of the link between the property and the evidence of criminal conduct. The property was held by offshore companies. ML tactic to prevent the tracing of funds involved and the determination of true beneficial ownership. The prosecuting authority now faces a cost bill estimated to be over £1m.

The Result...



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News

Luxury properties forfeited after six year NCA investigation

The wife of jailed banker Jahangir Hajiyev has agreed to forfeit a house in Knightsbridge worth approximately £14 million and a golf club in Ascot, following a National Crime Agency (NCA) civil recovery investigation into the acquisition of the properties.

Latest from twitter

[Visit the NCA timeline on Twitter](#)

Luxury properties forfeited after six year NCA investigation

The wife of jailed banker Jahangir Hajiyev has agreed to forfeit a **house in Knightsbridge** worth approximately **£14 million** and a **golf club in Ascot**, following a National Crime Agency (NCA) civil recovery investigation into the acquisition of the properties.

While the Court has concluded that the properties were purchased as a result of criminal activity and are therefore recoverable, it has not made any finding in relation to Mrs Hajiyeva's knowledge of how the properties were paid for.

Unexplained Wealth Orders

In the case study, we established that the analysis shows that the funds in the Cayman Investment and Trust Bank and 3 properties in London, Rome and New York are proceeds of John's corruption. These assets were purchased for \$2,122,437.

	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Cayman Investment and Trust Bank	\$ 50,044	\$ 347,542	\$ 655,210	\$ 268,779

Is John a PEP?

Politically Exposed Persons

An individual entrusted with prominent public function by an international organisation or a state other than the UK or another EEA (extends to family, close associates or connected persons)

What are the benefits of using a unexplained wealth order?

Disclosure problems

Evidential problems??? Obtaining evidence of assets from Cayman or elsewhere?

Avoid political fall out?

Burden of proof!!

Deferred Prosecution Agreements

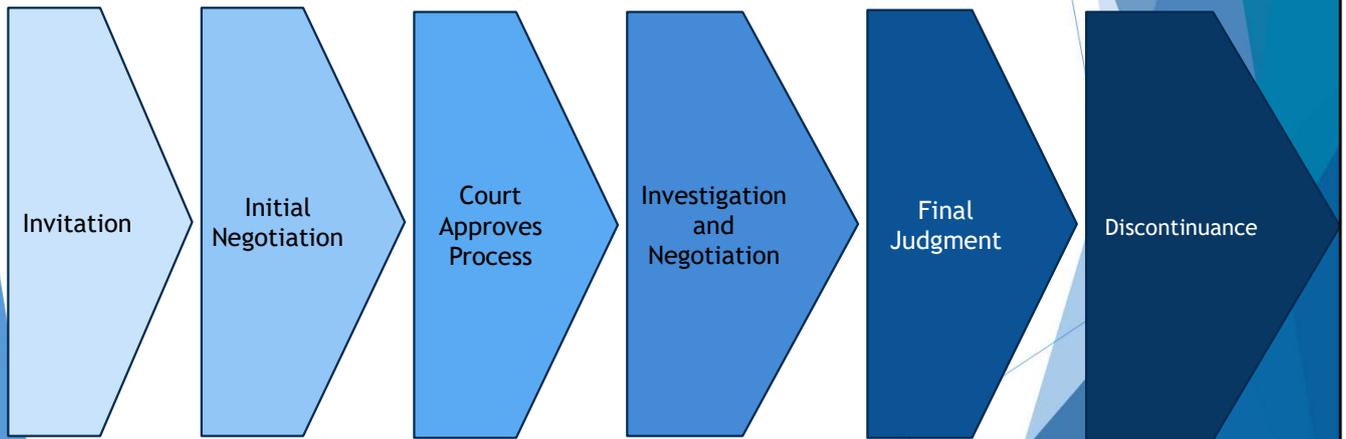
A promise not to prosecute a company in return for full cooperation with the investigation and the acceptance of negotiated penalties

