

A decorative graphic on the left side of the slide. It features a vertical column of five overlapping circles. To the right of this column is a rectangular area filled with a grid of small, light-blue dots. The text 'Thinking about Crime' is positioned to the right of the circles and overlaps the dot pattern.

Thinking about Crime

the money laundering consultancy

Advanced anti-money laundering update

Presented in partnership with the
Gibraltar Association of Compliance Officers

November 2016





Today's agenda

- Quick introduction to money laundering
- Quick revision of Gibraltar's AML legislation
- The evidencing of decisions
- Gibraltar AML catch-up
- Terrorist financing
- New threats: virtual currencies, and crowdfunding
- The tricky side of sanctions
- Hic! Money laundering through wine
- Money laundering picture bingo

What is money laundering?

- The process by which **criminals** attempt to **conceal** the fact that their **assets** have come from crime
- Things to remember:
 - o you will see only a tiny part of the scheme
 - o cash is only the start of it (and not in every scheme)
 - o a crucial part of laundering is the creation of a credible cover story



Key National Crime Agency concerns in 2016

- Child sexual exploitation and abuse
 - “The practice of live streaming is one example of how offenders can simultaneously create indecent images of children (IIOC) online, view IIOC, and commit contact abuse by proxy overseas.”
- Organised immigration crime
 - “Organised crime groups (OCGs) often move migrants from their own ethnic backgrounds and have networks with a presence in the originating countries, intermediate countries and the UK.”
- Cybercrime
 - “Financially motivated, international OCGs responsible for sophisticated malware campaigns remain a substantial threat to the UK.”
 - “Cyber crime is becoming more aggressive and confrontational, with a rise in easy-to-execute criminal tools, many designed to extort money from victims. Both international and UK domestic criminals are engaged in these attacks.”

Key National Crime Agency concerns in 2016

➤ Bribery and corruption

- “The proceeds of grand corruption committed overseas are laundered through the global financial centres of the world. The UK is one of the most attractive destinations for these funds to pass through and be invested in.”
- “Politically exposed persons (PEP) continue to pose a reputational and financial risk to the UK when they abuse their position for personal gain and choose to launder the proceeds of their corruption into the UK.”

➤ Money laundering

- “Virtually all high-end money laundering schemes, and several cash-based ones, rely on professional enablers to facilitate this activity. The skills, knowledge and abilities of professionals in the financial and legal sectors allow highly complex structures to be created that move and store large amounts of criminal money and conceal ownership effectively.”
- “Cash-based money laundering continues to play a major part in many crime groups’ modus operandi (MO). A high proportion of cash movements are managed by a small number of international controllers.”

*“National Strategic Assessment of Serious and Organised Crime 2016”
(September 2016)*

Why target Gibraltar?

- You are an active financial centre
 - o wide range of useful services
 - o big numbers (of clients and transactions) to hide in
- You occupy a handy geographical position between continents
- You speak the world's business language
- You deal in two major world currencies
- You have good international relations
 - o it is easy to move money into and out of Gibraltar
- You are easy to get to – and a very nice place to visit!

Neighbours...

➤ Between Spain and Morocco

- smuggling of people, drugs and cash (and now pre-paid cards)
- ships in the bay for refuelling and bunkering

➤ Spain

- major drug entry point for cocaine, heroin and hashish
- Marbella dominated by Eastern European organised crime groups (prostitution, kidnapping, extortion, etc.)

➤ Morocco

- growing of hashish
- people smuggling into Europe
- Al Qaeda cells operating in Morocco have been linked to the 9/11 attacks in the US and the bombings in Madrid

Revision of Gibraltar's AML legislation and regulation



Individual money laundering offences

- Proceeds of Crime Act 2015 (came into force on 28 January 2016)
 - o Concealing or transferring
 - o Assisting
 - o Failure to disclose
 - o Acquisition, possession or use
 - o Tipping-off

Concealing or transferring the proceeds of criminal conduct

- Committed if you know or have reasonable grounds to suspect that property – either your own or someone else's, in whole or in part – is or represents the proceeds of criminal conduct
- And then you conceal, disguise, convert, transfer or remove the property from the jurisdiction
- Objective test of suspicion
 - “knowing or having reasonable grounds to suspect”
 - **should have been** suspicious
- 14 years' imprisonment or a fine or both

Assisting another to retain the benefit of criminal conduct

- Committed if you know or suspect that another person is engaged in or has benefited from criminal conduct and then you:
 - facilitate retention or control of the proceeds of crime or of terrorist property by concealment, removal from the jurisdiction, transfer to nominees or otherwise
 - use the criminal proceeds to put funds at the criminal's disposal or make investments on his behalf
- Defences:
 - did not know or suspect that it was criminal proceeds
 - made a disclosure
 - intended to make a disclosure (but had a reasonable excuse for not doing so)
- 14 years' imprisonment or a fine or both

Failure to disclose (part of assisting)

- Committed if you
 - know, suspect or have reasonable grounds to suspect that someone is laundering, or is attempting to launder, money
 - you find out about this at work, and
 - you fail to disclose your knowledge or suspicion of money laundering
- Defences:
 - had a reasonable excuse for not disclosing
 - privileged circumstances apply (notaries, independent legal professionals, auditors, external accountants and tax advisers only)
- “Good faith” provision
- 14 years’ imprisonment or a fine or both

Acquisition, possession or use

- Committed if you acquire, possess or use property, knowing it to be, wholly or in part, directly or indirectly, the proceeds of criminal conduct
- Defences:
 - o adequate consideration was paid for the property
 - o made a disclosure
 - o intended to make a disclosure (but had a reasonable excuse for not doing so)
- 14 years' imprisonment or a fine or both

Tipping-off

- Committed if you disclose that
 - a money laundering suspicion report has been made, or
 - a money laundering investigation is underway or contemplated
- Defences:
 - trying to dissuade a client from engaging in crime (but tread carefully here...)
 - privileged circumstances apply (notaries, independent legal professionals, auditors, external accountants and tax advisers only)
- 5 years' imprisonment or a fine or both

Remember the Martini principle

- All offences apply to the proceeds of:
 - o any crime
 - o whoever committed it
 - o whenever they committed it
 - o wherever it took place (as long as it would have been a crime had it occurred in Gibraltar)



Institutional AML obligations

- Apply to those in charge of firms covered by the legislation
- Proceeds of Crime Act 2015
 - customer due diligence – identifying client and any beneficial owner, and getting information on the purpose and nature of the business relationship
 - ongoing monitoring
 - record-keeping
 - training
 - reporting
- Failure to do so carries a penalty of two years' imprisonment, an unlimited fine or both

Guidance Notes

- Issued by the FSC under powers granted by the Financial Services Commission Act 2007
 - last updated (minimally) in January 2016
 - currently under review to match new legislation
- Two level guidance
 - contains “Requirements” and “Expectations”
- Apply only to those sectors supervised by the FSC
 - there is “Supplementary Guidance for the Auditing Profession”
 - there are separate *Guidance Notes* for high value dealers
- The Gambling Commission has issued a “Code of Practice for the Gambling Industry”

