

## When is a Bank account not a Bank account under Account Freezing and Forfeiture Orders

1. As part of my series on AFO's I am going to discuss what accounts can be frozen by Account Freezing Orders ('AFO's). Though the requirements under section 303Z5 setting out what a bank is seem straightforward, it can be hard in practice to determine when a bank account is not a bank account.
2. It has in my experience caused a number of AFO's to be discharged. This is where orders have frozen Forex trading accounts, ISA fund accounts, or other accounts which contain money but do not
3. Section 303Z5 is the key provision. It states:

*(1) "Bank" means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom.*

*(2) In subsection (1), "authorised deposit-taker" means—*

*(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;*

*(b) a person who—*

*(i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and*

*(ii) accepts deposits;*

*(c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.*

*(3) A reference in subsection (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.*

4. So, the key phrase is an 'authorised deposit-taker'. Part 4A of the Financial Services and Markets Act 2000 ('FSMA') does not set out what an authorised deposit taker is, it regulates who is an authorised deposit taker. Section 31 of FSMA sets out the terms of authorisation. Which means it is slightly strange that section Z5 quotes Part 4A rather than Part 3, which is titled '*authorisation and exemption*'.
5. This means that to determine if a bank account is an account under section 303Z5, you have to determine what the regulated body behind account is authorized to do. This needs to be checked both under FSMA and the EEA regulation. This situation will be further complicated by Brexit in respect of the EEA regulated companies.

6. What this means in practice is that Financial Investigators should check that the account they are applying for is a bank. If they apply for an account to be frozen which is not a bank account there is a good chance that costs and compensation could be ordered against the applicant.
7. A further complicating factor is that Suspicious Activity Reports can refer to a wide range of movements of money, so it is a straight forward mistake for an FI to make, to think that as there is a SAR, there must be a bank account. This is wrong. There are ways to seize the money under AFO's, where the money is originally not in a bank account, but it will depend on the circumstances. As a rule of a thumb if the account does not have a sort code there should be a question mark over it.
8. Though this is not an area where there will be a lot of case law developed on this topic, but it is a pitfall that an unsuspecting applicant can fall into, and something which should be checked by the respondent. The biggest change in this area, and AFFO's as a whole, will come from our changing relationship with Europe.