



Jersey

DRAFT FINANCIAL SERVICES (AMENDMENT No. 5) (JERSEY) LAW 202-

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DRAFT FINANCIAL SERVICES (AMENDMENT No. 5) (JERSEY) LAW 202-

A LAW to amend the Financial Services (Jersey) Law 1998 in relation to credit business

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

FINANCIAL SERVICES (JERSEY) LAW 1998 AMENDED

1 Financial Services (Jersey) Law 1998 amended

This Part amends the Financial Services (Jersey) Law 1998.

2 Article 1 (general interpretation) amended

In Article 1(1), after the definition “compliance officer” there is inserted –

“ “credit business” has, subject to any Order under Article 4, the meaning given to that expression by Article 2(12);”.

3 Article 2 (“financial service business” defined) amended

In Article 2 –

(a) in paragraph (1) for “or AIF services business” there is substituted “, AIF services business or credit business”;

(b) after paragraph (11) there is inserted –

“(12) A person carries on credit business so far as the person carries on an activity described in Schedule 1A.”

4 Article 31A inserted

After Article 31 there is inserted –

“31A Powers in relation to consumer protection

- (1) The States may make Regulations relating to consumer protection in connection with credit business.
- (2) Regulations made under this Article may make provision in respect of the following matters -
 - (a) requiring persons carrying on business regulated by this Law to take steps to ensure that consumers with whom they are entering into an agreement have legal capacity to enter into the agreement and understand the terms and conditions by which they will be bound;
 - (b) business regulated by this Law involving high interest, short term or unsecured lending, and agreements –
 - (i) incurring high set-up or other initial or ongoing fees or charges,
 - (ii) attracting high interest rates or penalties,
 - (iii) under which the level of fees, charges, interest or penalties changes, or some other disadvantage ensues, as a result of a failure to repay within a certain period or in other specified cases or circumstances, and
 - (iv) otherwise attracting unfair fees, charges, interest or penalties;
 - (c) agreements entered into in contravention of the provisions of this Law and the consequences of such contraventions, including the enforceability, avoidance, modification, mitigation, disapplication or replacement of –
 - (i) such agreements, and
 - (ii) the terms and conditions of such agreements;
 - (d) cooling off periods and rights of cancellation or rescission of, or withdrawal from, agreements or offers to enter into agreements, including -
 - (i) the cases or circumstances where cooling off periods and rights of cancellation, rescission or withdrawal do or do not apply,
 - (ii) the times at or periods within which, and the form and manner in which, any such right of cancellation, rescission or withdrawal may be exercised,
 - (iii) the giving of information as to any such right of cancellation, rescission or withdrawal, and the form and manner in which, and the times at or periods within which, such information must be given,
 - (iv) the restitution of property and the making and recovery of payments where any such right of cancellation, rescission or withdrawal is exercised;
 - (e) unfair terms and conditions of agreements and unfair practices, including -

- (i) terms, conditions and practices deemed to be unfair, including by reason of their causing a significant imbalance in the parties' respective rights and obligations to the detriment of the consumer,
 - (ii) the consequences of the inclusion of unfair terms and conditions and the pursuit of unfair practices,
 - (iii) the enforceability, avoidance, modification, mitigation, disapplication or replacement of -
 - (A) unfair terms and conditions, and
 - (B) the consequences of unfair practices, and
 - (iv) the terms and conditions which must or must not be included in agreements;
 - (f) the form and manner of communication of agreements relating to business regulated by this Law;
 - (g) the regulation of –
 - (i) restrictions on the rights of consumers, or restrictions on the liabilities of persons carrying on business regulated by this Law, and
 - (ii) notices (however communicated) which restrict such rights or liabilities;
 - (h) secondary agreements, linked agreements and series of agreements, and the taking into account of all terms and conditions affecting the rights, obligations and liabilities of the parties;
 - (i) the powers of the Commission and the rights, obligations, liabilities, remedies, penalties, sanctions and other consequences in respect of matters set out in the preceding sub-paragraphs;
 - (j) the exercise by the Commission of its functions, including its powers to grant, refuse, suspend, revoke and impose conditions in respect of registrations and to issue directions, in respect of contraventions and other matters set out in the preceding sub-paragraphs.
- (3) In paragraph (2), “agreements” includes regulated agreements and other contracts, engagements and transactions.