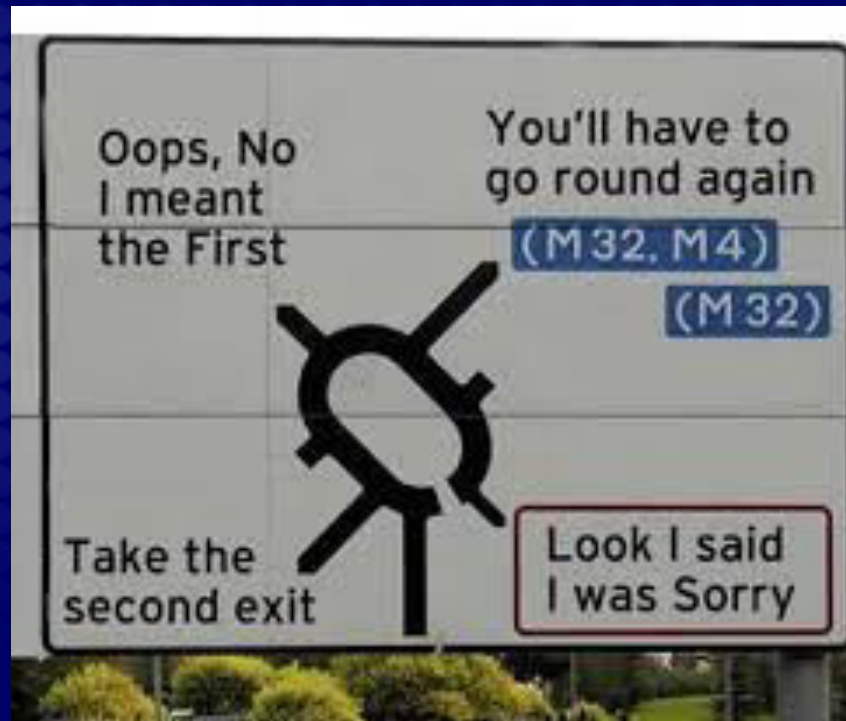
Who is responsible for compliance with AML obligations?

- There are personal obligations on **every member of staff**:
 - to understand what money laundering is and what AML legislation is in place
 - to be vigilant to any transaction or activity that could indicate money laundering, and
 - to report any suspicions of money laundering promptly to the Money Laundering Reporting Officer
- There are further obligations on **your firm as a regulated business**:
 - to put in place policies and procedures to prevent and forestall money laundering, including client due diligence procedures, internal reporting procedures and record-keeping procedures, and
 - to provide staff AML training so that staff understand how to fulfil their own obligations

Who is responsible for compliance with AML obligations?

- The **Money Laundering Reporting Officer (MLRO)** has additional obligations:
 - to conduct further enquiries into the reports of suspected money laundering that are submitted by staff, and to pass on those about which he has concern to the GFIU
 - to keep up-to-date with information about money laundering (such as new techniques, jurisdictions of concern and lists of proscribed individuals), and
 - to conduct regular audits of all AML policies and procedures to assess their effectiveness and relevance, and to make any necessary changes to them
- Finally, there are other obligations on senior management (the **Board**):
 - to oversee all AML policies and procedures, to ensure that they remain effective and proportionate
 - to provide the MLRO with the necessary resources to perform his AML functions, and
 - to address promptly any concerns raised by the MLRO about the effectiveness and proportionality of your firm's AML regime

The evidencing of decisions



Decision-making skills

- There are rarely definitive answers to AML questions
 - for instance, “Should we report this client?”
 - it is permissible for a firm to not report a client who later turns out to have been laundering money as long as the decision was well made, well justified and well documented
- The same rationale applies to all aspects of the AML regime, such as
 - how much due diligence should we do on this client?
 - is this document acceptable as proof of identity?
 - what should we cover in staff training?

Record-keeping skills

- The key thing is to record every decision
 - what prompted the discussion
 - what was considered
 - what/who was consulted
 - what decision was reached
- In several recent cases the decision-making of the MLRO and other senior staff has been under the spotlight
 - in *Shah v HSBC*, the MLRO could not demonstrate his decision-making process and was castigated for this
 - e.g. “The fifth factor [to arouse suspicion] was the size of the transaction. In considering the significance of the size Mr Wigley accepted that he would have wanted to look at the account history, but he could not recall whether he did so or not; there was no evidence that he did.”

File notes

- File notes join the dots between the documents
 - they explain who made what decision, when and why
- Do not rely on your memory for this
 - your memory fades...
 - if you leave the firm, your successors will still need access to the information
- So always make fulsome file notes and then sign and date them
- The information may be crucial during an investigation
 - particularly if your own conduct and compliance is under scrutiny

Gibraltar AML catch-up



The latest on MLD4

- On 2 February 2016 – largely in response to the November 2015 attacks in Paris – the European Commission published an “Action Plan for strengthening the fight against terrorist financing”
 - o <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-50-EN-F1-1.PDF>
- Among much else, it revisits MLD4

The latest on MLD4

- On 2 February 2016 – largely in response to the November 2015 attacks in Paris – the European Commission published an “Action Plan for strengthening the fight against terrorist financing”
 - among much else, it revisits MLD4 with some amendments
- The full text of the (now agreed) amendments can be seen here:
 - <http://data.consilium.europa.eu/doc/document/t/ST-13872-2016-INIT/en/pdf>

The latest on MLD4

➤ The amendments are:

- to enhance the powers of FIUs and facilitate their cooperation
 - the scope of information accessible by FIUs will be widened
 - they will have access to information in centralised bank and payment account registers and central data retrieval systems, which Member States will have to establish to identify holders of bank and payment accounts
- to tackle TF risks linked to virtual currencies
 - virtual currency exchange platforms and custodian wallet providers will be brought into MLD4
 - these entities will have to apply CDD controls when exchanging virtual for real currencies, ending the anonymity associated with such exchanges

The latest on MLD4

- o to tackle risks linked to anonymous pre-paid instruments (e.g. pre-paid cards)
 - the threshold for identification will be lowered from €250 to €150
 - customer verification requirements will be widened
- o to introduce stronger checks on risky third countries
 - the list of checks applicable to countries with AML/CFT deficiencies will be harmonised
 - banks will have to carry out additional CDD on financial flows from these countries
 - the list of countries, mirroring the FATF list, was formally adopted on 14 July 2016

The latest on MLD4

- With regard to transparency, the amendments are
 - o full public access to beneficial ownership registers
 - Member States will make public certain beneficial ownership information about to companies and business-related trusts
 - information on all other trusts will be included in the national registers and available to parties who can show a legitimate interest
 - beneficial owners who have 10% ownership in certain companies that present a risk of being used for money laundering and tax evasion will be included in the registers – the threshold remains at 25% for all other companies
 - o interconnection of the registers
 - there will be direct interconnection of the registers to facilitate cooperation between Member States
 - o extension of the information available to authorities
 - existing, as well as new, accounts should be subject to due diligence controls
 - passive companies and trusts, such as those highlighted in the Panama Papers, will be subject to greater scrutiny and tighter rules

