



Jersey

**FINANCIAL SERVICES (TRUST
COMPANY AND INVESTMENT
BUSINESS (ACCOUNTS, AUDITS AND
REPORTS)) (JERSEY) ORDER 2007**

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Arrangement

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Jersey

FINANCIAL SERVICES (TRUST COMPANY AND INVESTMENT BUSINESS (ACCOUNTS, AUDITS AND REPORTS)) (JERSEY) ORDER 2007

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of in pursuance of Articles 17, 18 and 42 of the Financial Services (Jersey) Law 1998¹, 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 the 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 the registered person that is approved under Article 2;

“auditor”, in respect of a registered person, means the auditor who is approved under Article 3 in respect of the registered person’s relevant business;

“auditor’s report” means a report prepared in accordance with Article 8;

“client”, in relation to a registered person who carries on investment business, means a person, whether or not resident in Jersey, with or for whom the registered person transacts or has transacted investment business;

“customer”, in relation to a registered person who carries 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 trust company 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 trust company business;

“declaration” means a declaration that complies with Article 5;

“directors’ report” means a report that complies with Article 6;

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

“group” means a group comprised of companies, partnerships or both;

“Law” means the Financial Services (Jersey) Law 1998²;

“relevant business” means trust company business, investment business or both;

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

2 Accounting period

- (1) A person who applies under the Law for registration in respect of relevant 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 in the application to be the first accounting period for the person; and
- (b) the period that is proposed in the application to be the accounting period for the person after the end of the first accounting period.
- (2) The Commission shall approve or refuse to approve an accounting period proposed in an application under paragraph (1) for a person.
- (3) A registered person shall not, without the Commission’s approval, change an accounting period approved under this Article for the person.
- (4) A person may apply to the Commission for approval of a period, proposed in the application, to be the accounting period for the person in place of the accounting period approved under this Article for the person.
- (5) The Commission shall approve or refuse to approve an accounting period proposed in an application under paragraph (4).
- (6) The Commission shall only approve, as the accounting period for a 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, which shall not be more than 18 months.
- (7) A person who fails to comply with paragraph (1) or (3) shall be guilty of an offence and shall be liable to a fine.

3 Appointment of auditor

- (1) A registered person shall not engage a person to be an auditor in respect of the registered person's relevant business, unless the person is approved under paragraph (4) to be the auditor in respect of that 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 another person, nominated in the application by the applicant, to be the auditor in respect of relevant business carried on, or to be carried on, by the applicant.
- (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 relevant business carried on, or to be carried on, by the applicant.
- (5) The Commission shall approve under paragraph (4) a person, nominated in an application under paragraph (3) to be the auditor in respect of relevant business carried on, or to be carried on, by the applicant, only if it is satisfied that –
 - (a) the person nominated is not an employee of the applicant and is independent of the applicant; and
 - (b) having regard to the relevant business carried on, or to be carried on, by the applicant, the person nominated is suitable to be an auditor in respect of that business.
- (6) If the appointment of an auditor is terminated by either the registered person or the auditor, the auditor shall, within 7 days of the termination, provide the Commission with 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.

4 Accounting records

- (1) A registered person who is registered to carry on relevant business shall keep accounting records that –
 - (a) show and explain each of the registered person's transactions in respect of that business carried on by the registered person;
 - (b) enable financial statements to be prepared in relation to the registered 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 accordance with paragraph (1), whether in electronic form or any other form –
 - (a) are so stored as to minimize any risk of their loss due to theft, fire, flood, corruption or unauthorized erasure;
 - (b) are so stored as to prevent unauthorized access; 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 accordance with paragraph (1) and the backup copy or duplicate made in accordance with paragraph (2)(c) are retained for a period of at least 10 years from the date the records were made.
- (4) 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.

