



Jersey

**FINANCIAL SERVICES (INVESTMENT  
BUSINESS (CLIENT ASSETS)) (JERSEY)  
ORDER 2001**

**Official Consolidated Version**

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Jersey

# FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (JERSEY) ORDER 2001

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Jersey

## FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (JERSEY) ORDER 2001

THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 20 and 42 of the [Financial Services \(Jersey\) Law 1998](#), and on the recommendation of the Jersey Financial Services Commission, orders as follows –

Commencement [[see endnotes](#)]

### PART 1

#### GENERAL

#### 1 Interpretation

In this Order, unless the context otherwise requires –

“approved bank”, in relation to a client bank account, means –

- (a) where the account is opened at a branch in Jersey, a person registered under the [Banking Business \(Jersey\) Law 1991](#); and
- (b) where the account is opened at a branch outside Jersey –
  - (i) an institution authorized under the Banking Act 1987 of the United Kingdom,
  - (ii) a credit institution (as defined in EEC Directive No. 77/780) established in any other Member State of the European Community and duly authorized by the relevant supervisory authority in that Member State,
  - (iii) an institution authorized under the Banking Act 1975 of the Isle of Man (as amended),
  - (iv) an institution authorized under the Banking Supervision (Bailiwick of Guernsey) Law 1994,
  - (v) a building society registered and incorporated under the Building Societies Act 1986 of the United Kingdom which operates a deposit-taking business (within the meaning of the Banking Act 1987 of the United Kingdom) without restriction, or

- (vi) a bank which is a company in the same group as an institution described in paragraph (a) or (b)(i) to (iv) of this definition;

“approved custodian” means –

- (a) a person who can be an approved bank;
- (b) a company –
  - (i) with no other business than acting as a nominee holder of investments or other property, and
  - (ii) which acts solely in accordance with the directions or instructions of a registered person or an approved bank; or
- (c) a person whom the registered person reasonably believes to be lawfully carrying on business as a custodian of investments or other property and who, in providing those services, is subject to –
  - (i) regulation and supervision by a regulatory body or agency of government in the country in which that person carries on that business, or
  - (ii) independent review at least once a year by auditors whose qualifications are prescribed by law or by such body or agency;

“bank” means any institution which lawfully carries on deposit-taking business in the country in which it was established;

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day appointed as a public holiday or bank holiday under Article 2 of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#);

“client bank account” means an account at an approved bank which –

- (a) holds the money of one or more clients;
- (b) is in the name of a registered person;
- (c) includes either words in its title indicating that it is a client account or other information which sufficiently distinguishes it as an account containing client money and from any account containing money belonging to the registered person; and
- (d) is a current or deposit account (or, if the approved bank is a building society within paragraph (b)(v) of the definition of “approved bank”, is a deposit (and not a share) account);

“client money” has the meaning assigned by Article 3;

“connected customer”, in relation to a registered person, means any client of the registered person –

- (a) who is –
  - (i) an associate of the registered person other than by virtue only of being an employee of the registered person or another company in the same group,
  - (ii) the spouse, civil partner, minor child or minor stepchild of any person described in sub-paragraph (i) of this definition, or

- (iii) a person in his or her capacity as trustee of a trust (other than an occupational pension scheme) the beneficiaries of which he or she knows or ought reasonably to know include any person described in sub-paragraph (i) or (ii) of this definition; or
- (b) with whom the registered person has an agreement that the registered person will have an interest of 25% or more in –
  - (i) any transaction or series of transactions carried on by the registered person in the course of investment business undertaken with or for the client, or
  - (ii) the gain or loss arising from such transactions;

“default” means the commencement of –

- (a) an application for a declaration under the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#); or
- (b) liquidation or any insolvency proceedings in any jurisdiction;

