



Jersey

**FINANCIAL SERVICES (FUND SERVICES  
BUSINESS (ACCOUNTS, AUDITS AND  
REPORTS)) (JERSEY) ORDER 2007**

**Official Consolidated Version**

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# **FINANCIAL SERVICES (FUND SERVICES BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 2007**

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Jersey

## **FINANCIAL SERVICES (FUND SERVICES BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 2007**

**THE MINISTER FOR ECONOMIC DEVELOPMENT**, in pursuance of Articles 17, 18 and 42 of the [Financial Services \(Jersey\) Law 1998](#), on the recommendation of the Jersey Financial Services Commission and after having consulted such bodies as appear to the Commission to represent the interests of persons described in Article 18(1)(a) and (b) of that Law and registered persons, orders as follows –

Commencement [[see endnotes](#)]

### **1 Interpretation**

In this Order, unless the context otherwise requires –

“accounting period”, in respect of a registered person, means the accounting period for that person that is approved in accordance with Article 2;

“auditor”, in respect of a registered person, means the auditor approved by the Commission in respect of that person in accordance with Article 4;

“auditor’s report” means a report prepared in accordance with Articles 5 and 7;

“client”, in respect of a registered person, means –

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

“Commission” means the Jersey Financial Services Commission;

“declaration” means a declaration that complies with Article 6;

“financial statements”, in respect of a registered person, means financial statements prepared in respect of that person that comply with the requirements of Article 8 or 9;

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

“registered person” means a person registered under the Law to carry on fund services business.

## **2 Accounting period**

- (1) A person applying under the Law for registration in respect of fund services business shall, at the same time, apply to the Commission for approval of –
  - (a) a period, of not more than 18 months, that is proposed by the registered person to be the first accounting period for the person; and
  - (b) the period that is proposed by the registered person to be the accounting period for the person after the end of the first accounting period.
- (2) A registered person shall not change an accounting period without the Commission’s approval.
- (3) A registered person may apply to the Commission for approval of a proposed accounting period for the person in place of an accounting period that is, under paragraph (4), approved in respect of the person by the Commission.
- (4) The Commission shall approve or refuse to approve an accounting period proposed in an application under paragraph (1) or (3).
- (5) The Commission shall only approve, as the accounting period for a registered person after the end of the first accounting period, a period of 12 months, unless it is satisfied that there are reasonable grounds for approving another period.
- (6) A registered person who fails to comply with paragraph (1) or (2) shall be guilty of an offence and shall be liable to a fine.

## **3 Accounting records**

- (1) A registered person shall keep accounting records that –
  - (a) show and explain each of the registered person’s transactions in respect of the fund services business carried on by the registered person;
  - (b) enable financial statements to be prepared in respect of the person; and
  - (c) are capable of disclosing at any time with reasonable accuracy the person’s –
    - (i) financial position, and
    - (ii) degree of compliance with any financial resources requirements of the Commission that relate to the person.
- (2) A registered person shall ensure that accounting records kept in compliance with paragraph (1), whether in electronic form or any other form –
  - (a) are stored in a way that minimizes any risk of their loss due to theft, fire, flood, corruption or unauthorized erasure;
  - (b) are stored in a way that prevents unauthorized access to the records; and
  - (c) are backed up or otherwise duplicated so that copies shall be available if the originals are lost, destroyed, corrupted or erased.
- (3) A registered person shall ensure that accounting records kept in compliance with paragraph (1) and the backup copy or duplicate made in compliance with

paragraph (2)(c) are kept by the person for at least 10 years from the date the records were made.

- (4) A registered person shall not be taken to have complied with paragraph (1) or (2) by keeping in an electronic form any accounting records, or by keeping in an electronic form any backup copies or duplicates of the records, unless he or she ensures that an electronic device capable of reading the records is provided to a person acting on behalf of the Commission, as soon as reasonably practicable after the person requests the device to be provided.
- (5) A registered person who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence and shall be liable to a fine.

#### **4 Appointment of auditor**

- (1) A registered person shall not employ or engage a person to be an auditor in respect of the person's fund services business unless the auditor is approved under paragraph (4) to be the auditor in respect of the person's fund services business.
- (2) A registered person who fails to comply with paragraph (1) shall be guilty of an offence and shall be liable to a fine.
- (3) A person may apply to the Commission for approval of a person nominated in the application to be the auditor in respect of the person's fund services business.
- (4) The Commission may approve, or refuse to approve, a person nominated in an application under paragraph (3) to be the auditor in respect of a person's fund services business.
- (5) The Commission shall approve under this Article an auditor in respect of a registered person only if it is satisfied that, having regard to the type of fund services business carried on by the registered person, the person is suitable to be an auditor in respect of the registered person.
- (6) If the appointment of an auditor is terminated for any reason, the auditor shall, within 7 days of the termination, provide to the Commission a statement as to whether there are circumstances relating to the termination that should be brought to the Commission's attention and, if there are, what those circumstances are.
- (7) An auditor who fails to comply with paragraph (6) shall be guilty of an offence and shall be liable to a fine.

