

# Legal issues arising out of financial crime

## LexisNexis® Anti-Money Laundering and Financial Crime

In a forthcoming update to *Anti-Money Laundering and Financial Crime*, our team of authors at top-tier law firm Herbert Smith Freehills have updated their chapter “Legal Issues Arising Out of Financial Crime” to incorporate a discussion on the offence of failing to prevent bribery under the UK Bribery Act 2010. The chapter provides guidance to Australian persons and organisations on the legal issues that surround the prevention and commission of financial crimes.

### *Offence of failing to prevent bribery*

It is a little more than one year since one of the world's strictest anti-bribery regimes, the UK Bribery Act 2010 commenced on 1 July 2011. The Act has far-reaching extraterritorial application and a number of unique features. Of particular relevance to Australian companies – and perhaps the most difficult to manage – is the unique offence of failing to prevent bribery.

Under s 7 of the UK Bribery Act 2010, a “commercial organisation” will commit an offence if:

- A person “associated with” the commercial organisation bribes another person; and,
- The associate intends to obtain or retain business, or a business advantage, for the commercial organisation.

A “commercial organisation” can commit an offence under s 7 irrespective of where the bribery took place, and even if the UK part of its business is completely unrelated to the alleged bribery. Further, there is no requirement that the commercial organisation itself intended for the bribery to take place, or even had any prior knowledge about it.

The penalties for contravention of the Act are severe. A conviction carries with it the potential for an unlimited fine and ten years in jail. In addition, companies may be disbarred from carrying out public contracts in the European Union.

### *How far into the supply chain will liability extend?*

The UK Ministry of Justice suggests that where there are multiple layers of contractors, an organisation usually exercises control only over its immediate contracting counterparty. Are the further links in the chain performing services for and on behalf of that counterparty, or for the principal organisation? This is a question that the UK courts will have to grapple with; and no doubt everything will depend on the facts of a particular case.

**Find out more about the LexisNexis Anti-Money Laundering and Financial Crime at**

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