“designated account” means a client bank account which –

- (a) includes either words in its title indicating that it is a designated account or other information which sufficiently distinguishes it as such; and
- (b) only contains the money of a single client (or, in the case of 2 or more clients who open an account jointly, those clients) whose written consent to the use of the approved bank with which the client money is to be held has been obtained;

“documents of title” includes certificates evidencing title;

“intermediary” means a person –

- (a) to whom any client money held by the registered person has been passed; or
- (b) from whom any money is owed to the registered person which, once received by him or her, will be client money,

in respect of the carrying out of transactions on behalf of clients of the registered person;

“investment” does not include a defined benefit scheme (within the meaning given by Article 130B(2) of the [Income Tax \(Jersey\) Law 1961](#));

“investment business agreement” means any agreement the making or performing of which by either party constitutes investment business;

“margined transaction” means a transaction effected by a registered person with or for a client relating to investment business under the terms of which the client will or may be liable to pay further amounts of cash or collateral over and above the amount initially received by the registered person;

“money” includes cheques and other payable orders of any currency;

“own nominee” means an approved custodian who is controlled by and acts only in accordance with the directions or instructions of the registered person;

“pooling event” has the meaning assigned by Article 25;

“protected account” means a client bank account which is not a designated account;

“protected property” includes investments and documents of title to investments but does not include client money;

“registered person” means a person registered under the Law to carry on investment business;

“registrable investment” means any investment, the terms of which require the title holder to register either with the issuer of the investment or a third party.<sup>1</sup>

## PART 2

### CLIENT MONEY

#### 2 Application of Part 2

- (1) This Part applies to every registered person, other than a registered person within the meaning of the [Banking Business \(Jersey\) Law 1991](#), who holds money on behalf of his or her clients in an account with himself or herself.
- (2) This Part does not apply to a designated account to the extent provided by Article 11.

#### 3 Meaning of “client money”

- (1) Subject to paragraph (2), client money is money which a registered person, in the course of carrying on investment business –
  - (a) holds or receives (whether in Jersey or not) in respect of any investment business agreement entered into, or to be entered into with or for a client which is either –
    - (i) not immediately due and payable on demand to the registered person for his or her own account, or
    - (ii) if it is so due and payable, is held or received in respect of any obligation of the registered person which has not yet been performed; or
  - (b) owes to a client and which is immediately due and payable without the need for the client to demand such payment.
- (2) The following descriptions of money are not client money –
  - (a) money which the client agrees is held in the form of precious coin for its intrinsic value;
  - (b) money held on behalf of or received from a connected customer except where –
    - (i) the connected customer is acting in his or her capacity as a trustee of a trust, and
    - (ii) neither the registered person nor any associate of the registered person is a beneficiary of that trust; and
  - (c) cheques or payable orders made payable to a client by a third party or to a third party by a client.

- (3) For the purposes of this Article money is only to be regarded as due and payable in respect of fees or commissions payable to the registered person if it may be withdrawn under Article 8.

#### **4 Segregation of client money**

- (1) A registered person shall pay all client money which he or she holds or receives into client bank accounts.
- (2) Subject to paragraph (3) –
- (a) client money;
  - (b) money belonging to the registered person; and
  - (c) money held on behalf of or received from connected customers,
- must be kept separate from one another.
- (3) Paragraph (2) does not apply to money falling within the exception to Article 3(2)(b).

#### **5 Accounting for and use of client money**

- (1) A registered person must account properly and promptly for client money and, in particular, must ensure that –
- (a) save as permitted by this Order, client money and other money do not become mixed;
  - (b) individual transactions can be accurately identified and traced;
  - (c) the credit standing to the account of each client is calculated each business day;
  - (d) no client is ever overdrawn; and
  - (e) money belonging to one client is not used for another client.
- (2) Wherever the daily calculation referred to in paragraph (1)(c) reveals an overdraft or one client's money has been used for another –
- (a) the registered person must pay in a sum of money equivalent to the deficit; and
  - (b) money paid in by the registered person under sub-paragraph (a) shall be client money and the registered person must not withdraw it until the client responsible for the deficit has paid in a sum of money equivalent to the deficit.