#### **5 Auditor to prepare financial statements and reports**

- (1) A registered person shall, as soon as practicable after the end of an accounting period, provide to the person's auditor financial statements and a declaration in respect of that period.
- (2) The auditor shall prepare reports in respect of both the financial statements and the declaration and provide them to the registered person.
- (3) A registered person who, on being requested to do so by the auditor for the purposes of this Order, fails to give the auditor –
  - (a) access at all reasonable times to the person's records and documents relating to the person's business; or

- (b) other information, or an explanation, that the auditor considers necessary for the performance of the auditor's duties under this Order,

shall be guilty of an offence and shall be liable to a fine.
- (4) A registered person, or a person acting or purporting to be acting on behalf of a registered person, who knowingly or recklessly makes a statement to the registered person's auditor –
  - (a) that conveys or purports to convey information or an explanation that the auditor requires or is entitled to require in the course of the auditor's duties under this Order; and
  - (b) that is misleading, false or deceptive in a material particular,

shall be guilty of an offence and shall be liable to a fine.

## **6 Declaration**

- (1) A declaration shall state whether, during the relevant accounting period, the registered person –
  - (a) has complied with the requirements of the Law;
  - (b) has complied with the requirements of any Order, or of any Code of Practice made under Article 19 of the Law, that apply to the registered person;
  - (c) has maintained proper accounting records and adequate systems to enable the registered person to maintain proper accounting records; and
  - (d) has complied with the requirements, of all laws relating to money laundering, with which the registered person is required to comply.
- (2) If a registered person has failed to comply with a requirement referred to in paragraph (1) (including paragraph (1)(c)) the declaration shall contain details of all material failures and specify any measures taken, or to be taken, by the registered person to ensure that the failures are not repeated.
- (3) A registered person who knowingly or recklessly includes in a declaration a statement that is misleading, false or deceptive in a material particular shall be guilty of an offence and shall be liable to a fine.

## **7 Auditor's reports**

- (1) An auditor's report shall be prepared, and the audit leading to that report shall be conducted, in accordance with –
  - (a) the Auditing Standards issued by the Auditing Practices Board;
  - (b) the International Standards on Auditing issued by the International Federation of Accountants; or
  - (c) another standard that is generally recognized and that is agreed between the registered person and the Commission.
- (2) An auditor's report that relates to financial statements shall specify whether the statements have been prepared in accordance with this Order.
- (3) An auditor's report that relates to a declaration shall –

- (a) if, while conducting the audit for the purpose of preparing the report, the auditor became aware of no matter that could be taken as indicating that a statement in the declaration was incorrect, state that this is the case; or
- (b) if the auditor cannot confirm that while conducting the audit for the purpose of preparing the report he or she became aware of no matter that could be taken as indicating that a statement in the declaration was incorrect, specify the matter that could be taken as indicating that a statement in the declaration was incorrect.

## **8 Financial statements to be provided**

- (1) A registered person shall provide to the Commission financial statements in respect of each accounting period.
- (2) The statements shall be provided by a person –
  - (a) within 4 months after the end of the accounting period; or
  - (b) if the Commission thinks there are special circumstances in relation to the person, within the period (being not more than 8 months after the end of the accounting period) that the Commission agrees with the person before the end of the period 4 months after the end of the accounting period.
- (3) The financial statements shall be accompanied by –
  - (a) a declaration;
  - (b) an auditor's report in respect of the financial statements and the declaration;
  - (c) any report prepared by an internal or external auditor that is available to the registered person and addresses a relevant matter;
  - (d) brief details of any report prepared by an accountant or consultant that is available to the registered person and addresses a relevant matter;
  - (e) any report prepared by an internal or external auditor that is available to the registered person and addresses a relevant matter in respect of a client of the registered person; and
  - (f) brief details of any report prepared by an accountant or consultant that is available to the registered person and addresses a relevant matter in respect of a client of the registered person.
- (4) In paragraph (3), "relevant matter", in respect of a registered person, means –
  - (a) a breakdown or material weakness in the person's internal controls or procedures; and
  - (b) any subsequent recommendations of the auditor, accountant or consultant as to how to improve those procedures.
- (5) The financial statements of a registered person shall be prepared in accordance with –
  - (a) International Financial Reporting Standards;
  - (b) the United Kingdom Generally Accepted Accounting Practice (GAAP); or
  - (c) another standard that is generally recognized and that is agreed between the registered person and the Commission.