The joy of Brexit

- Until the UK formally leaves the EU, nothing changes
- Once we leave, the current AML legislation (i.e. Money Laundering Regulations 2017, as it should be) will either be adopted as it is, or rewritten
- There is no word yet on what will happen to legislation that is partway through the transposition process, e.g. MLD4
 - as MLD4 is based on FATF Recommendations we will almost certainly go there anyway, but at certain points MLD4 goes beyond the FATF Recs, so we could “get away with” adopting a lower standard than MLD4
- Sadly, AML is likely to be low down on the list of government priorities, so we may be waiting some time for the final word
- My personal take on it is that I will carry on under the current regime until told otherwise

The beneficial ownership hoohah

- The PSC (people with significant control) register is now live in the UK
 - www.gov.uk/government/news/keeping-your-people-with-significant-control-psc-register
- On 14 April 2016, George Osborne announced a “a ground-breaking international deal to automatically share information on the ultimate owners of companies with key EU allies [Germany, France, Italy and Spain], making it more difficult for firms to dodge tax or funnel corrupt funds”
 - www.gov.uk/government/news/uk-leads-european-calls-for-g20-action-on-beneficial-ownership

The beneficial ownership hoohah

- On 22 April 2016, a joint statement was issued by the UK, France, Germany, Italy, Spain, Netherlands, Romania, Sweden, Finland, Croatia, Belgium, Slovakia, Latvia, Lithuania, Ireland, Slovenia, Denmark, Malta, Cyprus, Gibraltar, Isle of Man, Montserrat, Bulgaria, Estonia, Portugal, Greece, Czech Republic, Luxembourg, Austria and Hungary
 - www.gov.uk/government/publications/joint-statement-on-beneficial-ownership-information
- “We have committed to establishing as soon as possible registers or other mechanisms requiring that beneficial owners of companies, trusts, foundations, shell companies and other relevant entities and arrangements are identified and available for tax administration and law enforcement authorities.”

The beneficial ownership hoohah

- On 13 May 2016, HMT published a list of “Countries committed to sharing beneficial ownership information”
 - www.gov.uk/government/publications/beneficial-ownership-countries-that-have-pledged-to-exchange-information/countries-committed-to-sharing-beneficial-ownership-information
- “The following countries have committed to the initiative to automatically exchange information on beneficial ownership. The next stage will be for the development of a global standard for this exchange.”
- Countries currently listed
 - Afghanistan, Anguilla, Austria, Belgium, Bermuda, Bulgaria, Cayman Islands, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, **Gibraltar**, Germany, Greece, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Latvia, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Nigeria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Arab Emirates, UK

Mossack Fonseca

- A Panamanian law firm founded in 1986 by German lawyer Jürgen Mossack and Panamanian novelist/lawyer Ramón Fonseca – later joined by Swiss lawyer Christoph Zollinger
 - forty offices worldwide, including in Gibraltar
 - officially, the firm specialises in commercial law, trust services, investor advisory, and international business structures
 - but an internal memo leaked in April 2016 noted that noted that 95% of the company's work consists of “selling vehicles to avoid taxes”

Mossack Fonseca

- On 3 April 2016, German newspaper *Süddeutsche Zeitung* announced that an anonymous source had given them 11.5 million confidential Mossack Fonseca documents – the “Panama papers” – detailing how clients had hidden their money in tax havens
 - the newspaper enlisted the help of the International Consortium of Investigative Journalists to decipher all the information
- Mossack Fonseca told its clients that files had been obtained through a hack of the company’s email server
- Concerns were expressed that Mossack Fonseca had provided services to those subject to sanctions

Mossack Fonseca

- On 6 May 2016, the anonymous source issued a statement saying that s/he had been motivated by “income inequality”:
 - “Banks, financial regulators and tax authorities have failed. Decisions have been made that have spared the wealthy while focusing instead on reining in middle- and low-income citizens.”
- On 26 May 2016, Mossack Fonseca offices were shut down in Gibraltar, the Isle of Man and Jersey
- On 15 June 2016, a computer technician at the Mossack Fonseca office in Geneva was arrested on suspicion of data theft
- The ICIJ has since created the free-to-search Offshore Leaks Database, where you can “find out who’s behind almost 320,000 offshore companies and trusts from the Panama Papers and the Offshore Leaks investigations”
 - <https://offshoreleaks.icij.org/>

National risk assessments

- The risk-based approach to supervision is now widely supported, at every level – including national
- “Each Member State shall take appropriate steps to identify, assess, understand and mitigate the risks of money laundering and terrorist financing affecting it, as well as any data protection concerns in that regard. It shall keep that risk assessment up to date.” (MLD4, Article 7(1))
- The FATF has issued guidance on how to do this
 - “National Money Laundering and Terrorist Financing Risk Assessment” (February 2013) – useful bibliography
 - www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf

Gibraltar's first national risk assessment

- Published in April 2016
- There are no very high risks which require urgent action
- There are three high risks which require “action to be initiated as soon as possible and monitoring for changes”
 - tax planning structures and transactions
 - real estate
 - “Unlike other jurisdictions, Gibraltar has not seen a fall in market prices of properties. The distinct lack of supply and continued demand for properties has helped the real estate market maintain or appreciate its value.”
 - securities and funds sector
 - “[The securities industry’s] speed in executing transactions, its global reach, and its adaptability, can make it attractive to [criminals] due to the fact that the complexity of the structures and multiple relationships associated with funds can often give rise to particular difficulties and uncertainties with regards to the principal controller(s) and owner of the assets”

Gibraltar's first national risk assessment

- There are several medium risks which require “action once Very High and High risks have been addressed and monitored for changes”
 - o corporate vehicles
 - o legal profession
 - o prepaid credit/debit card
 - o money transmitters and currency exchanges
 - o prepaid phone cards
 - o high value goods
 - o ID theft
 - o bribery and corruption
 - o remote gaming sector
 - o sanctions
 - o tobacco
 - o terrorist attack

The FSC's risk-based approach to supervision

- “Our Risk Based Approach to Supervision ensures that resources are focused on managing the most material areas of risk in a consistent manner. The approach will ensure that firms which pose the biggest risk to the financial stability of the jurisdiction, its reputation, or to consumers, receive an appropriate level of regulatory support, guidance and supervision.”

GFSC “Risk Outlook” (April 2016)

What the FSC takes into account

➤ Impact

- o the degree of damage your firm could cause to Gibraltar's financial system, economy and citizens were it to fail

➤ Level of engagement

- o how well they know you

➤ Risk probability

- o the risk or likelihood that your firm will fail

➤ Readiness

- o your risk mitigation plans, including risk governance panels, management oversight, and management information

Gibraltar's risk outlook

- Published by the FSC in April 2016
 - o www.fsc.gi/download/adobe/RiskOutlook.pdf
- Looks at all areas of risk, including corporate governance, customer focus, risk culture – and financial crime

Gibraltar's risk outlook: risk culture

- “Examples of poor risk cultures and risk management include:
 - o incentives that encourage excessive risk taking with focus on short term benefits
 - o disregard for regulatory requirement
 - o lack of professional courtesy in dealings with regulators
 - o taking a ‘tick box’ approach to risk management rather than embedding and using risk management in business decisions
 - o inadequate internal audit function to review and test performance and design of controls and poor internal audit plans in terms of cycle and coverage.”