#### **6 Client bank accounts**

- (1) A registered person authorized to hold client money shall, for the purpose of, and prior to receiving, client money, open one or more client bank accounts.
- (2) The title of each account must be sufficiently distinguished from any accounts holding funds belonging to the registered person and connected customers.



- (3) Save as provided by paragraph (4), the client bank account must not be operated until the registered person has obtained from the approved bank an undertaking addressed to the registered person and the Commission that –
- (a) all money standing to the credit of the client bank account is and will be held by the registered person as trustee;
  - (b) interest earned on the account will be credited to that account, or to an account of that type;
  - (c) the bank is not, and will not be, entitled to combine the account with any other account or to exercise any right of set-off or counterclaim or any security interest against money in the account in respect of any debt or other obligation owed to it by the registered person; and
  - (d) the title of the account sufficiently distinguishes it as an account containing client money and from any account containing money belonging to the registered person,
- and the registered person has sent a copy of the undertaking to the Commission.
- (4) The Commission may, if it thinks fit and subject to any conditions it may from time to time impose, waive the requirement to obtain an undertaking where –
- (a) the law to which the approved bank is subject makes it impossible or impracticable to give the undertaking; or
  - (b) there are other exceptional circumstances.
- (5) Where the Commission has waived the requirement to obtain an undertaking, the registered person must explain to his or her clients the nature of the risks to which they may be subjected by reason of the absence of such undertaking.

## **7 Payments into a client bank account**

- (1) Client money held or received by a registered person shall be paid –
- (a) into a client account as soon as possible, and in any event no later than the next business day; or
  - (b) to the client concerned.
- (2) Money held or received by a registered person in the form of an electronic transfer or a cheque or draft drawn in favour of the registered person, which includes client money shall be paid in the first instance into the client bank account.

## **8 Payments out of a client bank account**

- (1) Subject to paragraph (2), money may be withdrawn from a client bank account only if –
- (a) it is not client money;
  - (b) it is properly required for immediate payment to or on behalf of a client; or
  - (c) it is properly transferred to another client bank account or into a bank account in the client's own name (not being an account which is also in the name of the registered person).

- (2) Where a registered person wishes to withdraw money from a client bank account for or towards payment of his or her own fees or commission he or she may only do so if –
  - (a) the fees or commission are accurately calculated and accord with arrangements previously agreed in writing with the client;
  - (b) the registered person has given the client 14 days' notice of his or her intention to withdraw the money, including precise details of the breakdown of the proposed payment, and the client has not objected; or
  - (c) the amount of the fees or commission is agreed in writing with the client or finally determined by a court or arbitration.

## **9 Interest on client money**

- (1) Interest must be paid on client money according to any agreement made in writing with the client, and if no interest is to be paid, such agreement must record the fact.
- (2) Where there is no such agreement the registered person must disclose to the clients concerned the amount of such interest and its destination.

## **10 Reconciliation of accounts**

- (1) A registered person shall, not less than once a month –
  - (a) reconcile the balance on each client bank account, as recorded by the registered person, with the balance on that account as set out in the statement issued by the approved bank covering the period in respect of which the reconciliation is made; and
  - (b) reconcile the total of the balances on all protected accounts, as recorded by the registered person, with the total of the corresponding balances in respect of each of its clients, as recorded by the registered person.
- (2) The reconciliations referred to in paragraph (1) must be performed within 10 business days of the date to which the reconciliation relates, and any differences must be corrected forthwith unless –
  - (a) they arise as a result of differences in timing between the accounting and settlement systems of the registered person and the approved bank; or
  - (b) the Commission is notified.