- (6) The financial statements shall show a true and fair view of –
  - (a) the state of affairs of the registered person at the end of the relevant accounting period; and
  - (b) the registered person's profit or loss for that period.
- (7) A registered person who fails to comply with a requirement of this Article shall be guilty of an offence and shall be liable to a fine.

## **9 Consolidated financial statements**

- (1) This Article applies –
  - (a) if a registered person is an affiliated member of a Jersey based group; and
  - (b) if U.K. Accounting Standards issued by the U.K. Accounting Standards Board allow consolidated financial statements to be prepared in respect of the members of the group.
- (2) For the purposes of this Article a registered person is an affiliated member of a Jersey based group if the person is a member of an affiliation that includes, comprises, or is part of, a group the immediate leading member of which is a company or partnership established in Jersey (whether or not that leading member is itself a registered person).
- (3) If this Article applies, a registered person's obligation –
  - (a) to provide financial statements to the person's auditor in accordance with Article 5(1); and
  - (b) to provide financial statements to the Commission in accordance with Article 8(1),may be satisfied by the auditor or the Commission being provided with the consolidated financial statements of the group of which the registered person is a member.
- (4) The consolidated financial statements shall show a true and fair view of –
  - (a) the state of affairs of the group as at the end of the relevant accounting period; and
  - (b) the profit or loss of the members of the group for that period.
- (5) If affiliated members of a group acting in accordance with this Article have provided their auditor with consolidated financial statements for the purpose of Article 5(1) the auditor shall for the purpose of Article 7(3) issue a single report in respect of all the separate declarations made by the members of the group in compliance with Article 6(1).
- (6) In this Article "affiliation" means a group of registered persons carrying on fund services business, each of whom has been registered by the Commission as a member of the same affiliation.

## **10 Exemptions**

- (1) The Commission may on the application of a registered person exempt the person from compliance with all or any part of Articles 2 to 9.



- (2) The Commission shall not grant an exemption unless it has first satisfied itself that by virtue of the fund services business the registered person carries on or intends to carry on no client 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).

## **11 Circumstances to be communicated to the Commission by auditors, accountants and others**

- (1) The circumstances in which matters to which Article 18 of the Law applies shall be communicated to the Commission are those circumstances that give a registered person's auditor (whether appointed by virtue of this Order or otherwise), or any reporting person in respect of the registered person, reasonable cause to believe that –
  - (a) a ground for revoking a registration specified in Article 9(4) of the Law (other than Article 9(4)(a)) has occurred or may occur in respect of the registered person;
  - (b) as a result of a breach of –
    - (i) a requirement, of a Code of Practice issued under Article 19 of the Law, that applies to the registered person,
    - (ii) a requirement, of a law, that applies to the registered person, or
    - (iii) internal controls or procedures,a client of the registered person has incurred, or is at significant risk of incurring, a material loss.
- (2) In this Article “reporting person”, in respect of a registered person, means an auditor, accountant, or another person nominated or approved by the Commission in respect of the person in accordance with Article 8(5), or Article 32(4), of the Law.

## **12 Transitional provisions**

- (1) Article 2(1) shall not apply to a relevant person.
- (2) A person who was, immediately before 14th November 2007, an auditor of the fund services business of a relevant person, shall be taken to have been approved by the Commission under Article 4(4) to be the auditor in respect of the relevant person's fund services business.
- (3) For the first accounting period in relation to a relevant person, the reference in Article 6(1)(a) to “the Law” shall, in so far as that period relates to a period before 14th November 2007, be taken to be a reference to the [Collective Investment Funds \(Jersey\) Law 1988](#).
- (4) Notwithstanding Article 8(2), a financial statement in respect of an accounting period ending before 1st December 2009 shall be provided by a person within 10 months after the end of the accounting period.

- (5) In this Article, “relevant person” means a person who, immediately before 14th November 2007, held a permit under the [Collective Investment Funds \(Jersey\) Law 1988](#) authorizing the person to carry on fund services business in relation to an unclassified fund.

### **13 Citation**

This Order may be cited as the Financial Services (Fund Services Business (Accounts, Audits and Reports)) (Jersey) Order 2007.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Financial Services (Fund Services Business (Accounts, Audits and Reports)) (Jersey) Order 2007	<a href="#">R&amp;O.154/2007</a>	14 November 2007

### Table of Renumbered Provisions

Original	Current
13(1)	13
13(2)	Spent, omitted

### Table of Endnote References

*There are currently no endnote references*