



Jersey

**FINANCIAL SERVICES (TRUST COMPANY  
BUSINESS (ASSETS – CUSTOMER MONEY))  
(JERSEY) ORDER 2000**

**Official Consolidated Version**

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Jersey

## **FINANCIAL SERVICES (TRUST COMPANY BUSINESS (ASSETS – CUSTOMER MONEY)) (JERSEY) ORDER 2000**

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## **FINANCIAL SERVICES (TRUST COMPANY BUSINESS (ASSETS – CUSTOMER MONEY)) (JERSEY) ORDER 2000**

**THE ECONOMIC DEVELOPMENT COMMITTEE**, in pursuance of Articles 21 and 42 of the [Financial Services \(Jersey\) Law 1998](#) and on the recommendation of the Jersey Financial Services Commission, orders as follows –<sup>1</sup>

Commencement [[see endnotes](#)]

### **1 Interpretation**

(1) In this Order, unless the context otherwise requires –

“approved bank” means a deposit taking institution established in and authorized by the relevant supervisory authority in a member state of the European Community or in Australia, Canada, Guernsey, Hong Kong, the Isle of Man, Japan, Jersey, New Zealand, Singapore, Switzerland or the United States of America;

“Commission” means the Jersey Financial Services Commission;

“customer”, in respect of a registered person registered to carry on trust company business, means –

- (a) a person who has entered into an agreement for the provision of services to be provided by the registered person when carrying on that trust company business; or
- (b) a person who has received or may receive the benefit of services provided or arranged by the registered person when carrying on that trust company business;

“customer money”, in respect of a registered person registered to carry on trust company business, means trust company business assets consisting of money that the registered person has control of or is otherwise responsible for which the registered person is required to safeguard in accordance with the responsibilities the registered person has accepted in the course of carrying on that trust company business;

“customer pooled bank account”, in respect of a registered person registered to carry on trust company business, means a bank account that is opened by and in the name of the registered person that holds or is intended to hold customer money in

respect of 2 or more customers of the registered person but does not include a designated joint account;

“designated joint account”, in respect of a registered person, means a bank account that is opened by and in the name of the registered person that holds or is intended to hold customer money in respect of 2 or more customers of the registered person where –

- (a) those customers agreed in writing when the account was opened that it would be a designated joint account; and
- (b) money in the account is to be used to finance a joint enterprise;

“joint enterprise” means an enterprise into which the persons participating enter for commercial purposes related to a business carried on by those persons; and where a person participating is a company, each company with which it is connected shall also be regarded as a person participating in the enterprise;

“Law” means the [Financial Services \(Jersey\) Law 1998](#);

“money”, in respect of customer money, includes cash, cheques and other payable orders and money deposited in accounts, in each case, in any currency.

- (2) If customer money referred to in this Order is trust property the trust and the beneficiaries under the trust shall be treated for the purposes of this Order as one customer.

## **2 Records of customer money to be kept**

- (1) A registered person must keep adequate records of customer money.
- (2) The records must –
  - (a) show each transaction in respect of the money in a manner that allows the transaction to be identified and traced;
  - (b) be kept in a manner that allows the balance due to each customer to be identified and traced; and
  - (c) be in a form that allows the records to be reconciled on a timely basis so that any error can be corrected promptly.

## **3 Reconciliation of customer money**

A registered person must promptly carry out a reconciliation between the records of customer money kept by the registered person and any statement received from a bank in which customer money is kept.

## **4 Interest on customer money**

- (1) A registered person must in so far as it is reasonable and practicable to do so ensure that interest is received on customer money.
- (2) A registered person shall credit interest received on a customer’s money to the customer.
- (3) Paragraphs (1) and (2) shall not apply to any extent the customer otherwise agrees.

## **5 Customer money not to be mixed with other money**

- (1) A registered person must ensure that in so far as it is possible and practicable to do so customer money and other money is not mixed.
- (2) It shall be a defence for a registered person charged with an offence under paragraph (1) to show that when the person became aware that the money was mixed it was separated within 2 days of it being possible and practicable to do so.

## **6 Use of customer money**

- (1) A registered person must ensure that a customer's money is not used for another customer without proper authority.
- (2) A registered person must ensure that customer money is not disbursed unless it is –
  - (a) properly payable to a customer;
  - (b) properly payable by or on behalf of, or in respect of a customer; or
  - (c) otherwise properly transferred.

## **7 Customer money in a customer pooled bank account**

- (1) A registered person must ensure that if customer money is kept in a customer pooled bank account –
  - (a) the account is with an approved bank;
  - (b) the account includes words or other information in its title that clearly indicates it to be a bank account for customer money of the registered person and not an account for money that belongs beneficially to the registered person; and
  - (c) an undertaking is given by the approved bank.
- (2) The undertaking must be to the effect that the bank –
  - (a) acknowledges that money standing to the credit of the account is and shall be accepted by the bank as being held by the registered person as a trustee; and
  - (b) accordingly undertakes not to combine the account with any other account nor to exercise any right of set-off or counterclaim or any security interest against money in the account in respect of a debt or other obligation owed to it by the registered person.
- (3) A registered person must ensure that a customer pooled bank account is not knowingly overdrawn.

## **8 Exemptions**

- (1) The Commission may on the application of a registered person exempt the person from compliance with any requirement of this Order.
- (2) The Commission shall not grant an exemption unless it has first satisfied itself that by virtue of the trust company business the registered person carries on or intends to carry on no customer of the person is likely to be prejudiced if the exemption is granted.

- (3) An exemption may be granted subject to the registered person complying with conditions specified by the Commission.
- (4) An exemption granted under paragraph (1) shall be of no effect if the registered person fails to comply with any condition imposed under paragraph (3).

## **9 Citation**

This Order may be cited as the Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000	<a href="#">R&amp;O.144/2000</a>	11 December 2000
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003

### Table of Renumbered Provisions

Original	Current
1(3), (4), (5)	spent, omitted from this revised edition

### Table of Endnote References

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<sup>1</sup> *Enacting formula*      *impliedly amended by R&O.101/2003*