5 Schedule 1A inserted

After Schedule 1 there is inserted –

“SCHEDULE 1A

(Article 2(12))

CREDIT BUSINESS**PART 1 - INTERPRETATION****1 Interpretation**

In this Schedule and Schedule 2 –

“borrower” means a consumer who receives credit under a consumer credit agreement or a secured lending arrangement;

“consumer credit agreement” means an agreement between a consumer and another person (“B”) under which B provides the consumer with credit of any amount;

“consumer hire agreement” means an agreement between an owner and a hirer for the hiring of goods to the hirer (including a hire-purchase agreement) which is capable of subsisting for more than three months;

“credit” includes a cash loan and any other form of financial accommodation;

“consumer” means –

- (a) an individual acting for purposes wholly or mainly outside that individual's trade, business or profession, or
- (b) [a person acting by way of business] which employs fewer than 10 persons [and whose annual turnover or annual balance sheet total does not exceed [GBP 2 million][EUR 2 million]];

“hire-purchase agreement” has the meaning given in Article 1 of the Supply of Goods and Services (Jersey) Law 2009;

“hirer” means a consumer who receives goods under a consumer hire agreement;

“lender” means –

- (a) the person providing credit under a consumer credit agreement or a secured lending arrangement by way of business, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided credit under a consumer credit agreement or a secured lending arrangement;

“owner” means –

- (a) the person who provides goods under a consumer hire agreement by way of business, or
- (b) a person who exercises or has the right to exercise the rights and duties of a person who provided goods under a consumer hire agreement;

“regulated consumer credit agreement” means a consumer credit agreement which is entered into on or after [insert date];

“regulated consumer hire agreement” means a consumer hire agreement which is entered into on or after [insert date];

“regulated secured lending arrangement” means a secured lending arrangement which is entered into on or after [*insert date*];

“secured lending arrangement” means an arrangement which creates, or may create, a security for the repayment of a loan or for the discharge of another obligation against immovable property in Jersey used for residential purposes (including, for example, a hypothec, under the Loi (1880) sur la propriété foncière and a security interest under the Security Interests (Jersey) Law 2012).

PART 2 – ENTERING INTO AND EXERCISING RIGHTS UNDER REGULATED AGREEMENTS AND ARRANGEMENTS

2 Entering into regulated agreements or arrangements

- (1) A person who enters into a regulated consumer credit agreement or a regulated secured lending arrangement as lender carries on credit business.
- (2) A person who enters into a regulated consumer hire agreement as owner carries on credit business.

3 Exercising rights under regulated agreements or arrangements

- (1) A lender or other person who exercises, or has the right to exercise, the lender’s rights and duties under a regulated consumer credit agreement or a regulated secured lending arrangement carries on credit business.
- (2) An owner or other person who exercises, or has the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement carries on credit business.

PART 3 – ADVISING ON, ARRANGING AND ADMINISTERING REGULATED AGREEMENTS AND ARRANGEMENTS

4 Advising on regulated agreements and arrangements

A person who advises another person (“A”) carries on credit business where –

- (a) the advice is given to A in A’s capacity as a borrower or potential borrower and is advice on the merits of A –
 - (i) entering into a particular regulated consumer credit agreement or regulated secured lending arrangement, or
 - (ii) varying the terms of a regulated consumer credit agreement or regulated secured lending arrangement entered into by A in such a way as to vary A’s obligations under that agreement or arrangement; or
- (b) the advice is given to A in A’s capacity as a hirer or potential hirer and is advice on the merits of A –
 - (i) entering into a particular regulated consumer hire agreement, or
 - (ii) varying the terms of a regulated consumer hire agreement entered into by A in such a way as to vary A’s obligations under that agreement.

5 Administering regulated agreements or arrangements

- (1) A person who administers a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement carries on credit business.
- (2) “Administering” a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement means either or both of –
 - (a) notifying the borrower (or the hirer, as the case may be) of changes in interest rates or payments due under the agreement or arrangement, or of other matters of which the agreement or arrangement requires the borrower (or the hirer) to be notified; and
 - (b) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement or arrangement from the borrower (or the hirer),

but a person is not to be treated as administering a regulated consumer credit agreement, a regulated consumer hire agreement or a regulated secured lending arrangement merely because the person has, or exercises, a right to take action for the purposes of enforcing the agreement or arrangement (or to require that such action is or is not taken).

