A Practitioner's Guide to the

Law and Regulation of Financial Crime

Consultant Editors

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Baker & McKenzie LLP

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Biographies

Arun Srivastava is a Partner in Baker & McKenzie's London office. Arun joined the firm in 1996 and was made partner in 2002. He spent a year on secondment to the FSA's Enforcement Division from 1999 to 2000. The focus of Arun's practice is on advising regulated banks and other financial institutions on compliance with their regulatory obligations. Arun also advises non-financial sector clients on general compliance issues and represents clients in regulatory and criminal investigations.

Ian Mason is a Partner in the Baker & McKenzie's Financial Services Group in London. He served as a department head in the FSA's Enforcement and Financial Crime Division and is recognized by *Chambers* 2011 and other legal directories as a leader in the financial services field. Ian is one of the few lawyers to have acted as an FSA skilled person (s.166 FSMA) and has also served on the AIMA Compliance Committee, the AIMA Market Abuse Working Group and the BBA's TCF Working Group. He is also an editorial board member for *Complinet* and *PLC Financial Services*, and has written and spoken extensively on FSA matters.

Andrew Keltie has extensive experience of substantial and complex commercial litigation and arbitration, both domestic and international. He frequently handles cases involving fraud and asset tracing claims, often cross-border, and specialises in disputes concerning trusts. He also coordinates Baker & McKenzie's Business Crime Unit, which, among other things, assists corporate clients to avoid exposure to potential criminal liability (including compliance with anti-money laundering and bribery/corruption legislation, corporate governance and environmental regulation). The Unit also helps to facilitate requests for criminal mutual legal assistance between different States

Nina Moffatt is an Associate in Baker & McKenzie's Financial Services Group. Based in the London office, Nina specialises in advising clients in the regulated and non-regulated sector on compliance with regulatory requirements applicable to their business. Nina advises on money laundering compliance issues, including issues arising from mergers and acquisitions in emerging market jurisdictions. She also advises a wide range of companies based in the UK and overseas on the UK's anti-corruption legislation including drafting compliance policies and conducting training for corporate personnel and senior management on UK anti-bribery issues. Nina was educated at Edinburgh University and was admitted as a Solicitor in September 2009.

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.

Ross McKean is a Partner in Baker & McKenzie's London office and an active member of the firm's global outsourcing and privacy practice groups. He is a member of the firm's European IT Practice Group steering committee. Ross focuses in particular on advising clients in regulated sectors, notably the financial services and telecommunications sectors on a broad range of information management, data breach, data protection, document retention and banking secrecy issues. He also has a broad transactional practice advising on technology procurements and major outsourcings from commodity ITO to bespoke BPO. Ross talks and writes frequently on outsourcing and all aspects of information management, IT and communications law and is a regular contributor to PLC magazine, including authoring various articles on security breach and co-authoring a practice note on communications outsourcing.

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 product teams within the Legal and Compliance department. Georgia specialises in advising the wholesale regulated sector on insider dealing and market abuse issues and also advises clients in the regulated sector on compliance with UK and EU financial services regulatory laws and conduct of business rules, particularly in a cross-border context. Georgia has an LLM in Banking and Finance law from Queen Mary University and is dually qualified as an Attorney at Law in Greece (2005) and a Solicitor in England and Wales (2006).

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

Jerome Tomas is a Partner in Baker & McKenzie's Business Crimes & Investigations and Corporate Compliance & Risk Management practice groups. Jerome previously worked as senior attorney in the SEC's Division of Enforcement. He assists clients address potential exposure under, as well as compliance with, US criminal and civil law, including the US Federal Securities Laws, the Foreign Corrupt Practices Act (FCPA), the Commodity Exchange Act, the US criminal money laundering laws and the US Bank Secrecy Act. Jerome also assists clients that are expanding their international operations handle legal, compliance and reputational risk attendant to establishing operations in higher risk emerging markets, including addressing issues under the FCPA and US trade sanctions laws and regulations—working together with transactional counsel, where necessary, to address these risks either pre-or-post-close, as well as generally advising clients on FCPA-related issues in the context of corporate and commercial transactions. He also assists clients design and implements best-practice compliance programs and policies pursuant to the requirements of the Federal Sentencing Guidelines and the SEC Enforcement Manual.

Nicole Smith is an Associate and Australia solicitor practising in Baker & McKenzie's Financial Services Group. Based in the London office, Nicole specialises in advising financial institutions, such as banks and other regulated entities, on a range of regulatory and compliance issues, including compliance with anti-money laundering and counter terrorist financing laws and regulations. Nicole also advises clients on compliance with FSA systems and controls requirements, and on UK and EU financial services regulatory laws and conduct of business rules. Prior to working in London, Nicole was an Associate in Baker & McKenzie's Sydney office where she advised Australian regulated firms and overseas financial institutions on various compliance and regulatory obligations. Nicole's experience also includes a secondment at ABM AMRO in Sydney. Nicole was educated at Bond University in Australia and graduated with a Bachelor of Law in 2004.

