



Jersey

FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (AMENDMENT No. 2) (JERSEY) ORDER 2022

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES, on the recommendation of the Jersey Financial Services Commission, makes this Order under Articles 20 and 42 of the Financial Services (Jersey) Law 1998 –

1 Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 amended

This Order amends the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001.

2 Article 1 (interpretation) amended

In Article 1 –

- (a) after the definition “documents of title” there is inserted –
“ “overseas jurisdiction” means a jurisdiction outside Jersey;”;
- (b) for the definition “investment” there is substituted –
“ “investment” does not include an approved Jersey scheme or an approved drawdown contract (as those terms are defined in Article 130(1) of the Income Tax (Jersey) Law 1961);”.

3 Article 13 (protection of investments) amended

In Article 13 for “documents of title to investments” there is substituted “protected property”.

4 Article 15 (safekeeping of documents: general) substituted

For Article 15 there is substituted –

“15 Safekeeping of protected property: general

A registered person is responsible in accordance with this Part for the safekeeping of protected property belonging to the registered person’s clients which has come into the registered person’s possession or control, and remains so responsible as trustee until the protected property is 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.”.

5 Article 16 (safekeeping of documents by the registered person) substituted

For Article 16 there is substituted –

“16 Safekeeping of protected property by the registered person

If a registered person is responsible for the safekeeping of any protected property belonging to the registered person’s clients, unless the protected property is properly in the custody of an approved custodian acting for the registered person –

- (a) the registered person –
 - (i) must hold the protected property in the registered person’s own possession and in safe custody, or must arrange that the protected property is held by the registered person as trustee, and
 - (ii) must not part with possession of or transfer any of the protected property to any person, other than on the client’s instructions or to the client in accordance with the client agreement;
- (b) if the title to the protected property passes by delivery, it must be held in such a manner that –
 - (i) it is readily apparent that the protected property does not belong to the registered person or to a connected customer of the registered person, and
 - (ii) the owner of the protected property can be identified at all times; and
- (c) any protected property held for the following purposes must be identified and, if possible, segregated from protected property which is not so held –
 - (i) protected property that is held as security for a loan to that client, or
 - (ii) protected property that is held 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.”.

6 Article 17 (safekeeping of documents by a registered person's own nominee) amended

In Article 17 –

- (a) in the heading for “documents” there is substituted “protected property”;
- (b) for “any documents of title to investments” there is substituted “any protected property”;
- (c) for “those documents are” there is substituted “the protected property is”;
- (d) for sub-paragraph (b) there is substituted –
 - “(b) the references to the registered person in sub-paragraphs (a) and (c) of that Article were references to the nominee.”.

7 Article 18 (safekeeping of documents held by an approved custodian who is not the registered person's own nominee) substituted

For Article 18 there is substituted –

“18 Safekeeping of protected property held by an approved custodian who is not the registered person's own nominee

- (1) This Article applies if an approved custodian who is not the registered person's own nominee is to be responsible for the safekeeping of protected property.
- (2) The registered person must act with due diligence, as would a prudent person, and to the best of the registered person's ability and skill when –
 - (a) selecting, appointing or delegating to an approved custodian;
 - (b) agreeing the terms on which the approved custodian is responsible for the safekeeping of the protected property;
 - (c) carrying out, or determining the frequency of, reviews of the performance of the approved custodian of the safekeeping of protected property; and
 - (d) following each review described in sub-paragraph (c), determining whether to permit the approved custodian to continue to be responsible for the safekeeping of that protected property.
- (3) A registered person who discharges their duty under paragraph (2) in good faith and without neglect is not liable for any loss to the client arising from the performance or conduct of the approved custodian in the safekeeping of the protected property.
- (4) A registered person must not employ the services of an approved custodian who is not the registered person's own nominee to be responsible for the safekeeping of protected property belonging to a client unless –
 - (a) the registered person and the custodian have agreed in writing that –