## **11 Designated accounts**

- (1) Where a client has a designated account and has given his or her written consent to that account being overdrawn or the money in it being used for another client, Article 5(1)(d) and (e), as the case may be, shall not apply to that account.
- (2) The requirement to address the undertaking referred to in Article 6(3) to the Commission shall not apply in the case of a designated account.
- (3) Article 10(1)(a) shall not apply to a designated account where –
  - (a) the client of that account has given his or her written consent; and

- (b) the registered person has taken such steps as are necessary to ensure that the balance on that account as set out in the statement issued by the approved bank agrees with what he or she reasonably believes the balance should be.
- (4) Where the registered person's client has a designated account, the registered person must inform the client that such an account does not have the protection of Part 4.

## **PART 3**

### **CLIENT PROPERTY**

#### **12 Application of Part 3**

This Part applies where a registered person has in his or her possession or custody or under his or her control any protected property.

#### **13 Protection of investments**

A registered person must not –

- (a) recommend to a client that a person other than the registered person or an approved custodian should act as –
  - (i) the registered holder of the client's registrable investments, or
  - (ii) the custodian of documents of title to investments belonging to the client; or
- (b) procure the client's agreement to such a person so acting.

#### **14 Registrable investments**

- (1) A registered person shall arrange for registrable investments belonging to a client to be registered in such name as is agreed with the client, or, in the absence of any such agreement, in the client's own name.
- (2) Where a registered person arranges for registrable investments belonging to its clients to be registered in the same name as that in which the registered person's own registrable investments are registered, the registered person shall arrange for the client's registrable investments to be registered in an account which sufficiently distinguishes it from the account in which the registered person's own investments are registered.

#### **15 Safekeeping of documents: general**

A registered person shall be responsible in accordance with this Part for the safekeeping of documents of title to investments belonging to his or her clients which have come into his or her possession or control, and shall remain so responsible until such documents are delivered –

- (a) to the client; or
- (b) in accordance with written arrangements made with the client, otherwise than to an approved custodian acting for the registered person.

**16 Safekeeping of documents by the registered person**

Where a registered person is responsible for the safekeeping of any documents of title to investments belonging to his or her clients, unless such documents are properly in the custody of an approved custodian acting for the registered person –

- (a) the registered person shall hold the documents in his or her own possession and in safe custody and shall not part with possession of any of them to any person other than the client or on his or her instructions;
- (b) where the title to the documents passes by delivery, they shall be held in such manner that –
  - (i) it is readily apparent that the investments to which they relate do not belong to the registered person or to a connected customer of his or hers, and
  - (ii) the owner of each investment can be identified at all times; and
- (c) where some of the documents are held –
  - (i) as security for a loan to that client, or
  - (ii) as any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from margined transactions effected by the registered person with or for that client,

the documents which are so held shall be identified and distinguished from those which are not so held.

**17 Safekeeping of documents by a registered person's own nominee**

Where a registered person is responsible for the safekeeping of any documents of title to investments belonging to a client and those documents are properly in the custody of the registered person's own nominee, the registered person must ensure that the nominee complies with the requirements of Article 16 as though –

- (a) that Article applied to the nominee; and
- (b) the reference to the registered person in paragraph (a) and the first reference to the registered person in paragraph (c) of that Article were references to the nominee.

**18 Safekeeping of documents held by an approved custodian who is not the registered person's own nominee**

- (1) A registered person must not employ the services of an approved custodian who is not the registered person's own nominee, to hold documents of title to investments belonging to a client unless –
  - (a) the registered person and the custodian have agreed in writing that –
    - (i) the custodian will not part with possession of such documents otherwise than to the registered person or on the registered person's instructions,
    - (ii) the documents will be held in such manner that it is readily apparent that the investments to which they relate do not belong to the registered person, and