Gibraltar's risk outlook: financial crime

- “Examples of weakened controls and increased levels of risk include:
 - o firms increasing their risk appetite during periods of slow economic growth to take on new clients without adequately assessing the financial crime risks or implementing satisfactory controls
 - o poor internal controls leading to internal fraud
 - o marketing of products and services on the basis on anonymity
 - o lack of understanding of who the client is and the business carried out by a client
 - o use of overly complex company structures
 - o adoption of a ‘tick box’ approach to AML/CFT controls.”

Looking ahead: Legislative Reform Programme

- “We [at the FSC] have embarked, jointly with the Government of Gibraltar, on a Legislative Reform Programme (LRP) which will provide a much clearer framework for financial services regulation in Gibraltar, as well as improving the powers available to the Commission to enforce those regulations.
- “The LRP is aimed at delivering a consistent application of risk-based regulation, capable of responding flexibly and in a timely manner to changes in the market, EU policy developments and Government of Gibraltar macro and micro policy decisions.”
- “One of the key deliverables of the LRP, which reinforces our aim of increasing individual accountability, is an individual persons regime.”

Gibraltar's new AML legislation

- The Proceeds of Crime Act 2015
 - o came into force on 28 January 2016
 - o repealed the Crime (Money Laundering and Proceeds) Act 2007 and Part V of the Drug Trafficking Offences Act
 - o www.gibraltarlaws.gov.gi/articles/2015-22o.pdf
- Make sure that all of your in-house policies, procedures, forms and processes now refer to this new legislation
 - o outdated references confuse staff and clients, and irritate (and unsettle) regulators and investigators

Terrorist financing



Quick reminder: legal definition

➤ According to the Terrorism Act 2005 as amended

o “terrorist property” is

- “(a) money or other property which is likely to be used for the purposes of terrorism;
- (b) proceeds of the commission of acts of terrorism; and
- (c) proceeds of acts carried out for the purposes of terrorism”

Quick reminder: legal definition

o and terrorist financing offences include

- raising funds for terrorism – giving, receiving or organising (*objective test*)
- using or possessing terrorist property
- entering into funding arrangements (*objective test*)
- laundering (i.e. concealing, transferring, etc.) terrorist property
- failing to disclose suspicion of terrorist financing

Muslim factions

- Muslims follow Islam, which is based on the Qur'an – the verbatim word of Allah as revealed to Muhammed
- 1,400 years ago, after the death of Muhammad in Medina (in modern-day Saudi Arabia), the Muslims who wanted to select his successor by following the traditional Arab custom (*sunna*) of community vote formed into a group known as Sunnis, and said that Abu Bakr was their man
 - 90% of Muslims today are Sunnis
- Others insisted that Muhammed had designated his cousin and son-in-law Ali as his legitimate heir
 - they called themselves Shia Ali – party of Ali – and became the Shias

Leading terrorist organisations: Daesh

➤ Daesh

- aka Islamic State of Iraq and Syria (ISIS); aka Islamic State of Iraq and the Levant (ISIL)
- a militant Sunni Islamist organisation
- considered the largest terrorist group in the Middle East, and the wealthiest terrorist organisation in the world
 - according to Matthew Levitt of the Washington Institute for Near East Policy, ISIL's daily income is US\$3 million, giving it assets of up to \$2 billion

- ## ➤ Put (too) simply, Daesh aims to return to the early days of Islam, rejecting all innovations in the religion; it follows an extremist interpretation of Islam, promotes religious violence, and regards Muslims who do not agree with its interpretations as infidels

Leading terrorist organisations: Al Qaida

- Al Qaida (al-Qa'ida and other variants) means “the base” or “the foundation”
 - a militant Sunni Islamist organisation
 - responsible for the 1998 US embassy bombings in Tanzania and Kenya, the 9/11 attacks and the 2002 Bali bombings
- Put (again, too) simply, they believe that because of the lack of *sharia* law, the Muslim world is no longer Muslim and has reverted to a state of pre-Islamic ignorance known as *jahiliyyah*
 - to restore Islam, righteous Muslims should establish true Islamic states, implement *sharia*, and rid the Muslim world of any non-Muslim influences, such as concepts like socialism and nationalism
 - the rules of *sharia* are based on scripture as expressed in the Qur'an

Other terrorist organisations

➤ Boko Haram

- o means “western education is forbidden”
- o based in north-eastern Nigeria
- o previously linked with al-Qaida, in March 2015 it announced its allegiance to Daesh
- o very violent – also responsible for the April 2014 kidnapping of 276 Nigerian schoolgirls

➤ Hezbollah

- o means “party of Allah”
- o a Shia Islamist military group and political party based in Lebanon
- o its current core belief and central rationale is the elimination of the State of Israel

Other terrorist organisations

➤ Taliban

- o an Islamic fundamentalist political movement waging war against the more moderate rulers of Afghanistan
- o mostly from the Pashtun ethnic group
- o known for their harsh enforcement of their interpretation of *sharia* law, resulting in their brutal treatment of many Afghans, especially women

➤ IRA

- o a catch-all name for various armed movements dedicated to the belief that all of (the island of) Ireland should be an independent republic
 - “Old” IRA (1917-22); IRA (1922-69); Official IRA (mostly Marxist); Provisional IRA broke with OIRA; Continuity IRA broke with PIRA in 1986; Real IRA formed in 1997 of those opposed to the peace process; and in April 2011 members of the Provisional IRA announced a resumption of hostilities
- o involved in smuggling and protection rackets, and suspected of raising funds from the Irish diaspora

Latest thoughts from the FATF

- “Emerging Terrorist Financing Risks” (October 2015)
 - www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf
- Terrorist organisations vary enormously in size, from “lone actors” to “advanced terrorist organisations”
- They need money for five areas of activity
 - operations; propaganda and recruitment; training; salaries; and social services (to gain local support)

Latest thoughts from the FATF

- The best organised have financial managers “to accumulate revenue, establish financial shelters (such as bank accounts, front and holding entities), and oversee financial disbursements [as well as] provisioning funds to the group’s leadership, members, and operators and considering opportunities to invest any excess capital”
 - o to this end, they actively recruit accountants, lawyers and others with financial expertise

Latest thoughts from the FATF

➤ Emerging threats

- social media – for publicity, recruitment and fundraising
- crowdfunding
 - “Several cases indicate that the [terrorist] end-use of funds collected through crowdfunding and social networks was not known to donors. As well as raising funds, crowdfunding techniques could also be used to transfer funds abroad by avoiding regulated financial entities.”
- multiplicity of payment methods now available
 - in August 2015 Ali Shukri Amin was sentenced to eleven years in prison in the US, in part for promoting the use of Bitcoin as a way to fund terrorism; on his Twitter account he posted instructions on “how to use Bitcoin to mask the provision of funds to ISIL”
- the exploitation of natural resources, e.g. gas, oil, timber, diamonds, gold and wildlife
 - attractive in countries “where the government lacks effective control of territory and its resources”, with “weak regulation in the sector” and “low level of detection, prosecution and lower penalties associated with criminal activity involving these sectors”

