



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER II

RESTRICTION ON CARRYING ON BUSINESS

3 Persons entitled to carry on investment business

No person shall Carry on, or purport to carry on. Investment business in the United Kingdom unless he is an authorised person under Chapter III or an exempted person under Chapter IV of this Part of this Act.

4 Offences

- (1) Any person who carries on, or purports to carry on. investment business in contravention of section 3 above shall be guilty of an offence and liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) In proceedings brought against any person for an offence under this section it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

5 Agreements made by or through unauthorised persons

- (1) Subject to subsection (3) below, any agreement to which this subsection applies—
 - (a) which is entered into by a person in the course of carrying on investment business in contravention of section 3 above; or

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- (b) which is entered into—
- (i) by a person who is an authorised person or an exempted person in respect of the investment business in the course of which he enters into the agreement ; but
 - (ii) in consequence of anything said or done by a person in the course of carrying on investment business in contravention of that section,
- shall be unenforceable against the other party; and that party shall be entitled to recover any money or other property paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having parted with it.
- (2) The compensation recoverable under subsection (1) above shall be such as the parties may agree or as the court may, on the application of either party, determine.
- (3) A court may allow an agreement to which subsection (1) above applies to be enforced or money and property paid or transferred under it to be retained if it is satisfied—
- (a) in a case within paragraph (a) of that subsection, that the person mentioned in that paragraph reasonably believed that his entering into the agreement did not constitute a contravention of section 3 above ;
 - (b) in a case within paragraph (b) of that subsection, that the person mentioned in sub-paragraph (i) of that paragraph did not know that the agreement was entered into as mentioned in sub-paragraph (ii) of that paragraph ; and
 - (c) in either case, that it is just and equitable for the agreement to be enforced or, as the case may be, for the money or property paid or transferred under it to be retained.
- (4) Where a person elects not to perform an agreement which by virtue of this section is unenforceable against him or by virtue of this section recovers money paid or other property transferred by him under an agreement he shall repay any money and return any other property received by him under the agreement.
- (5) Where any property transferred under an agreement to which this section applies has passed to a third party the references to that property in subsections (1), (3) and (4) above shall be construed as references to its value at the time of its transfer under the agreement.
- (6) A contravention of section 3 above shall not make an agreement illegal or invalid to any greater extent than is provided in this section.
- (7) Subsection (1) above applies to any agreement the making or performance of which by the person seeking to enforce it or from whom money or other property is recoverable under this section constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act and is not excluded by Part III or IV of that Schedule.

6 Injunctions and restitution orders

- (1) If, on the application of the Secretary of State, the court is satisfied—
- (a) that there is a reasonable likelihood that a person will contravene section 3 above; or
 - (b) that any person has contravened that section and that there is a reasonable likelihood that the contravention will continue or be repeated,
- the court may grant an injunction restraining the contravention or, in Scotland, an interdict prohibiting the contravention.

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- (2) If, on the application of the Secretary of State, the court is satisfied that a person has entered into any transaction in contravention of section 3 above the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.
- (3) The court may, on the application of the Secretary of State, make an order under subsection (4) below or, in relation to Scotland, under subsection (5) below if satisfied that a person has been carrying on investment business in contravention of section 3 above and—
 - (a) that profits have accrued to that person as a result of carrying on that business; or
 - (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of his contravention of section 47 or 56 below or failure to act substantially in accordance with any of the rules or regulations made under Chapter V of this Part of this Act
- (4) The court may under this subsection order the person concerned to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard—
 - (a) in a case within paragraph (a) of subsection (3) above to the profits appearing to the court to have accrued;
 - (b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect; or
 - (c) in a case within both paragraphs (a) and (b) of that subsection, to the profits and to the extent of the loss or other adverse effect.
- (5) The court may under this subsection order the person concerned to pay to the applicant such sum as appears to the court to be just having regard to the considerations mentioned in paragraphs (a) to (c) of subsection (4) above.
- (6) Any amount paid into court by or recovered from a person in pursuance of an order under subsection (4) or (5) above shall be paid out to such person or distributed among such persons as the court may direct, being a person or persons appearing to the court to have entered into transactions with that person as a result of which the profits mentioned in paragraph (a) of subsection (3) above have accrued to him or the loss or other adverse effect mentioned in paragraph (b) of that subsection has been suffered.
- (7) On an application under subsection (3) above the court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in paragraph (a) of that subsection and for determining how any amounts are to be paid or distributed under subsection (6) above; and the court may require any such accounts or other information to be verified in such manner as it may direct
- (8) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (9) Nothing in this section affects the right of any person other than the Secretary of State to bring proceedings in respect of any of the matters to which this section applies.