5 Declaration

- (1) A registered person (or, if the registered person is a company or a partnership, a director of the company or partner of the partnership) shall prepare and sign, after a relevant accounting period of the registered person, a declaration in relation to the period.
- (2) If a declaration under paragraph (1) in respect of a company relates only to a single branch of the company, then, despite that paragraph, the declaration may be prepared and signed by an employee of the company approved in respect of that branch by the company, instead of by a director.
- (3) A declaration under paragraph (1) shall state whether, throughout the relevant accounting period, the registered person to whom the declaration relates –
 - (a) has complied with the requirements of the Law, and with the requirements of Orders and Codes of Practice made or issued under the Law (not being a requirement the Commission has waived) that apply to the registered person;
 - (b) has maintained proper accounting records and adequate systems to enable the registered person to comply with the requirements referred to in sub-paragraph (a); and
 - (c) has complied with the requirements of all relevant legislation and guidance to counter money laundering and the financing of terrorism.
- (4) If a registered person to whom a declaration under paragraph (1) relates has failed to comply with a requirement referred to in paragraph (3), the declaration shall –
 - (a) contain details of all material failures; and
 - (b) specify any measures taken or to be taken by the registered person to ensure that the failures are not repeated.

6 Directors' report

- (1) A registered person that is a company or a partnership shall prepare, after the end of the relevant accounting period, a report (a "directors' report") in relation to the period.
- (2) The directors' report in relation to a registered person shall contain at least the following information –
 - (a) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners;
 - (b) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners, who were appointed during the relevant accounting period and the dates of their appointments;
 - (c) a list of the directors, if any, of the registered person or, if the registered person is a partnership, a list of the partners, who ceased to be directors during the relevant accounting period and the dates on which they ceased to be directors;
 - (d) a summary of the activities of the registered person during the relevant accounting period;
 - (e) the name of the country or territory in which the registered person is incorporated or established.

7 Registered person to provide certain documents to auditor

- (1) A registered person shall, as soon as practicable after the end of a relevant accounting period, provide the registered person's auditor with –
 - (a) financial statements;
 - (b) if Article 6(1) applies to the registered person, the directors' report; and
 - (c) the declaration,in respect of that period.
- (2) 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 registered person's records and documents relating to the registered person's relevant business; or
 - (b) other information or an explanation the auditor considers necessary for the performance of the auditor's duties under this Order,shall be guilty of an offence and liable to a fine.
- (3) 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.

8 Auditor's reports

- (1) The auditor shall prepare –
 - (a) a report in respect of the financial statements provided to the auditor under Article 7 by a registered person;
 - (b) a report in respect of the directors' report, if any, provided to the auditor under Article 7 by a registered person; and
 - (c) a report in respect of the declaration provided to the auditor under Article 7 by a registered person.
- (2) The auditor shall provide to the registered person copies of any report prepared by the auditor under paragraph (1).
- (3) Unless the Commission otherwise agrees, an auditor's report shall be prepared in accordance with the International Standards on Auditing (U.K. and Ireland) issued by the Auditing Practices Board.
- (4) Unless the Commission otherwise agrees, the audit leading to an auditor's report shall be conducted in accordance with the International Standards on Auditing (U.K. and Ireland) issued by the Auditing Practices Board.
- (5) An auditor's report that relates to financial statements shall state whether the statements have been prepared in accordance with this Order.
- (6) An auditor's report that relates to a declaration provided to the auditor under Article 7 shall –
 - (a) contain a statement that while conducting the audit for the purpose of preparing the report under paragraph (1)(c) the auditor became aware of nothing that could be taken to indicate that a statement in the declaration was incorrect; or
 - (b) if the auditor became aware of a matter that could be taken to indicate that a statement in the declaration was incorrect, contain a statement as to the matter and why the auditor is of the opinion that it may indicate that a statement in the declaration was incorrect.
- (7) An auditor's report shall be signed by the auditor.

9 Financial statements to be provided to Commission

- (1) A registered person shall, after the end of a relevant accounting period, prepare financial statements in relation to the registered person in respect of the period.
- (2) Unless the Commission otherwise agrees, the financial statements shall be prepared in accordance with either –
 - (a) the U.K. Accounting Standards issued by the U.K. Accounting Standards Board; or
 - (b) the Accounting Standards issued by the International Accounting Standards Board.