Latest concerns in the UK

- High-level conference (Chatham House rules) held in London in February 2016
- The UK is a net exporter of terrorist finance
 - UK attacks have been funded locally
 - bank loans (and payday loans, with their much-reduced due diligence); fraud, theft and drug crime; charities are “extraordinarily important” for raising large sums but UK powers of disruption are limited to UK borders

Latest concerns in the UK

- US sources say that ISIL draws US\$500 million a year from oil sales
- It also extorts hundreds of millions from individuals and businesses in occupied territory through threats and “taxation”
 - o thankfully in August 2015, the Iraqi government decided to hold in escrow public employee salaries in ISIL-held areas, so these can no longer be “taxed”
- It also seizes “hundreds of millions of dinars” from state-controlled banks and the Central Bank of Iraq
- It “earns” \$40 million a year from kidnap for ransom
- And \$5 million a year comes from foreign donations

Disrupting money movements

- The US Treasury and Central Bank of Iraq have cut off 90 bank branches in Mosul from the Iraqi and international financial system
- 142 MSBs have also been put on a proscribed list
- Hawala is now the only way to get money into Syria
 - efforts are underway to design a safe route for the \$4.5 billion a year in aid and \$2 billion a year in legitimate remittances that need to get into Syria
- FinCEN uses 20 rules to sift for ISIL-related SARs:
 - oil sales, trade in stolen antiquities, KFR payments and misuse of charities; interaction with the international financial system by proscribed organisations; named ISIL fighters
 - this generates about a thousand hits a month, of which 10% go on for investigation
 - in 2014 they introduced “flash reports” for rapid sharing with LEAs and FIUs
 - over 300 flashes went out in 2015

Further actions against Daesh

- There are continuing raids on oil production and supply lines
- Coalition airstrikes in Syria have targeted prominent Daesh financiers and its cash depots
- In March 2015, 26 countries and several international organisations founded the Counter-ISIL Financing Group (CIFG)
 - <https://assets.documentcloud.org/documents/1875678/counter-finance-action-plan-final.pdf>

Waiting in the wings

- In February 2014, 17-year old Aseel Muthana travelled from his home in Cardiff to Syria to join his older brother Nasser and Daesh
- Before that, he worked at Ice Cream Passion in Cardiff with 20-year old Kristen Brekke
 - Brekke bought combat clothes for Muthana from eBay and allowed him to use his computer for research
- Muthana also became friendly with 21-year old call centre worker Forhad Rahman
 - they met online, as part of a network committed to violent struggle, and later met in person in London
 - Rahman used contacts in Syria to help Muthana get there and allowed him to use his credit card to pay for a passport, coach trip to Gatwick and flight from the UK to Cyprus
- Rahman introduced Muthana to 21-year old Adeel Ulhaq
 - Ulhaq gave Muthana practical help online about how to cross the border from Turkey, and called on his contacts within Syria to smooth the boy's entry into the country

Waiting in the wings

- In February 2016, the three men were found guilty of preparing for acts of terrorism
 - Rahman and Ulhaq were sentenced to five years, and Brekke to 4½ years
 - Ulhaq was given a further twelve months for terrorist funding
- Judge Rebecca Poulet QC: “These acts of preparation were clear and determined and in my judgment they suggested certainly you, Rahman and Ulhaq, were waiting in the wings to assist anyone ready to travel to Syria [while Brekke acted out of] “misguided friendship.”
- Nasser and Aseel Muthana are now both on UN sanctions lists, with asset freezes and travel bans

New threats



Virtual currency basics

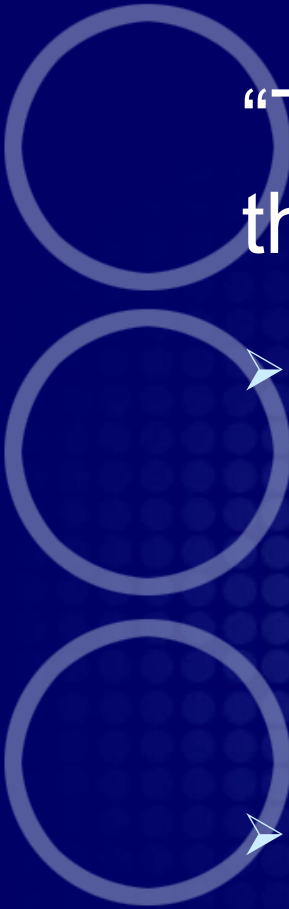
- Virtual currencies (or cryptocurrencies, or digital currencies) are distributed, open-source, maths-based peer-to-peer currencies that have no central administering authority and no central monitoring or oversight
- It is believed that inherent risks include
 - anonymity in non face-to-face relationships, with lack of formal identification of sender and recipient
 - almost instantaneous global reach
 - no central oversight body
 - law enforcement is unable to identify one central location for investigative or asset seizure purposes

Virtual currency basics: the blockchain

- A shared, trusted, public ledger that everyone (within the user network) can inspect, but which no single user controls
 - it records every transaction that has ever been executed
- The participants in a blockchain system collectively keep the ledger up to date
 - it can be amended only according to strict rules and by general agreement
- Blockchains meet the need for a trustworthy record without a neutral central authority

Virtual currency basics: the blockchain

- The blockchain grows as “completed” blocks are added to it in a linear, chronological order
- Each node (computer connected to the, for instance, Bitcoin network using a program that performs the task of validating and relaying transactions) gets a copy of the blockchain, which gets downloaded automatically upon joining the Bitcoin network
- The blockchain has complete information about the addresses and their balances right from the genesis block to the most recently completed block
 - the blockchain is like a full history of banking transactions, while blocks are like individual bank statements
- The blockchain could be made public...



“The great chain of being sure about things” (*Economist*, 31 October 2015)

➤ “To work as cash, bitcoin had to be able to change hands without being diverted into the wrong account and to be incapable of being spent twice by the same person. To fulfil Mr Nakamoto’s dream of a decentralised system the avoidance of such abuses had to be achieved without recourse to any trusted third party, such as the banks which stand behind conventional payment systems.

➤ “It is the blockchain that replaces this trusted third party. A database that contains the payment history of every bitcoin in circulation, the blockchain provides proof of who owns what at any given juncture. This distributed ledger is replicated on thousands of computers – bitcoin’s ‘nodes’ – around the world.”

“The trust machine”

(*Economist*, 31 October 2015)

- “One idea, for example, is to make cheap, tamper-proof public databases – land registries, say, (Honduras and Greece are interested); or registers of the ownership of luxury goods or works of art.
- “Documents can be notarised by embedding information about them into a public blockchain – and you will no longer need a notary to vouch for them.
- “Financial-services firms are contemplating using blockchains as a record of who owns what instead of having a series of internal ledgers. A trusted private ledger removes the need for reconciling each transaction with a counterparty, it is fast and it minimises errors. Santander reckons that it could save banks up to \$20 billion a year by 2022. Twenty-five banks have just joined a blockchain startup, called R3 CEV, to develop common standards, and NASDAQ is about to start using the technology to record trading in securities of private companies.”

