

A large, stylized orange hand graphic is positioned on the left side of the cover, with fingers spread. The background is a solid red color.

# **A Practitioner's Guide to the Law and Regulation of Financial Crime**

**Consultant Editors**

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Baker & McKenzie LLP

**CITY & FINANCIAL PUBLISHING**

Published in 2010 by  
Thomson Reuters (Legal) Limited (Registered in England & Wales,  
Company No 1679046. Registered Office and address for service:  
100 Avenue Road, Swiss Cottage,  
London NW3 3PF) trading as City & Financial.

For further information on our products and services, visit  
*[www.cityandfinancial.com](http://www.cityandfinancial.com)*.

Typeset by LBJ Typesetting Ltd of Kingsclere.  
Printed and bound in Great Britain by CPI Antony Rowe,  
Chippenham and Eastbourne.

ISBN: 978 0 414 04306 0

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**Lucinda Davies** is an Associate of Baker & McKenzie, specialising in non-contentious and contentious financial services law, financial crime and other regulatory and compliance matters. Lucinda regularly advises clients on financial crime issues that arise from their domestic and foreign business operations, including anti-money laundering, counter-terrorist financing, and corruption issues. She has recently been advising the Gulf Cooperation Council on the harmonisation of banking supervision laws in the region. Educated at University College, London and BPP Professional Education in London, Lucinda was admitted as a solicitor in England & Wales in March 2009. She is currently based in Baker & McKenzie's Sydney office.

**Charles Thompson** is a Senior Associate in Baker & McKenzie London's Dispute Resolution Department with higher rights of audience and is a member of the Business Crime Unit and the Commercial Fraud Lawyer's Association. He has vast experience in a broad range of commercial litigation, but his particular areas of specialism relate to business crime and fraud, bribery and corruption, money laundering and civil and criminal mutual legal assistance. He has worked on a number of high profile, complex and high value international fraud matters, and assisted overseas prosecutors to obtain evidence and restrain the suspected proceeds of crime in the UK and off shore.

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**Dr Ian Walden** is Professor of Information and Communications Law and head of the Institute of Computer and Communications Law in the Centre for Commercial Law Studies, Queen Mary, University of London. His publications include *EDI and the Law* (1989), *Information Technology and the Law* (1990), *EDI Audit and Control* (1993), *Cross-border Electronic Banking* 2nd edn, (2000), *Telecommunications Law Handbook* (1997), *E-Commerce Law and Practice in Europe* (2001), *Telecommunications Law and Regulation* 3rd edn, (2009), *Computer Crimes and Digital Investigations* (2007) and *Media Law and Practice* (2009). Ian has been involved in law reform projects for the World Bank, the European Commission, UNCTAD, UNECE and the EBRD, as well as for a number of individual states. Ian was a National Expert seconded to the European Commission DG-Industry (1995-1996); Board Member and Trustee of the Internet Watch Foundation (2004-2009). Ian is a solicitor and Of Counsel to Baker & McKenzie. He is a member of the Press Complaints Commission and, in January 2010, was asked by the Government to chair the Industry Working Group of the UK Council for Child Internet Safety.

**Georgia Chrysikopoulou** is a Senior Associate in Baker & McKenzie's Financial Services Group in London. Georgia joined the firm in 2008 and since then has been involved in both contentious and non-contentious financial services matters. Prior to that Georgia was an Associate Director of UBS Investment Bank and during the four years she spent at UBS she held positions in both the Equities and the Fixed Income

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**Mark Simpson** is an Associate in Baker & McKenzie's Financial Services Group in London. Mark specialises in advising financial institutions and clients outside the regulated sector on financial crime issues, in particular anti-money laundering, counter-terrorist financing, fraud, corruption, market abuse and other compliance matters. Mark's experience includes advising on corruption, money laundering and other financial crime issues arising in the context of mergers and acquisitions, customer relationships, outsourcing arrangements, and joint ventures in higher risk jurisdictions. Mark also advises clients in the regulated sector on compliance with FSA systems and controls requirements, and on UK and EU financial services regulatory laws and conduct of business rules, particularly in a cross-border context. Mark is currently advising the Gulf Cooperation Council on the harmonisation of banking supervisory laws in the Gulf region in the context of the Gulf Cooperation Council Monetary Union project. Mark was educated at Oxford University and at the Oxford Institute of Legal Practice, and was admitted as a Solicitor in England & Wales in March 2008

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# Chapter 1

## Financial Crime

**Arun Srivastava**

### 1.1 Introduction

The UK's new Coalition Government has taken an energetic approach to the reform of financial regulation and related law enforcement matters. At the time of writing a large number of reforms have been aired and are being consulted upon. These include the abolition of the Financial Services Authority (FSA), the creation of an Economic Crime Agency and the establishment of a National Crime Agency, which will replace a number of existing law enforcement bodies. The coming months and years will therefore see significant changes in the approach to financial crime. The object of this book is to consider the various substantive legal and regulatory issues that fall under the subject of financial crime, particularly from the perspective of banks and other financial institutions.

There is no comprehensive definition of financial crime. It may, however, be regarded as a category of criminal conduct which covers offences giving rise to a financial or economic benefit committed in a business or commercial context. The conduct could constitute an offence under the general criminal law (for example, as theft) or under statutes specifically covering financial or commercial transactions. The Financial Services and Markets Act 2000 (FSMA) does refer specifically to "financial crime" but includes only a non-exhaustive definition, referring to offences such as fraud and money laundering.

Financial crime has attracted considerable attention over the years because of a perception that regulators and law enforcement authorities have taken a relatively lax approach to