Negotiated penalties

- ▶ financial penalty;
- ▶ Compensation
- ▶ Donation to charity
- ▶ Disgorge profits
- ▶ Implement compliance programme or changes to existing compliance programme
- ▶ Pay reasonable costs

Financial penalty – similar level to fine imposed on conviction

Deferred Prosecution Agreement Process



Approach –

Letter of invitation and undertakings – acceptance that the company must provide complete and accurate information, that information provided may be used in any prosecution

Deferred Prosecution Agreements

To enter into DPA negotiations the prosecutor must be satisfied that the two-stage test is met:

Evidential Stage

1. There is sufficient evidence to provide a realistic prospect of conviction, or
2. There is reasonable suspicion based on the evidence that the offence has been committed and there are reasonable grounds for believing that further investigation would produce admissible evidence within a reasonable time to provide a realistic prospect of conviction

Public Interest Stage

It would be in the public interest to enter not to prosecute and to enter into a DPA



Initial
Negotiation

Deferred Prosecution Agreements

The Court will make a declaration to approve the process if:

- ▶ entering into a DPA with P is likely to be in the interests of justice,
- and
- ▶ the proposed terms of the DPA are fair, reasonable and proportionate



Court
Approves
Process

Deferred Prosecution Agreements

- ▶ The company is expected to provide complete, open and accurate information
- ▶ If the company provides inaccurate, misleading or incomplete information, a fresh prosecution may be instituted
- ▶ Documentation provided during this process may be used as evidence within prosecution
- ▶ Provide accurate information regarding the profits derived from the offending to calculate the figure to disgorge profits
- ▶ The prosecutor and the company will agree a statement of facts of the alleged offence (admissions)
- ▶ The prosecutor and the company will agree the terms of deferred prosecution (timescale, penalties, quantum of penalties)
- ▶ Prosecutor is bound to disclose information received during the course of the investigation which would undermine the prosecution case or assist the defence



Investigation
and
Negotiation

Deferred Prosecution Agreements

The prosecutor will apply to the court for a declaration that:

- ▶ the DPA is in the interests of justice, and
- ▶ the terms of the DPA are fair, reasonable and proportionate.

The court issues a judgment giving reasons for the decision. An 'expiry date' will provide a time by which the company must fulfil the terms of the order.

NB. Charges will be laid to commence criminal proceedings, but the proceedings are then suspended.



Final
Judgment

Deferred Prosecution Agreements

- ▶ Breach of the terms of the DPA will result in the termination of the DPA. The charges can be reinstated, and the statement of facts can be treated as an admission during the criminal proceedings.
- ▶ The DPA may be varied by agreement between the parties and with the court's approval. This may happen after a breach or in anticipation of a breach.
- ▶ If the terms of the order have been met by the company, the Prosecutor will send a discontinuance notice to formally discontinue the prosecution.

Discontinuance

Deferred Prosecution Agreement



The indictment alleged failing to prevent the bribery of a foreign official in relation to transactions with Turkey prior to 2017. There is no regulated They later changed their senior management and sold their business in Turkey.

The DPA is within the compliance period and the statement of facts are currently withheld.

DPA Terms

penalty of £465m;
disgorgement of profits totalling £120m;
£20m charitable donation; and
£10m in respect of the costs of HMRC and CPS.

Agreed to dispose of foreign business interests that are not in regulated markets
Compliance processes were implemented and reviewed and found to be robust.

Court found that prosecution would have had disproportionate consequences:
In particular, if convicted, Entain would risk losing its licenses to operate in territories in the United States, and in other jurisdictions. This in turn, would put at risk thousands of jobs in this jurisdiction and elsewhere; and the revenue losses would risk damaging the interests of shareholders, pension fund holders,

contractual counterparties, and those in its supply chain.

CASE STUDY 11

Task:

What are the ways in which it would be possible to deal with A T Maintenance and Supplies Ltd?

Consider some of the benefits of using a deferred prosecution agreement in the circumstances of this case study.



The End!

Any other questions?