

## A MOORE STEPHENS GUIDE TO FINANCIAL SERVICES (JERSEY) LAW 1998

### Introduction

The Financial Services (Extension) (Jersey) Law 2000 came into force 27 November 2000, amending the Investment Business (Jersey) Law 1998 to extend its scope to those companies and individuals who provide company and trustee services. There is now one regulatory law to cover those who carry on “financial services business”, meaning those who conduct “investment business” and those who conduct “trust company business”. To reflect this extension in scope, the Investment Business (Jersey) Law was renamed the Financial Services (Jersey) Law 1998.

Businesses (described as the “registered person”) were given until 1 February 2001 to apply to the Jersey Financial Services Commission for registration under the law and Moore Stephens Jersey has continued to be granted with a licence to conduct trust company business. The Jersey Financial Services Commission is an independent body, which supervises and regulates those businesses registered under the law.

### Codes of Practise and Orders

The regime to regulate trust company business was created primarily by subordinate legislation entitled the “Codes of Practice and Orders”. The Codes set out sound principles for the conduct of trust and company business, but do not themselves render anyone liable to proceedings or invalidate any transaction should they fail to follow the Codes. However, such a failure may, in serious cases, place a registered person at risk of having their registration revoked or result in the Jersey Financial Services Commission taking other action against them. The Jersey Financial Services Commission has wide ranging powers in addition to the duty generally to supervise those registered under the Law and these include:

- make “directions” (failure to follow is a criminal offence);
- appoint investigators who may require documents to be provided, questions answered and, on giving notice, enter premises;
- appoint a manager to run the trust company business;
- require provision of information and documents or persons to attend and answer questions and may enter premises for these purposes;
- issue licence conditions;
- revoke a licence;
- exercise these powers on the request of another regulatory body.

### What is a registered person required to do?

#### Conduct of business

- The Codes contain numerous “conduct of business” rules, which should be implemented. Although each is described in more detail in the Codes, the rules generally require that the registered person must:
  - conduct its business with integrity;
  - have highest regard for the interests of its customers;
  - comply with specific basic standards in relation to each different type of trust company business service;
  - be transparent in its arrangements;
  - comply with the Proceeds of Crime (Jersey) Law 1999, Money Laundering (Jersey) Order 1999 and follow standards set out in the Anti-Money Laundering Guidance Notes for the Finance Sector. KYC and due diligence requirements are covered in these separate pieces of legislation; operate “robust arrangements” to authorise transactions relating to customer assets and for safe guarding against involvement in financial crime;
  - establish effective complaints-handling systems and procedures;
  - keep adequate and orderly records of their business transactions, their financial position, their internal organisation and of their risk management systems.

### **Organisation and competence of proprietors, partners, directors, senior managers and all other employees**

The Codes deal with how the Jersey Financial Services Commission expects a registered person to meet the span of control requirements (six eyes principle). At least three appropriately skilled persons, who are able to exercise independent judgement without duress or undue influence from one another, are required to deal with the direction and conduct of the registered person.

### **Competence requirements**

The registered person is required to demonstrate competence in two areas:

- as a general requirement, the registered person must be “fit and proper”, and
- the trust company business employees must have the required qualification and/or experience.

### **Compliance**

The registered person and their employees are required to undertake a minimum of 25 hours per year of relevant training.

### **Financial resources**

A registered person must maintain, and be able to demonstrate the existence of, both adequate financial resources and adequate insurance. The registered person will generally be required to meet the following three requirements:

- minimum of £25,000 paid up share capital (or evidenced net assets for non-incorporated entities);
- surplus of Adjusted Net Liquid Assets over Expenditure Requirements (solvency test);
- maintain adequate insurance cover and that such cover must include professional indemnity insurance. The minimum cover must be the greater of;
- three times relevant fees
- thirty times relevant fees from single largest customer; or
- £5,000,000 for each and every claim.

### **Notifications**

In addition to obligations under the Law, the registered person must make certain notifications to the Jersey Financial Services Commission within a specified timescale.

### **What Are The Orders?**

Whilst the contravention of the Codes of Practice does not render anyone liable to proceedings, contravention of an Order will, in most instances, be a criminal offence.

### **Accounts, Audit and Reports Order**

The Order requires a registered person to comply with the following requirements:

- proper books of account for the business must be kept;
- an auditor must be appointed and be approved by the Jersey Financial Services Commission
- an audit of the registered person’s financial statements and compliance with the Law, the orders and the Codes of Practice must be carried out
- the auditors must make a declaration to the Jersey Financial Services Commission that no evidence of any breach of the Law, the Orders OR THE Codes of Practice has been found during the audit; and
- the auditor must inform the Jersey Financial Services Commission of any serious breach of the Law, orders and Codes of Practice.

### **Trust Company Business Assets Order**

A registered person that holds or controls customer assets must ensure that they comply with the requirements of the Law and Order:

- customer assets must be segregated and separately identified;
- must keep adequate records of customer money;
- must reconcile the records of customer money with bank statements;
- ensure that in so far as it is possible and practicable to do so, customer money and other money is not mixed;

- ensure that customer's money is not used for another customer without proper authority; and
- ensure that where customer money is in a pooled bank account;
- the account is with an approved bank
- the account clearly indicates it to be a bank account for customer money.

#### **Appointment Of A Manager Order**

Where the Jersey Financial Services Commission is concerned that there has been inadequate management of the affairs of a registered person, they have the power to apply to Courts for the appointment of an appropriately qualified person to manage the trust company business.

#### **Registration and Fees Orders'**

This order sets out the different classes of trust company business for which a business may wish to seek registration. These classes match the different services comprising trust company business described in the Law.

#### **Advertising Order**

The order sets out certain requirements relating to advertisements for financial service business, including requirements relating to full and frank disclosure, record keeping and the sending of unsolicited material.

#### **Exemption Orders**

A number of activities falling within the definition of "trust company business" are nevertheless treated as being exempt from the law or exempt from registration under the Law but still subject to a number of the provisions of the Law. To date there are eight Exemption Orders

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Stephen Milsom or Paul Camara:

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