- (3) The financial statements in relation to a registered person shall –
 - (a) be signed by the registered person; or
 - (b) if the registered person is a body corporate or a partnership, be signed by as many directors or partners as are required, under the laws of the country or territory in which the registered person is incorporated or established, to sign financial statements for the registered person, but in any case not less than one director or partner of the registered person.
- (4) The financial statements in relation to a registered person shall be provided to the Commission –
 - (a) within 4 months of the end of the relevant accounting period; or
 - (b) within the period (being not more than 8 months after the end of the relevant accounting period) that the Commission may, in special circumstances, permit.
- (5) The financial statements in relation to a registered person 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.
- (6) 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.

10 Consolidated financial statements

- (1) This paragraph applies to a registered person if –
 - (a) the registered person is a member of a group; and
 - (b) the accounting standards in accordance with which, under Article 9(2), the registered person shall prepare financial statements, allow consolidated financial statements to be prepared in respect of the members of the group.
- (2) A registered person to whom paragraph (1) applies may apply to the Commission for an approval to be granted under paragraph (4).
- (3) Registered persons who are members of the same group and who are persons to whom paragraph (1) applies may jointly apply to the Commission for an approval to be granted under paragraph (4).
- (4) If an application is made under paragraph (2) or (3) by a registered person or persons, the Commission may grant, or refuse to grant, an approval to the person or persons.
- (5) An approval granted under paragraph (4) to a registered person may permit the person to provide under Articles 7(1)(a) and 9(1) consolidated financial statements of the group of which the registered person is a member, instead of financial statements that relate only to the registered person.

- (6) An approval may be granted under paragraph (4) on the conditions specified by the Commission on the approval.
- (7) A registered person to whom an approval has been granted under paragraph (4) may, if permitted to do so under the approval, provide under Articles 7(1)(a) and 9(1) consolidated financial statements of the group of which the registered person is a member, instead of financial statements that relate only to the registered person.
- (8) If a registered person is required under an approval granted under paragraph (4) to provide under Articles 7(1)(a) and 9(1) consolidated financial statements of the group of which the registered person is a member, the requirements of those Articles shall only be taken to have been complied with if the consolidated financial statements are provided to the Commission in accordance with the approval.
- (9) A registered person to whom an approval has been granted under paragraph (4) may apply to the Commission to amend the approval.
- (10) The Commission may –
 - (a) of its own motion, by notice in writing to a registered person; or
 - (b) if it receives an application under paragraph (9) from a registered person, by notice in writing to the registered person,amend an approval granted to the registered person under paragraph (4).

11 Declarations and reports to be provided to Commission at same time as financial statements

- (1) A registered person shall ensure that the financial statements provided to the Commission under Article 9 by the registered person are accompanied by –
 - (a) a declaration in relation to the relevant accounting period;
 - (b) the directors' report in relation to the relevant accounting period, if the person is required by Article 6 to prepare such a report;
 - (c) any auditor's reports in respect of the financial statements, directors' report and declaration;
 - (d) any report that –
 - (i) has been prepared during, or in relation to, the relevant accounting period, by an auditor in relation to the registered person or a person who conducts an audit for the registered person,
 - (ii) addresses a relevant matter, and
 - (iii) is available to the registered person; and
 - (e) any report that –
 - (i) has been prepared, during, or in relation to, the relevant accounting period, by an accountant or consultant in relation to the registered person,
 - (ii) addresses a relevant matter, and
 - (iii) is available to the registered person.