The legal standing of Bitcoin

- In September 2015, the US Commodity Futures Trading Commission recognised Bitcoin as a commodity
 - “For the first time the CFTC finds that Bitcoin and other virtual currencies are properly defined as commodities.”
 - this may suggest that it is something to be invested in long-term, as opposed to spent and traded on a regular basis

The legal standing of Bitcoin

- But on 22 October 2015, when asked to judge a case regarding taxes on the exchange of Bitcoin for currency (and vice versa), the European Court of Justice ruled that Bitcoin should be exempt under the provision concerning transactions relating to currency, banknotes and coins used as legal tender
 - in other words, the EU views Bitcoin as a currency, not a commodity or valuable product
 - <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150128en.pdf>
- Some information and links given in Wikipedia
 - https://en.wikipedia.org/wiki/Legality_of_bitcoin_by_country

The legal standing of Bitcoin

- And on 25 July 2016, Judge Teresa Pooler of Miami ruled that Bitcoin is not money (and therefore that someone cannot be charged with laundering it)
 - website designer Michell Espinoza had been charged with illegally transmitting and laundering \$1,500 worth of Bitcoins
 - he sold them to undercover detectives who told him they wanted to use the money to buy stolen credit card numbers
- In her finding, Judge Pooler wrote: “The court is not an expert in economics; however, it is very clear, even to someone with limited knowledge in the area, that Bitcoin has a long way to go before it the equivalent of money.”
 - she reasoned that Bitcoin was not backed by any government or bank, and was not “tangible wealth” and “cannot be hidden under a mattress like cash and gold bars”
- The Miami-Dade State Attorney’s Office is considering an appeal

The legal standing of Bitcoin

- But then on 19 September 2016, Manhattan-based federal judge Alison Nathan ruled that charges of running an unlicensed money transfer business against a Florida man called Anthony Murgio could not be dropped, because Bitcoin is money
 - Murgio was arrested in July 2015 in connection with an alleged hack into JP Morgan Chase, and accused of running a Bitcoin exchange website called Coin.mx with Gery Shalon, the alleged hacking mastermind
- In his motion to dismiss the charges, Murgio claimed that, because Bitcoins are not considered “funds”, he was not operating an illegal business.
- In her order, Judge Nathan denied Murgio’s argument:
 - “Bitcoins are funds within the plain meaning of that term. Bitcoins can be accepted as a payment for goods and services or bought directly from an exchange with a bank account. They therefore function as pecuniary resources and are used as a medium of exchange and a means of payment.”

Jersey regulates virtual currencies

- On 26 September 2016, the Proceeds of Crime (Miscellaneous Amendments) (Jersey) Regulations 2016 came into force
 - www.jerseylaw.je/laws/enacted/Pages/RO-063-2016.aspx
- These amend the Proceeds of Crime (Jersey) Law 1999 to bring the business of virtual currency exchange within the AML regime
 - regulated virtual currency exchange activity is the business of providing, to third parties, the service of virtual currency exchange
 - “virtual currency exchange” is the exchange of virtual currency for money in any form, or vice versa
- This also means that the principles of the Money Laundering (Jersey) Order 2008 now apply to anybody acting as a “virtual currency exchanger”

Thoughts of the FSC

➤ “Virtual currencies and associated activities are not regulated in Gibraltar at present, therefore firms acting as an exchange, wallet provider or other, can legally establish themselves and operate from Gibraltar. The Gibraltar Government is currently considering its position following a paper prepared by a select working group and representations received by several interested stakeholders.

➤ “However, one key point to note is that in some instances, depending on the ‘wrapper’, or the way in which the activity is carried out, current regulatory arrangements could apply to virtual currency activity and legal advice should be sought. We would encourage anyone, whether already licensed to carry out a regulated financial or professional service activity or not, who is thinking of, or is already carrying out in or from Gibraltar, any virtual currency associated activity, to engage with our Innovate and Create team.”

Dutch arrests

- On 21 January 2016, Dutch police (after receiving assistance from police in Australia, Lithuania, Morocco and the US) arrested ten people on suspicion of laundering about €20 million via Bitcoin and the dark web
 - at fifteen addresses across the Netherlands, they seized luxury vehicles, bank accounts, cash, and chemicals used for the production of the drug ecstasy
- Some of those arrested were Bitcoin traders (believed to have acquired Bitcoins by selling illegal goods) while others were identified as Bitcoin cashers (who exchanged Bitcoins for euros that would later be withdrawn from ATMs)
- The whole investigation started when banks reported that large sums of money were being deposited and then immediately withdrawn at ATMs

Bitcoin is not alone

- There are now over 150 virtual/crypto/digital currencies
- Among the other leaders:
 - Litecoin – designed by a former Google engineer
 - Darkcoin – launched in January 2014, and offers more anonymity as it works on a decentralised mastercode network that makes transactions almost untraceable
 - Peercoin – an inflationary currency, with no fixed upper limit on the number of coins
 - Dogecoin – again no upper limit, and also deals with large numbers of coin that are lesser in value individually, making the currency more accessible with a low entry barrier and fit for carrying out smaller transactions
 - Primecoin - its algorithms are based on prime numbers and involve finding special long chains (“Cunningham chains”) of prime numbers – which are also of great interest in mathematical research

Crowdfunding

- Funding a project or venture by raising money from a large number of people
 - nowadays most often online via crowdfunding platforms, but can also be done via the post, benefit events and so on
- Two main types of crowdfunding:
 - rewards-based: entrepreneurs pre-sell a product or service to launch a business concept without incurring debt or sacrificing equity/shares, usually offering goodies (first edition, t-shirt, name in lights) to donors
 - equity: the backer receives shares of a company, usually in its early stages, in exchange for the money pledged
- There is also debt-based – or P2P – crowdfunding, e.g. Zopa
- In 2013, the crowdfunding industry raised over US\$5.1 billion worldwide

Rewards-based or donation crowdfunding platforms

- Each targets certain types of project and allows certain types of fundraising arrangements
- Two basic models:
 - All or Nothing: when the fund-raising period is over, money is collected from the contributors only if a pre-determined minimum amount of money has been pledged
 - Keep it All (KiA): whether the project goal is met or not, all of the funds collected (minus commission) are handed over to the entrepreneur; if he has insufficient funds to meet the objectives, then it is up to him to refund them to the contributors
- The most popular ones in the UK are Kickstarter (AoN) and JustGiving (KiA)
 - the UK crowdfunding sector is growing at more than 200% per year

Equity crowdfunding platforms

- In short, investors receive equity in the company or entrepreneur
- Most popular ones in the UK are Angels Den, Crowdcube (the largest, with 51% of the market – 200,000 investors have funded nearly 300 businesses), Funding Circle, Seedrs, Syndicate Room and ThinCats
 - Seedrs (for investing in startups) was the first equity crowdfunding platform to receive regulatory approval – from the FCA in May 2012
- But critics cite the lack of “exits” – crowdfunded businesses being sold and so allowing investors to realise their profit
 - in July 2015, E-Car Club – the UK’s first all-electric car-sharing venture – was sold to Europcar, giving its 63 Crowdcube investors a “multiple return” on their investment
 - this is the only successful crowdfunding exit in the world!