6 Arranging regulated agreements or arrangements

A person carries on credit business where the person makes arrangements –

- (a) for another person to enter into a regulated consumer credit agreement or a regulated secured lending arrangement as borrower;
- (b) for another person to enter into a regulated consumer hire agreement as hirer;
- (c) for another person to vary the terms of a regulated consumer credit agreement or a regulated secured lending arrangement entered into by that person as borrower in such a way as to vary that person’s obligations under that agreement or arrangement;
- (d) for another person to vary the terms of a regulated consumer hire agreement entered into by that person as hirer in such a way as to vary that person’s obligations under that agreement;
- (e) with a view to a person who participates in the agreements or arrangements entering into a regulated consumer credit agreement or a regulated secured lending arrangement as borrower;
- (f) with a view to a person who participates in the agreements entering into a regulated consumer hire agreement as hirer;
- (g) to enter into a regulated consumer credit agreement or a regulated secured lending arrangement with a borrower on behalf of a lender;
- (h) to enter into a regulated consumer hire agreement with a hirer on behalf of an owner.

PART 4 – CREDIT BROKING**7 Credit broking**

- (1) A person carries on credit business where the person –
 - (a) effects an introduction of an individual who wishes to enter into a consumer credit agreement or secured lending arrangement to another person with a view to that other person entering into a regulated consumer credit agreement or regulated secured lending arrangement as lender by way of business;
 - (b) effects an introduction of an individual who wishes to enter into a consumer hire agreement to another person with a view to that other person entering into a regulated consumer hire agreement as owner by way of business;
 - (c) effects an introduction of an individual who wishes to enter into a consumer credit agreement, secured lending arrangement or consumer hire agreement (as the case may be) to a person who carries on an activity of the kind described in sub-paragraph (a) or (b) by way of business;
 - (d) presents or offers an agreement or arrangement which would (if entered into) be a regulated consumer credit agreement or regulated secured lending arrangement;
 - (e) assists an individual by undertaking preparatory work with a view to that individual entering into a regulated consumer credit agreement or a regulated secured lending arrangement;
 - (f) enters into a regulated consumer credit agreement or a regulated secured lending arrangement on behalf of a lender.
- (2) For the purposes of paragraph (1) it is immaterial whether the consumer credit agreement, secured lending arrangement or consumer hire agreement is subject to the law of a jurisdiction outside Jersey.
- (3) A person does not carry out an activity under paragraph (1) if the person only provides details of potential lenders or owners (as the case may be) to an individual.
- (4) In paragraph (1) “regulated consumer credit agreement”, “regulated secured lending arrangement” and “regulated consumer hire agreement” include an agreement or arrangement that would be a regulated consumer credit agreement, regulated secured lending arrangement or regulated consumer hire agreement but for any exemptions set out in Schedule 2.

PART 5 – ACTIVITIES IN RELATION TO DEBT**8 Debt adjusting**

- (1) A person carries on credit business where the person, in relation to debts due under a consumer credit agreement or secured lending arrangement –
 - (a) negotiates with the lender, on behalf of the borrower, terms for the discharge of a debt;

- (b) takes over, in return for payments by the borrower, the customer's obligation to discharge a debt; or
 - (c) carries on any similar activity concerned with the liquidation of a debt.
- (2) A person carries on credit business where the person, in relation to debts due under a consumer hire agreement –
- (a) negotiates with the owner, on behalf of the hirer, terms for the discharge of a debt,
 - (b) takes over, in return for payments by the hirer, the hirer's obligation to discharge a debt, or
 - (c) carries on any similar activity concerned with the liquidation of a debt.

9 Debt-counselling

- (1) A person who gives advice to a borrower about the liquidation of a debt due under a consumer credit agreement or secured lending arrangement carries on credit business.
- (2) A person who gives advice to a hirer about the liquidation of a debt due under a consumer hire agreement carries on credit business.

10 Debt-collecting

- (1) A person who takes steps to procure the payment of a debt due under a consumer credit agreement or secured lending arrangement carries on credit business.
- (2) A person who takes steps to procure the payment of a debt due under a consumer hire agreement carries on credit business.