- (2) In paragraphs (1)(d) and (e) “relevant matter”, in respect of a registered person, means –
 - (a) a breakdown or weakness in the registered person’s internal control procedures; and
 - (b) the consequential recommendations for their improvement.
- (3) A registered person who is registered to carry on trust company business shall ensure that the financial statements provided to the Commission under Article 9 by the registered person are accompanied by a document setting out the Resource Requirement Table, within the meaning of the Code of Practice issued under Article 19 of the Law in relation to trust company business, that is prepared, at the end of the relevant accounting period, in accordance with that Code of Practice.
- (4) A registered person who is registered to carry on investment business shall ensure that the financial statements provided to the Commission under Article 9 by the registered person are accompanied by a document setting out the Resource Requirement Table, within the meaning of the Code of Practice issued under Article 19 of the Law in relation to investment business, that is prepared, at the end of the relevant accounting period, in accordance with that Code of Practice.
- (5) A registered person who is registered to carry on –
 - (a) both trust company business and investment business; or
 - (b) trust company business, or investment business, together with any other financial service business,shall ensure that the financial statements provided to the Commission under Article 9 by the registered person are accompanied by a document, prepared at the end of the relevant accounting period, containing the requirements in relation to the resources of the registered person that are specified by the Commission under paragraph (6).
- (6) The Commission may, on the application of a registered person who is registered to carry on trust company business, or investment business, together with any other financial service business, specify the requirements in relation to the resources of the registered person that shall apply to the registered person under paragraph (5).
- (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.

12 Consolidated declarations

- (1) This paragraph applies to a registered person if –
 - (a) the registered person is a member of a group, each member of which is registered under the Law; and
 - (b) the accounting standards in accordance with which, under Article 9(2), the registered person shall prepare financial statements, allow consolidated financial statements to be prepared in respect of the members of the group.

- (2) A registered person to whom paragraph (1) applies may apply to the Commission for an approval to be granted under paragraph (4).
- (3) Registered persons who are members of the same group and who are persons to whom paragraph (1) applies may jointly apply to the Commission for an approval to be granted under paragraph (4).
- (4) If an application is made under paragraph (2) or (3) by a registered person or persons, the Commission may grant, or refuse to grant, an approval to the person or persons.
- (5) An approval granted under paragraph (4) to a registered person may permit the person to provide under Articles 7(1)(c) and 11(1)(a) a single consolidated declaration, relating to all persons who are registered under the Law and who are members of the group of which the registered person is a member, instead of a declaration that relates only to the registered person.
- (6) An approval may be granted under paragraph (4) on the conditions specified by the Commission on the approval.
- (7) A registered person to whom an approval has been granted under paragraph (4) may, if permitted to do so under the approval, provide under Articles 7(1)(c) and 11(1)(a) a single consolidated declaration, instead of a declaration that relates only to the registered person.
- (8) If a registered person is required under an approval granted under paragraph (4) to provide under Articles 7(1)(c) and 11(1)(a) a single consolidated declaration, the requirements of those Articles shall only be taken to have been complied with if the single consolidated declaration is provided to the Commission in accordance with the approval.
- (9) A registered person to whom an approval has been granted under paragraph (4) may apply to the Commission to amend the approval.
- (10) The Commission may –
 - (a) of its own motion, by notice in writing to a registered person; or
 - (b) if it receives an application under paragraph (9) from a registered person, by notice in writing to the registered person,amend an approval granted to the registered person under paragraph (4).

13 Consolidated directors' and auditor's reports

- (1) If a registered person who is a member of a group has, in accordance with an approval granted under Article 10(4), provided consolidated financial statements under Article 7(1)(a), the directors' report required under Article 7(1)(b) and 11(1)(b) to be provided in relation to the registered person shall relate to all members of the group of which the registered person is a member.
- (2) The requirements of Articles 7(1)(b) and 11(1)(b) shall not be satisfied by the provision of a directors' report that relates to more than one registered person, except if the report is required be provided under paragraph (1).

- (3) If members of a group acting in accordance with an approval granted under Article 10(4) have provided their auditor with consolidated financial statements under Article 7(1)(a), the report prepared under Article 8(1)(a) or (b) shall relate to the consolidated financial statements.
- (4) If members of a group acting in accordance with an approval granted under Article 11(4) have provided their auditor with a single consolidated declaration under Article 7(1)(c), the report prepared under Article 8(1)(c) shall relate to the single consolidated declaration.
- (5) The requirements of Article 8(1)(a), (b) or (c) shall not be satisfied by the provision of a report that relates to more than one registered person, except if the report is required be provided under paragraph (3) or (4).