Famous crowdfunded projects

- Actor Zach Braff raised US\$3.1 million from 46,520 backers in May 2013 to create the feature film “Wish I Was Here”, which premiered at the Sundance Film Festival
 - they were tempted by offers of special screenings and after-parties
- The Pebble Smartwatch was created by Eric Migicovsky and allows its wearers to connect to their mobile phones
 - Migicovsky raised \$375,000 through angel investing before starting a Kickstarter campaign in April 2012 and raising \$10,266,844 from 68,928 people in 37 days

Crowdfunding due diligence

- Most due diligence energy in equity crowdfunding is spent on making sure that the investment opportunities are, to the best of anyone's knowledge, sound and safe
 - there are companies offering this service to crowdfunding platforms, e.g. CrowdCheck in the US
- The fact that I could not find any guidance, articles, reports or even FAQs mentioning what due diligence crowdfunding platforms should do on their investors worries me...

FCA plans for crowdfunding rules

- On 8 July 2016, the UK's FCA launched a “call for input” on crowdfunding rules
 - www.fca.org.uk/publication/call-for-input/call-input-crowdfunding-rules.pdf
 - closing date was 8 September 2016
- “The FCA is seeking views on a number of issues related to crowdfunding including:
 - considering whether financial promotions, due diligence and prudential standards are still appropriate for the way the market has developed
 - whether to mandate in greater detail the disclosure firms are expected to give consumers and the time that the disclosures must be provided
 - whether platforms should be required to assess investor knowledge or experience of the risks involved in this type of investment.”

Thoughts of the FSC

- “Crowdfunding can be a good way for start-up businesses to access finance which traditional lenders might not be prepared to offer and it can offer attractive returns for investors. However, as with most types of investment, there is a risk of loss to investors. As it currently stands, crowdfunding platforms have no access to compensation schemes. Unlike investments which have a secondary market, investments made via a crowdfunding platform may not always be cashed in quickly or for as much money as investors pay in. Crowdfunding is generally considered a high-risk investment that can attract inexperienced investors.
- “At present, the GFSC is monitoring the developments in the crowdfunding market. We do not regulate crowdfunding activity as such, although depending on the way in which the crowdfunding platform is structured the activity carried out may mean it constitutes a licensable activity under current legislation.”

Academic research on money laundering and crowdfunding

- “The Risk of Money Laundering Through Crowdfunding: A Funding Portal’s Guide to Compliance and Crime Fighting” by Zachary Robock (2014)
 - o “Money laundering in crowdfunding may manifest in several ways. For example, an issuer may collude with investors to exchange money for securities in a nefarious enterprise under the façade of a business transaction. A fake investor seeking to purchase bulk narcotics (or other contraband) could crowdfund a sham company owned by a narcotics distributor. The investor/buyer would receive narcotics plus (worthless) equity. The issuer/narcotics distributor would receive funds electronically under the guise of a legitimate crowdfunding offering, which would be easier to integrate into the financial system than if the transaction were conducted in cash.”
 - o <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1019&context=mbelr>

ISIL and crowdfunding

➤ “Financing of the Terrorist Organisation ISIL” (FATF, February 2015)

- “Group actions which mimic popularized crowdfunding strategies have become another source of financing and physical resources for ISIL.”
- “ISIL has manipulated social media, physical and virtual social networks, encouraged donations and conducted a marketing campaign in a manner that is consistent with industry standards established by major crowdfunding companies.”
- “Crowdfunding was observed early in the Syrian civil war as used by rebel groups... Pledges took the form of several options ranging from the purchase of a single weapon to the funding of an operation or paying for the travel, training and arming of a volunteer fighter. In return for subscribing to a certain donation tier, contributions were commonly reinforced with visual documentation of how the donations were utilized.”

SaveWalterWhite.com

- In “Breaking Bad”, Walt’s son Walt Jr sets up the website www.savewalterwhite.com, asking for donations through PayPal to help pay for his father’s cancer treatment
- Walt’s lawyer (well, money launderer) Saul Goodman explains to Walt that the best option he has for laundering his drug money is to send small but consistent donations through the website with the help of one of Saul’s computer hacker friends, Phoenix
 - meanwhile real donations roll in from all over the US and Canada, and Walt Jr is interviewed by the local news station
- The website really exists – but the “Donate” button just links to the show’s website
 - it used to link to the donation page of the National Cancer Coalition, but it was changed in August 2013 when the Center for Investigative Reporting named the NCC as one of “America’s Worst Charities”

The tricky side of sanctions



Where do sanctions come from?

- Sanctions and embargoes are political tools, put in place mainly by the UN and the EU
- The main aim of all UN sanctions and embargoes, as set out in the UN Charter, is to implement decisions made by its Security Council to maintain or restore international peace and security
- The EU imposes sanctions and embargoes to further the objectives of its Common Foreign and Security Policy, and to uphold respect for human rights, democracy and the rule of law
- Sanctions and embargoes (including national arms embargoes) can also be put in place by the Organisation for Security and Co-operation in Europe
- Finally, sanctions and embargoes can be imposed by national governments – including, of course, Gibraltar

What are sanctions for?

- The main purpose is to change the behaviour of a country's ruling regime, or resident individuals or groups, in a direction which will improve the situation in that country
 - the specific aim will vary from sanction to sanction
- Common aims include:
 - to support a peace process through imposition of an arms embargo and a ban on the export of certain items or raw materials (which might be used by combatants to finance weapons)
 - to prevent weapons falling into the wrong hands
 - to disrupt terrorist operations
 - to change the policies or actions of the 'target'

What sanctions are available?

➤ Common sanctions include:

- o embargoes on exporting or supplying arms and associated technical assistance, training and financing
- o bans on exporting equipment that might be used for internal repression
- o financial sanctions on individuals in government, government bodies and associated companies, or terrorist groups and individuals associated with those groups
- o travel bans on named individuals
- o bans on imports of raw materials or goods from the sanctions target

How are sanctions set up?

- The UN Security Council passes a UN Security Council Resolution (UNSCR)
- For EU Member States, the EU adopts a Common Position and, in most cases, an EU regulation is then adopted which is directly and immediately applicable to Member States
 - if this requires more than administrative action to be implemented, then the Member States will also introduce new (or amend existing) licensing and enforcement legislation

Who do sanctions apply to?

- All sanctions and embargo regimes are “targeted” – i.e. focused on individual people or organisations
- Sometimes a comprehensive restriction is put in place against a particular country’s regime
- Sanctions can also be targeted at a particular industry, such as banning the supply of petroleum and related products

Financial restrictions

- These are particularly relevant to Gibraltar, with it being a financial jurisdiction
- There are various financial restrictions:
 - o comprehensive prohibitions on dealing with sanctioned countries and their governments
 - o targeted measures such as asset freezes and prohibitions on providing specific financial services or making funds or other economic resources available to designated individuals or entities

Current sanctions regimes

➤ Links to all current sanctions are given on the FSC website

- o financial sanctions:

- www.fsc.gi/international/sanctions.htm

- o anti-terrorism sanctions:

- www.fsc.gi/international/terrorismorders.htm

➤ Links to all targets are given on the relevant page of the FSC website:

- o www.fsc.gi/international/terrorismnames.htm

- this links to the UN consolidated list, the EU list and the UK HMT list

Office of Financial Sanctions Implementation

- On 1 April 2016, the HMT financial sanctions team was renamed the Office of Financial Sanctions Implementation (OFSI)
 - all links and alerts still work
 - their new email address (for enquiries, licence applications, reports and breach notifications) is ofsi@hmtreasury.gsi.gov.uk
- OFSI's main aims are to
 - increase awareness of and compliance with financial sanctions
 - ensure that sanctions breaches are rapidly detected and effectively addressed
 - provide a professional service to the public and industry on financial sanctions issues

Reporting a sanctions “match”

- If you think you have a match, check carefully
 - the more CDD information you have on a client, the more points you will have at which you can confirm or negate the match
- If you can negate the match, keep a careful record of this
- If you confirm the match, or cannot tell, you must report the potential match to the GFIU
- The GFIU will need to know
 - on what basis you think you have a match
 - all the information you hold on the target
 - the nature and value of any funds or economic resources you hold for the target

Is a SAR also necessary?

