STATUTORY INSTRUMENTS

2001 No. 544

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

PART II

SPECIFIED ACTIVITIES

CHAPTER II

ACCEPTING DEPOSITS

The activity

Accepting deposits

5.—(1) Accepting deposits is a specified kind of activity if—

(a) money received by way of deposit is lent to others; or

(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), "deposit" means a sum of money, other than one excluded by any of **[**[F1]articles 6 to 9A**]**, paid on terms—

(a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(b) which are not referable to the provision of property (other than currency) or services or the giving of security.

(3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—

(a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

(b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or

(c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Textual Amendments

F1 Words in art. 5(2) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **3(1)**

Exclusions

Sums paid by certain persons

6.—(1) A sum is not a deposit for the purposes of article 5 if it is—

(a) paid by any of the following persons—

(i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;

(ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;

(iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);

(iv) the National Savings Bank;

(v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987 [M1] by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;

(vi) Keesler Federal Credit Union;

(vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;

(viii) a local authority;

(xi) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, “enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);

(x) the European Community, the European Atomic Energy Community or the European Coal and Steel Community;

(xi) the European Investment Bank;

(xii) the International Bank for Reconstruction and Development;

(xiii) the International Finance Corporation;

(xiv) the International Monetary Fund;

(xv) the African Development Bank;

(xvi) the Asian Development Bank;

(xvii) the Caribbean Development Bank;

(xviii) the Inter-American Development Bank;

(xix) the European Bank for Reconstruction and Development;

[[F2](xx) the Council of Europe Development Bank;**]**

(b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;

(c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or

(d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

Textual Amendments

F2 Art. 6(1)(a)(xx) substituted (5.6.2002) by The Financial Services and Markets Act 2000 (Financial Promotion and Miscellaneous Amendments) Order 2002 (S.I. 2002/1310), arts. 1, **4(1)**

Marginal Citations

M1 1987 c. 22. Section 3 was amended by the Bank of England Act 1998 (c. 11), Sch. 5, paras 1 and 3. “Municipal bank" is defined in section 103 of the Banking Act 1987, which was amended by the Local Government Act 1992 (c. 19), **Sch. 3**, para. 22, and by the Local Government and Rating Act 1997 (c. 29), Sch. 3, para. 21.

Sums received by solicitors etc.

7.—(1) A sum is not a deposit for the purposes of article 5 if it is received by a practising solicitor acting in the course of his profession.

(2) In paragraph (1), “practising solicitor" means—

(a) a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974 [M2], article 4 of the Solicitors (Northern Ireland) Order 1976 [M3] or section 4 of the Solicitors (Scotland) Act 1980 [M4];

(b) a recognised body;

(c) a registered foreign lawyer in the course of providing professional services as a member of a multi-national partnership;

(d) a registered European lawyer; or

(e) a partner of a registered European lawyer who is providing professional services in accordance with—

(i) rules made under section 31 [M5] of the Solicitors Act 1974;

(ii) regulations made under article 26 of the Solicitors (Northern Ireland) Order 1976; or

(iii) rules made under section 34 of the Solicitors (Scotland) Act 1980 [M6].

(3) In this article—

(a) “a recognised body" means a body corporate recognised by—

(i) the Council of the Law Society under section 9 of the Administration of Justice Act 1985 [M7];

(ii) the Incorporated Law Society of Northern Ireland under article 26A of the Solicitors (Northern Ireland) Order 1976 [M8]; or

(iii) the Council of the Law Society of Scotland under section 34 of the Solicitors (Scotland) Act 1980;

(b) "registered foreign lawyer" has the meaning given by section 89 of the Courts and Legal Services Act 1990 [M9] or, in Scotland, section 65 of the Solicitors (Scotland) Act 1980 [M10];

(c) "multi-national partnership" has the meaning given by section 89 of the Courts and Legal Services Act 1990 but, in Scotland, is a reference to a "multi-national practice" within the meaning of section 60A of the Solicitors (Scotland) Act 1980 [M11]"registered European lawyer" has the meaning given by regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 [M12] or regulation 2(1) of the European Communities (Lawyer's Practice) (Scotland) Regulation 2000 [M13].

Marginal Citations

M2 1974 c. 47.

M3 S.I. 1976/582 (N.I. 12); relevant amending instrument is S.I. 1989/1343 (N.I. 14).

M4 1980 c. 46.

M5 Section 31 was amended by para. 10 of Sch. 17 to the Courts and Legal Services Act 1990 (c. 41), and by para. 3 of Sch. 6 to, and para. 1 of Sch. 7 to, the Access to Justice Act 1999 (c. 22).

M6 Amended by section 31 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M7 1985 c. 61; section 9 was amended by para. 54 of Sch. 18 to the Courts and Legal Services Act 1990, and by para. 1 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119), and was repealed in part by Part II of Sch. 15 to the Access to Justice Act 1999.

M8 Inserted by article 10 of the Solicitors (Amendment) (Northern Ireland) Order 1989 (S.I. 1989/1343) (N.I. 14).

M9 1990 c. 41; section 89 was amended by para. 14 of Sch. 4 to the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).

M10 Amended by para. 29(15) of Sch. 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M11 Inserted by section 32 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

M12 S.I. 2000/1119.

M13 Scottish Statutory Instruments 2000 No. 121.

Sums received by persons authorised to deal etc.

8. A sum is not a deposit for the purposes of article 5 if it is received by a person who is—

(a) an authorised person with permission to carry on an activity of the kind specified by any of articles 14, 21, 25, 37, 51 and 52, or

(b) an exempt person in relation to any such activity,

in the course of, or for the purpose of, **[**[F3]carrying on any such activity (or any activity which would be such an activity but for any exclusion made by this Part)**]** with or on behalf of the person by or on behalf of whom the sum is paid.

Textual Amendments

F3 Words in art. 8 substituted (1.12.2001) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2001 (S.I. 2001/3544), arts. 1(a), **3**

Sums received in consideration for the issue of debt securities

9.—(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless—

(a) the commercial paper is issued to persons—

(i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and

(b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

[[F4](3) In paragraph (2), "commercial paper" means an investment of the kind specified by article 77 or 78 having a maturity of less than one year from the date of issue.**]**

Textual Amendments

F4 Art. 9(3) substituted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **12**

[[F5]Sums received in exchange for electronic money

9A. A sum is not a deposit for the purposes of article 5 if it is immediately exchanged for electronic money.**]**

Textual Amendments

F5 Art. 9A inserted (27.4.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (S.I. 2002/682), arts. 1(2)(b), **3(2)**

[[F6]Information society services

9AA. Article 5 is subject to the exclusion in article 72A (information society services).**]**

Textual Amendments

F6 Art. 9AA inserted (21.8.2002) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2002 (S.I. 2002/1776), arts. 1, **3(2)**

[[F7]Funds received for payment services

9AB.—(1) A sum is not a deposit for the purposes of article 5 if it is received by an authorised payment institution, an EEA authorised payment institution or a small payment institution from a payment service user with a view to the provision of payment services.

(2) For the purposes of paragraph (1), "authorised payment institution", "EEA authorised payment institution", "small payment institution", "payment services" and "payment service user" have the meanings given in the Payment Services Regulations 2009.**]**

Textual Amendments

F7 Art. 9AB inserted (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), reg. 1(2)(c), **Sch. 6 para. 4(a)**

Status:
Point in time view as at 01/11/2009.

Changes to legislation:
The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, Chapter II is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.