14 Exemptions

- (1) A registered person may apply to the Commission to be exempted from compliance with all or any part of Articles 2 to 13.
- (2) The Commission may, on the application of a registered person, exempt the person from compliance with all or any part of Articles 2 to 13.
- (3) The Commission shall not grant an exemption under paragraph (2) unless it is of the opinion that by virtue of the relevant business the registered person carries on, or intends to carry on, no customer or client of the person is likely to be prejudiced if the exemption is granted.
- (4) An exemption may be granted under paragraph (2) subject to the conditions specified on the exemption.
- (5) An exemption granted under paragraph (2) shall be of no effect if the registered person fails to comply with any condition imposed under paragraph (4).
- (6) A registered person to whom an exemption has been granted under paragraph (2) may apply to the Commission to amend the exemption.
- (7) The Commission may –
 - (a) of its own motion, by notice in writing to a registered person; or
 - (b) if it receives an application under paragraph (6) from a registered person, by notice in writing to the registered person,amend an exemption granted to the registered person under paragraph (2).

15 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 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 –

- (a) that 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; or
 - (b) that as a result of a breach of a requirement of a Code of Practice (not being a requirement the Commission has waived) or of a legal requirement, or of a breach of internal controls or procedures, or both, a customer or 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 other person nominated or approved by the Commission in respect of the person in accordance with Article 8(5) or 32(4) of the Law.

16 Transitional provisions

- (1) If, immediately before the commencement day, there was, in relation to a registered person, an accounting period, details of which were provided to the Commission in accordance with Article 2 of the Trust Company Business Order, the period shall be taken to be the accounting period approved for the person under Article 2 of this Order.
- (2) A period that was, immediately before the commencement day, an accounting reference period in relation to a registered person in accordance with the Investment Business Order, shall be taken to be the accounting period approved for the person under Article 2 of this Order.
- (3) A person who was, immediately before the commencement day, a person approved under Article 4 of the Trust Company Business Order to be the auditor in relation to a registered person shall be taken to have been approved as an auditor under Article 3 of this Order in relation to the registered person.
- (4) A person who was, immediately before the commencement day, the auditor, for the purposes of Article 6 of the Investment Business Order, in relation to a registered person, shall be taken to have been approved as an auditor under Article 3 of this Order in relation to the registered person.
- (5) If a registered person was, immediately before the commencement day, a person exempted under the repealed Orders from a requirement of one of those Orders that corresponds to a requirement of this Order, the exemption shall continue in force, on the same terms, in relation to the person as if it were an exemption from the requirement in this Order granted under Article 14.
- (6) If a registered person was, immediately before the commencement day, permitted to provide to the Commission consolidated financial statements under any of the repealed Orders the registered person shall be taken to have been granted an approval under Article 10 on the same terms as the permission.
- (7) If a registered person was, immediately before the commencement day, permitted to provide to the Commission a single consolidated declaration under any of the repealed Orders, the registered person shall be taken to

have been granted an approval under Article 12 on the same terms as the permission.

(8) Nothing in the Article shall be taken to prevent the amendment, under another Article of this Order, of an approval or exemption that shall be taken, by virtue of this Article, to have been granted under that other Article.

(9) In this Article –

“commencement day” means 31st December 2007;

“Investment Business Order” means the Financial Services (Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2001³, as in force immediately before the commencement day;

“repealed Orders” means the Investment Business Order and the Trust Company Business Order;

“Trust Company Business Order” means the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000⁴, as in force immediately before the commencement day.

17 Citation

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

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement
Financial Services (Trust Company and Investment Business (Accounts, Audits and Reports)) (Jersey) Order 2007	R&O. 183/2007	31 December 2007

Table of Renumbered Provisions

Original	Current
16	Spent, omitted
17	16
18(1)	17
18(2)	Spent, omitted

Table of Endnote References

¹	<i>chapter 13.225</i>
²	<i>chapter 13.225</i>
³	<i>chapter 13.225.10 (revised edition 31.8.04)</i>
⁴	<i>chapter 13.225.45 (revised edition 31.8.04)</i>