- The mere involvement of a sanctioned party is not grounds for making a SAR
- If someone is (or appears to be) a sanctions target, they are not *necessarily* a money launderer or terrorist financier
- But if you think that they *are* also a money launderer or terrorist financier, then a SAR will be required in addition to the sanctions match notification

Does tipping off apply?

- No
- The names on the target lists are public
- You cannot tip someone off about public information

Sanctions guidance

- JMLSG *Guidance Notes*, Part III, chapter 4
 - written for the UK financial sector, but with some helpful definitions and suggestions (particularly around transaction screening)
 - www.jmlsg.org.uk/
- FCA “Financial Crime: A guide for firms”, Part 1, chapter 7
 - UK financial sector again, but very useful good and poor practice examples around governance, risk assessment, screening, matches and escalation, and weapons proliferation
 - www.handbook.fca.org.uk/handbook/document/F_C1_FCA_20160307.pdf

Demonstrating compliance

- As ever, the key is to keep as up to date as possible
 - o subscribe to email alerts
 - o document receipt of, and reaction to, these alerts
- Document every instance where you have considered sanctions issues
 - o be prepared so that you can explain what you have done

Christopher Tappin



- In 2005, agents from Immigration and Customs Enforcement in the US set up a front company
- An acquaintance of UK businessman Christopher Tappin contacted the company and enquired about exporting military hardware without the required licences
- Tappin was accused by the US authorities of trying to ship batteries for Hawk missiles from the US, via the Netherlands, to Tehran
 - Tappin maintained that he thought he was buying car batteries

Christopher Tappin

- A US arrest warrant was issued for Tappin in 2007
 - co-conspirators Robert Gibson (British) and Robert Caldwell (American) were jailed in the US
- Tappin lost a long battle against extradition, and in February 2012 he was sent to the US
- In November 2012 he pleaded guilty in a Texas court to selling weapons parts to Iran
 - he was sentenced to 33 months in prison and fined US\$11,357
 - he was returned to the UK to complete his sentence

Hic! Money laundering through wine



A cheeky little Bordeaux

- In its 2012 annual report, Tracfin (the French FIU) drew attention to “la montée des risques dans le secteur vitivinicole”
 - they are receiving a growing number of SARs on the purchase of French vineyards by foreign investors
 - whereas previously only the French bought French vineyards, SARs are reporting purchases by Russians, Chinese and Ukrainians
 - these purchases are effected through complex legal structures, often in “des pays à fiscalité privilégiée” – in one case, a vineyard was bought by a Cypriot holding company owned by a shell company based in a low tax country, with a Russian UBO
 - strong demand for wine in “certains pays émergents, et notamment la Chine”
 - www.economie.gouv.fr/files/files/directions_services/tracfin/Publications/RAAA_2012_TRACFIN.pdf

A cheeky little Bordeaux

- It is estimated that Chinese investors now own over a hundred vineyards in Bordeaux and are starting to make their mark in Burgundy
 - Chinese investment accounts for approximately one third of the luxury real estate market in Bordeaux
 - Bordeaux's Chamber of Commerce and Industry has a desk devoted to helping Chinese investors in the region
- In 2014, China's National Audit Office released a report highlighting how public funds had been misused to buy vineyards in Bordeaux
 - in one case, two Dalian-based companies were given about US\$43 million of public money to acquire foreign technology
 - they used some of it to buy fourteen vineyards in France instead

A cheeky little Bordeaux

- France wants to encourage foreign investment
 - o French GDP grew at just 0.24% in 2014
- The wine industry has been suffering – global economic crisis, health concerns, shorter liquid lunches – and so sellers are perhaps not as fussy as they should be about due diligence...
 - o many are more than happy to accept cash

Why wine?

- The price of wine is not fixed
- It is easy to over- or under-invoice as required
- Cash payments are not unusual
- It is an aspirational product, so wealthy people want to – and are expected to – get involved

Why the Chinese and wine?

- Wealthy Chinese are known to be on the lookout for ways to expatriate their funds
 - Global Financial Integrity estimates that between 2000 and 2011 nearly US\$4 trillion left China's economy
 - and between 1994 and 2011 over \$200 billion flowed out of Russia
 - owning French property is seen as the height of sophistication in China
 - Dr Frank Tian Xie, Associate Professor of Marketing at the University of South Carolina: "French property ownership gives the owners the status, the prestige, and the envy of others in China that no other country can match."

Why the Chinese and wine?

- According to International Wine and Spirits research, China is now the largest consumer of red wine in the world, and the fifth largest wine market, purchasing 1.9 billion bottles in 2013 alone
 - for a Chinese hotelier or importer, buying a vineyard makes commercial sense
- At such a distance, across different cultures and languages, it is easier to foil enquiries into source of funds/wealth
 - and cultural sensitivities make it tricky to question what you are told
- French economist Eric Vernier: “Being a rich person and a foreigner, one could easily account for laundered funds through one’s official wealth. It’s difficult, all the way from France, to be able to distinguish a billionaire’s clean money from dirty money.”

Toasting the law

- London lawyer Michael Lloyd Wilson set up Global Wine Investments Limited (GWI) in April 2011 to attract investments in cases of high-value wine
- GWI had plush offices in the City of London, and distributed glossy brochures and ads referring to Wilson's status as a solicitor
- GWI's accounts show that between July 2011 and September 2012, investors paid in £631,261 – and GWI spent:
 - £64,016 on wine
 - £100,000 on “business costs”
 - £21,089 on “lifestyle payments”
 - £93,000 withdrawn in cash
 - £150,000 paid to individuals, including Wilson



Toasting the law

- One victim invested £19,600 in two cases of Château Lafite 2008 and another £17,000 the following month
 - when he asked to sell the original two cases, he was told by the London City Bond that no account was held in his name
- Another investor committed £42,500 but received one case of wine worth £8,500
- Wilson – the sole signatory to the company bank account – blamed his staff: “I hired them to do a job. I paid them to do a job – they were supposed to be ordering the wines – I accept I was negligent but it wasn’t my intention.”
- On 22 June 2016 he was jailed for three years for laundering at least £100,000 of fraud proceeds
 - he has been banned from being a director for seven years
 - the SRA website currently shows him as “non-practising”...

Money laundering picture bingo





And finally.....

- Thank you for your attention and participation
- If you have any questions, please contact me:

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