



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 4

#### CONDUCT OF PERSONS WORKING IN FINANCIAL SERVICES SECTOR

VALID FROM 07/03/2016

#### *Offence*

#### **36 Offence relating to a decision causing a financial institution to fail**

- (1) A person (“S”) commits an offence if—
- (a) at a time when S is a senior manager in relation to a financial institution (“F”), S—
    - (i) takes, or agrees to the taking of, a decision by or on behalf of F as to the way in which the business of a group institution is to be carried on, or
    - (ii) fails to take steps that S could take to prevent such a decision being taken,
  - (b) at the time of the decision, S is aware of a risk that the implementation of the decision may cause the failure of the group institution,
  - (c) in all the circumstances, S's conduct in relation to the taking of the decision falls far below what could reasonably be expected of a person in S's position, and
  - (d) the implementation of the decision causes the failure of the group institution.
- (2) A “group institution”, in relation to a financial institution (“F”), means F or any other financial institution that is a member of F's group for the purpose of FSMA 2000 (see section 421 of that Act).

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(3) Subsections (1) and (2) are to be read with the interpretative provisions in section 37.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction—

(i) in England and Wales, to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003) or a fine, or both;

(ii) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;

(iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

### **37 Section 36: interpretation**

(1) This section has effect for the interpretation of section 36.

(2) “Financial institution” means a UK institution which—

(a) meets condition A or B, and

(b) is not an insurer or a credit union.

(3) Condition A is that it has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits.

(4) Condition B is that—

(a) it is for the purposes of FSMA 2000 an investment firm (see section 424A of that Act),

(b) it has permission under Part 4A of that Act to carry on the regulated activity of dealing in investments as principal, and

(c) when carried on by it, that activity is a PRA-regulated activity.

(5) In subsection (2)—

(a) “UK institution” means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom;

(b) “insurer” means an institution which is authorised under FSMA 2000 to carry on the regulated activity of effecting or carrying out contracts of insurance as principal;

(c) “credit union” means a credit union as defined by section 31 of the Credit Unions Act 1979 or a credit union as defined by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985.

(6) Subsections (3), (4) and (5)(b) are to be read in accordance with sections 22 and 22A of FSMA 2000, taken with Schedule 2 to that Act and any order under section 22.

(7) A person is a “senior manager” in relation to a financial institution if, under an arrangement entered into by the institution, or by a contractor of the institution, in relation to the carrying on by the institution of a regulated activity, the person performs a senior management function.

(8) A “senior management function” is a function designated as such—

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- (a) by the FCA under subsection (6A) of section 59 of FSMA 2000 (approval for particular arrangements), or
  - (b) by the PRA under subsection (6B) of that section.
- (9) A financial institution (“F”) is to be regarded as failing where—
- (a) F enters insolvency,
  - (b) any of the stabilisation options in Part 1 of the Banking Act 2009 is achieved in relation to F, or
  - (c) F is taken for the purposes of the Financial Services Compensation Scheme to be unable, or likely to be unable, to satisfy claims against F.
- (10) In subsection (9)(a) “insolvency” includes—
- (a) bankruptcy,
  - (b) liquidation,
  - (c) bank insolvency,
  - (d) administration,
  - (e) bank administration,
  - (f) receivership,
  - (g) a composition between F and F's creditors, and
  - (h) a scheme of arrangement of F's affairs.

### **38 Institution of proceedings**

- (1) In this section “an offence” means an offence under section 36.
- (2) Proceedings for an offence may be instituted in England and Wales only—
- (a) by the FCA, the PRA or the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (3) Proceedings for an offence may be instituted in Northern Ireland only—
- (a) by the FCA, the PRA or the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) In exercising its power to institute proceedings for an offence, the FCA or the PRA must comply with any conditions or restrictions imposed in writing by the Treasury.
- (5) Conditions or restrictions may be imposed under subsection (4) in relation to—
- (a) proceedings generally, or
  - (b) such proceedings, or categories of proceedings, as the Treasury may direct.

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