Sunny Mann is a Partner within the EU, Competition and Trade Department of the London office of Baker & McKenzie. In addition to his time in London, he has also worked in the Washington DC, New York and Sydney offices. Sunny's practice focuses on compliance issues, in particular, international trade compliance, including, export controls and trade sanctions. He has advised a number of clients from a variety of sectors (including financial services, energy, technology, telecoms, pharmaceutical and defence) on UK and EU export control rules, including on compliance, classification, licensing, WMD end-use controls and voluntary disclosure issues. He also advises on UN, EU and UK sanctions. In the US, he worked on projects involving US export, re-export and deemed export controls and

US trade embargoes. Sunny graduated from King's College, University of London with an LLB in Law and also from the University of Paris I (Panthéon-Sorbonne) with a Maîtrise en Droit in 1997. He then took an LLM in European Legal Studies at the College of Europe in Bruges. He is a Visiting Professor at the College of Europe (at both the Bruges and Warsaw campuses), the first and leading institute for postgraduate European studies. He was admitted as a solicitor in England and Wales in 2002.

Tristan Grimmer is an Associate in the EU, Competition and Trade Department of Baker & McKenzie's London office. Tristan's trade practice is focused on advising clients from a wide range of industries (including energy, technology, manufacturing and financial services) on the impact of export control and sanctions laws. He has provided sanctions advice to clients in respect of their activities in jurisdictions such as Burma, Iran and Zimbabwe. He also regularly advises clients on compliance with anti-bribery and corruption laws. He has significant expertise in advising clients on the drafting and submission of voluntary disclosures to government authorities, as well as providing more general strategic advice regarding the handling of government investigations. Tristan was admitted to practise as a Solicitor in England and Wales in March 2006. He graduated in 2002 from Leeds University with an LLB in Law.

Ben Smith joined Baker & McKenzie's London office in 2007 and is an Associate in the EC, Competition and Trade Practice. He has also spent 3 months in the European and Competition Law Practice of Baker & McKenzie's Brussels office. Ben is a member of Baker & McKenzie's international trade team in which his work focuses on export control and sanctions law. Ben has experience of advising clients in a number of sectors, including the energy and energy services sector. Ben has also advised clients on compliance with anti-bribery and corruption laws. Ben was admitted to practise as a solicitor in England and Wales in September 2009. He received BA and MA degrees in Law from Magdalene College, Cambridge in July 2005 and May 2009 respectively.

Sylwia A. Lis is an Associate in Baker & McKenzie's International Trade Compliance Group in Washington DC.

Sylwia has represented and counseled foreign and domestic clients across a broad range of international trade issues and regulatory matters relating to cross-border transactions. Sylwia has extensive experience advising companies on US laws relating to exports and re-exports of commercial goods and technology, defense trade controls, and economic sanctions, including licensing, regulatory interpretations, compliance programs, and enforcement matters. Sylwia also has advised clients on national security reviews of foreign investment administered by the Committee on Foreign Investment in the United States (CFIUS), including CFIUS-related due diligence, risk assessment, and representation before the CFIUS agencies. Sylwia received her JD from Vanderbilt University Law School in 2001 and her BA, with distinction and honors, in Political Science and Slavic Languages and Literatures from Northwestern University in 1996.

Alexandre Lamy is an Associate in Baker & McKenzie's International Trade Compliance Group in Washington DC. Alexandre advises clients on compliance with US export controls, trade and economic sanctions, anti-boycott controls, and international anti-corruption measures such as the Foreign Corrupt Practices Act. He advises US and non-US companies in the context of enforcement actions, internal investigations, compliance audits, mergers and acquisitions, and other cross-border transactions, as well as the design, implementation, and administration of compliance programs. Alexandre earned his BA at Claremont McKenna College and his JD at the University of Virginia School of Law, and was admitted to the Commonwealth of Virginia bar in October 2009 and the District of Columbia bar in September 2010.

Monica Kurnatowska is a Partner in Baker & McKenzie's Employment Group based in London. Her work includes general employment counsel advice, transactional projects, and employment litigation, with a particular interest in whistle-blowing, sensitive employment claims, investigations, city bonus disputes and other issues affecting the financial and professional services sectors.

Paul Harrison is Of Counsel in Baker & McKenzie's Employment Group based in London and advises at a senior level on all aspects of contentious and non-contentious employment law. He regularly advises on the conduct of complex internal investigations, Employment Tribunal claims for unfair dismissal, whistleblowing and discrimination, High Court litigation, and senior executive and Board issues across a variety of sectors.

Francis FitzGibbon QC of Doughty Street Chambers practises in all types of criminal work, in particular fraud, money laundering, and drug trafficking. Francis undertakes advisory work, and is registered for Direct Access. He has assisted the Bar Council on its responses to the 2008 counter-terror legislation and advised on the Corporate Manslaughter & Homicide Bill. Reported cases include *R. v Edwards* (1998) Crim. L.R. 207 (admissibility of lifestyle in drugs offences); *R. v P* [2002] 1 A.C. 146 (admissibility of intercepted telephone calls from abroad); *Kulah* [2007] Crim. L.R. 907 (sentence indications). Francis is regularly instructed in miscarriage of justice appeals. In 2005 he successfully appealed a Jamaican death row conviction at the Privy Council (*Evon Smith* [2006] 1 W.L.R. 243.) He has given lectures on the impact of money laundering legislation on solicitor's practice. He sits as a part-time Immigration Judge.

David Hislop QC graduated from Auckland University in New Zealand in 1979 and practised in New Zealand until 1988 when he came to the Bar in London. He practises as a barrister at Doughty Street Chambers specialising in all aspects of Serious Organised Crime. He is a senior member of the Regulatory and Financial Crime Team and advises on fraud, corporate crime, money laundering and confiscation issues. He regularly appears as Leading Counsel in all aspects of white collar crime both in the Crown Court and the Court of Appeal.

Contents

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