- (iii) the custodian will not less than once every 6 months and on the request of the registered person prepare and deliver to the registered person a statement –
    - (A) made up as at such date within the previous month as is specified by the registered person, and
    - (B) specifying in relation to each description of investment the documents of title held and the amount of that investment; and
  - (b) the custodian has acknowledged in writing to the registered person that he or she will not have or claim any lien or right of retention over, or any right to sell, the documents of title to investments placed in his or her custody, to offset the indebtedness of the registered person or a client except where –
    - (i) that client is the title holder of the investments,
    - (ii) the beneficial owner (or, where he or she has capacity to do so, the legal owner) has consented, or
    - (iii) the indebtedness is only in respect of charges relating to the administration or custody of the investments.
- (2) A registered person who makes an agreement with a custodian in accordance with paragraph (1)(a) must not authorize the custodian to release any documents of title to the client's investments otherwise than –
  - (a) in accordance with the client agreement; or
  - (b) on the express instructions of the client.

## **19 Accounting for and reconciliation of title to investments**

- (1) Subject to paragraph (2), a registered person who is responsible in accordance with this Part for the safekeeping of documents of title to investments of a client shall, not less than once every 6 months, deliver or send to the client a statement –
  - (a) made up as at a date not earlier than one month before the date on which it is so sent or delivered; and
  - (b) specifying the investments or other property in respect of which the registered person was on that date responsible for the safekeeping of documents of title and the amount of each such investment in accordance with this Part.
- (2) No statement need be delivered or sent if –
  - (a) the client has consented in writing;
  - (b) a statement has been sent or delivered in that calendar year; and
  - (c) no changes have taken place in the matters to be specified under paragraph (1)(b) since that statement was sent or delivered.
- (3) Where a registered person or an approved custodian is responsible in accordance with this Part for the safekeeping of documents of title to investments of a client, the registered person shall, not less than once every 6 months, carry out a reconciliation of such documents.

**20 Storage of client property**

- (1) Where title to investments is recorded electronically the registered person must ensure that clients' entitlements are separately identifiable from those of the registered person in the records of the person maintaining records of the entitlement.
- (2) Where the registered person holds documents belonging to clients, title to which passes by delivery, he or she must ensure such documents are stored so as to minimize any risk of their loss due to theft, fire or flood.

**21 Insurance**

A registered person must maintain adequate insurance at all times to cover non-registered securities of clients and such insurance must extend to cover his or her own nominee.

**22 Third parties**

- (1) A registered person must not lend client's title documents to a third party unless the client has given his or her written consent.
- (2) All monies, fees or commission earned from a third party shall be received for the account of the client unless the client has given his or her prior written consent.
- (3) Where clients' title documents have been lent to a third party, proper records shall be maintained.

**PART 4****DEFAULT****23 Application of Part 4**

This Part only applies to protected accounts.

**24 Creation of statutory trust**

- (1) Where client money is held by a registered person in a protected account in the course of investment business it is held on trust in accordance with this Part –
  - (a) for the clients for whom the money is held according to their respective shares in it; and
  - (b) after all valid claims under sub-paragraph (a) have been met, for the registered person.
- (2) Where this Part applies the [Trusts \(Jersey\) Law 1984](#) shall have effect subject to this Part.

**25 Meaning of “pooling event”**

- (1) A pooling event consists of the happening of any of the following –
  - (a) the default of the registered person;

- (b) the default of any approved bank with which any client money held by the registered person is deposited;
  - (c) the default of an intermediary; or
  - (d) the coming into force of a direction by the Commission in respect of all client money held by the registered person, unless the direction states otherwise.
- (2) A pooling event shall be deemed not to have occurred if, forthwith on the default of an approved bank or an intermediary, the registered person repays to his or her clients or pays into a client bank account an amount equal to the amount of client money held on behalf of those clients with that bank or by that intermediary.