- (i) the custodian acknowledges that the registered person is acting as trustee,
 - (ii) the custodian will not part with possession of or transfer title to that protected property otherwise than to the registered person or on the registered person's instructions,
 - (iii) the protected property will be held in a manner that it is readily apparent that the protected property does not belong to the registered person, and
 - (iv) 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 protected property the protected property held and the amount of that protected property;
 - (b) the custodian has acknowledged in writing to the registered person that the custodian will not have or claim any lien or right of retention over, or any right to sell, the protected property placed in the custodian's custody, to offset the indebtedness of the registered person or a client except where –
 - (i) that client is the title holder of the protected property,
 - (ii) the beneficial owner (or the legal owner, where the legal owner has capacity to do so) has consented, or
 - (iii) the indebtedness is only in respect of charges relating to the administration or custody of the protected property; and
 - (c) if the custodian is subject to the laws of an overseas jurisdiction or acts on terms which are governed by the laws of an overseas jurisdiction, the registered person or custodian has disclosed to the client –
 - (i) that the client's protected property will be subject to the client protected property asset protection regime or the insolvency regime, as the case may be, of the overseas jurisdiction,
 - (ii) in the event of the bankruptcy or insolvency of the custodian, the risks of the loss or loss of value of the client's protected property arising from the protected property being held in the overseas jurisdiction, and
 - (iii) the extent (if any) to which any investor compensation scheme in the overseas jurisdiction applies to the client or the client's protected property.
- (5) The disclosures required under paragraph (4)(c) apply even if the approved custodian appoints a sub-custodian.

- (6) A registered person who makes an agreement with a custodian in accordance with paragraph (4)(a) must not authorise the custodian to release or transfer title to any protected property otherwise than –
 - (a) in accordance with the client agreement; or
 - (b) on the express instructions of the client.”.

8 Article 19 (accounting for and reconciliation of title to investments) amended

In Article 19 –

- (a) in the heading, for “title to investments” there is substituted “protected property”;
- (b) in paragraph (1) –
 - (i) in the introductory text for “documents of title to investments” there is substituted “protected property”,
 - (ii) for sub-paragraph (b) there is substituted –
 - “(b) specifying the protected property in respect of which the registered person was on that date responsible for the safekeeping and the amount of such protected property in accordance with this Part.”;
- (c) in paragraph (3) –
 - (i) for “documents of title to investments” there is substituted “protected property”,
 - (ii) for “such documents” there is substituted “that protected property”.

9 Article 20 (storage of client property) amended

In Article 20 –

- (a) in paragraph (1) for “title to investments” there is substituted “protected property”;
- (b) for paragraph (2) there is substituted –
 - “(2) Where the registered person holds protected property belonging to clients, title to which passes by delivery, the registered person must ensure that the protected property is stored so as to minimize any risk of its loss due to theft, fire or flood.”.

10 Article 22 (third parties) amended

In Article 22 –

- (a) in paragraph (1), for “title documents”, there is substituted “protected property”;
- (b) after paragraph (1), there is inserted –
 - “(1A) A registered person must act with due diligence, as would a prudent person, and to the best of the registered person’s ability and skill when –

- (a) selecting, appointing or delegating to a third party to whom clients' protected property is lent;
 - (b) agreeing the terms on which the protected property is lent to the third party; and
 - (c) carrying out, or determining the frequency of, reviews of the performance of the third party; and
 - (d) following each review described in sub-paragraph (c), determining whether to continue to lend the protected property to the third party.
- (1B) A registered person who discharges their duty under paragraph (1A) in good faith and without neglect is not liable for any loss to the client arising from performance or conduct of the third party to whom the protected property is lent.
- (1C) A registered person must not lend a client's protected property to a third party subject to the laws of an overseas jurisdiction or act on terms which are governed by the laws of an overseas jurisdiction, unless the registered person or third party has disclosed to the client –
 - (a) that the client's protected property will be subject to the client protected property asset protection regime or the insolvency regime, as the case may be, of the overseas jurisdiction;
 - (b) in the event of the bankruptcy or insolvency of the third party, the risks of the loss or loss of value of the client's protected property arising from the protected property being held in the overseas jurisdiction; and
 - (c) the extent (if any) to which any investor compensation scheme in the overseas jurisdiction applies to the client or the client's protected property.
- (1D) The disclosures required under paragraph (1C) apply even if the third party appoints or delegates to another party.”;
- (c) in paragraph (3), for “title documents have” there is substituted “protected property has”.

11 Article 22A (transitional provision) inserted

After Article 22 there is inserted –

“22A Transitional provision

- (1) A person to whom this Part applied immediately before the commencement day does not, within the relevant period, commit an offence under Article 20(4) of the Financial Services (Jersey) Law 1998 if the person would have been in compliance with this Part were it not for the commencement of the Financial Services (Investment Business (Client Assets)) (Amendment No. 2) (Jersey) Order 2022.
- (2) In this Article –

“commencement day” means the day on which the Financial Services (Investment Business (Client Assets)) (Amendment No. 2) (Jersey) Order 2022 comes into force; and

“relevant period” means a period of 3 months beginning on the commencement day.”.

12 Citation and commencement

This Order may be cited as the Financial Services (Investment Business (Client Assets)) (Amendment No. 2) (Jersey) Order 2022 and comes into force 7 days after it is made.

Signed:

Date:

Minister for External Relations and Financial Services