## **26 Destination of client money on pooling event**

- (1) Where a pooling event occurs –
- (a) save insofar as money is received after the pooling event, the power of a registered person to pay money into and out of protected accounts in which client money is held is suspended; and
  - (b) subject to Article 27, money held in all the registered person's protected accounts is pooled and shall be made available to meet the claims of clients in respect of whom client money is, or should be, held in those protected accounts *pari passu*.
- (2) Where, at the time when a pooling event occurs, a registered person has paid an uncleared cheque or other payable order into a protected account, when such cheque or order is cleared the amount credited in respect of it shall be pooled in accordance with paragraph (1)(b).
- (3) Where, at the time when a pooling event occurs, client money from a protected account is in the hands of an intermediary, it shall, on its return to the protected account, be pooled in accordance with paragraph (1)(b).
- (4) Where client money referred to in paragraph (3) cannot be returned until one month after the pooling event, the registered person may make distributions from the account in advance of that date if he or she makes provision for the possibility of such money not being returned.
- (5) Without prejudice to any claim of any other person arising under this Order, where a surplus remains in the pool created under paragraph (1)(b) it shall form part of the assets of the registered person.
- (6) Where a registered person receives money from a client after a pooling event which, but for that event, would fall to be paid into a protected account, that money –
- (a) shall be placed in a new client bank account duly opened after that pooling event; and
  - (b) shall not be pooled with the money held in the registered person's protected accounts at the time of the pooling event.

## **27 Money held by third parties**

- (1) Where client money is held by an approved bank or an intermediary who defaults or, following a pooling event, fails to recognize that the money is held on trust in accordance with this Part –

- (a) the money shall –
  - (i) be pooled separately,
  - (ii) be made available to satisfy the separate claims of the separate clients *pari passu*, and
  - (iii) after the claims described in clause (ii) have been satisfied, be paid into the pool created under Article 26(1)(b); and
- (b) the pool created under Article 26(1)(b) shall be applied –
  - (i) to meet any claims of separate clients that are not separate claims and the claims of other clients (all ranking equally), and
  - (ii) after the claims described in clause (i) have been satisfied, to meet any unsatisfied separate claims of separate clients.
- (3) In this Article –

“separate claim” means the claim of a separate client to the value of the money that was or should have been held; and

“separate client” means a client whose money was, or should have been, held with the approved bank or intermediary.

## **28 Default officer**

- (1) The Commission may appoint a person, to be known as the default officer, to administer the application of this Part in relation to a registered person in the event of the default of the registered person or the coming into force of a direction by the Commission in respect of all client money held by that person.
- (2) The registered person and his or her clients shall provide the default officer with such assistance as the default officer may require.
- (3) A certification by the default officer as to –
  - (a) the value of any claim or of any amount pooled in accordance with Article 26(2); or
  - (b) the amount of payments to be made,shall, in the absence of manifest error, be conclusive.
- (4) The default officer may withdraw, amend or revise his or her certifications at any time but no client who has received payment pursuant to such a certificate shall be required to repay any sum.
- (5) The default officer shall report on his or her actions to the Commission and shall comply with any directions it may give him or her so as to comply with this Order.

## **PART 5**

### **MISCELLANEOUS**

## **29 Record keeping**

Any record required to be kept under this Order must be retained for at least 10 years.



**30 Citation**

This Order may be cited as the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001.

## ENDNOTES

### Table of Legislation History

Legislation	Year and Number	Commencement
Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001	<a href="#">R&amp;O.6/2001</a>	2 February 2001
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003
Civil Partnership (Consequential Amendments) (Jersey) Regulations 2012	<a href="#">R&amp;O.47/2012</a>	2 April 2012
Financial Services (Investment Business (Client Assets)) (Amendment) (Jersey) Order 2018	<a href="#">R&amp;O.58/2018</a>	23 July 2018

### Table of Renumbered Provisions

Original	Current
1(2), (3), (4)	spent, omitted from this revised edition
18(1)(b)(A)	18(1)(b)(i)
(1)(b)(B)	(1)(b)(ii)
(1)(b)(C)	(1)(b)(iii)
30	spent, omitted from this revised edition
31	30

### Table of Endnote References

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<sup>1</sup> Article 1 *amended by R&O.47/2012, R&O.58/2018*