11 Debt administration

- (1) A person carries on credit business where the person takes steps –
 - (a) to perform duties under a consumer credit agreement or a secured lending arrangement on behalf of the lender; or
 - (b) to exercise or to enforce rights under a consumer credit agreement or a secured lending arrangement on behalf of the lender, so far as the taking of those steps is not debt-collecting.
- (2) A person carries on credit business where the person takes steps –
 - (a) to perform duties under a consumer hire agreement on behalf of the owner; or
 - (b) to exercise or to enforce rights under a consumer hire agreement on behalf of the owner, so far as the taking of those steps is not debt-collecting.
- (3) Sub-paragraphs (1) and (2) do not apply in so far as the activity is an activity of the kind described in paragraph 10 (debt collecting)."

6 Schedule 2 (exemptions) amended

In Schedule 2, at the end there is inserted –

“PART 6 – CREDIT BUSINESS**24 Certain business loans**

- (1) The carrying on of credit business in relation to a consumer credit agreement if –
 - (a) the lender provides the borrower with credit exceeding the amount for the time being specified in Article 1(1) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000, and
 - (b) the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- (2) The carrying on of credit business in relation to a consumer hire agreement if –
 - (a) the hirer is required by the agreement to make payments exceeding the amount for the time being specified in Article 1(1) of the Petty Debts Court (Miscellaneous Provisions) (Jersey) Law 2000, and
 - (b) the agreement is entered into by the hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the hirer.

25 Certain trade agreements

The carrying on of consumer credit business in relation to a consumer credit agreement that is made in connection with trade in goods or services –

- (a) between Jersey and a jurisdiction outside Jersey;
- (b) within a jurisdiction outside Jersey; or
- (c) between jurisdictions outside Jersey, and

the credit is provided to the borrower in the course of a business carried on by the borrower.

26 Advice given in newspapers etc.

Advice of the kind mentioned in paragraph 4 of Schedule 1A given in any newspaper, journal, magazine, television broadcast, teletext service, sound broadcast or electronic information service, or in any other periodical publication, broadcast or electronic information service if –

- (a) the principal purpose of the periodical publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not the giving of that advice, or
- (b) the publisher, broadcaster, service provider or producer of the periodical publication, broadcast or service does not derive any direct benefit from any business resulting from the advice given therein.

27 Activities carried on by trustees

- (1) Advice of the kind mentioned in paragraph 4 of Schedule 1A given by a person as trustee to –
 - (a) a co-trustee for the purposes of the trust; or
 - (b) a beneficiary under the trust concerning the person's interest in the trust fund.
- (2) The making of arrangements under paragraph 6 of Schedule 1A by a person acting as trustee for or with a view to a transaction which is or is to be entered into –
 - (a) by that person and a fellow trustee (acting in their capacity as such); or
 - (b) by a beneficiary under the trust.
- (3) This paragraph does not apply if the person giving the advice or making the arrangements is remunerated for that activity in addition to any remuneration the person receives as trustee, and for these purposes a person is not to be regarded as receiving additional remuneration merely because the remuneration is calculated by reference to time spent.

28 Advice given in the course of a profession or business (other than financial service business)

- (1) Advice of the kind mentioned in paragraph 4 of Schedule 1A –
 - (a) given in the course of carrying on any profession or business which does not otherwise consist of financial service business, and
 - (b) which may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.
- (2) This paragraph does not apply if the giving of advice is remunerated separately from the other services.

29 Agreements for supply of essential services

The carrying on of credit business in relation to a consumer hire agreement if –

- (a) the owner is a body corporate which is authorised by or under an enactment to supply gas, electricity or water, and
- (b) the subject of the agreement is a meter or metering equipment which is used (or is to be used) in connection with the supply of gas, electricity or water.

30 Activities carried on by members of the legal profession etc

- (1) The carrying on of an activity described in paragraphs 7 to 11 of Schedule 1A –
 - (a) by a practising advocate or practising solicitor acting in that capacity, or
 - (b) by a person working under the supervision of a practising advocate or practising solicitor acting in that capacity,

but only in so far as the activity is regulated by the code or rules of professional conduct issued under the bye-laws of the Law Society of Jersey under the Law Society of Jersey Law 2005.

- (2) In this paragraph –
- (a) “practising advocate” means an advocate who is qualified to act as such under the Advocates and Solicitors (Jersey) Law 1997;
 - (b) “practising solicitor” means –
 - (i) a solicitor who is qualified to act as such under the Advocates and Solicitors (Jersey) Law 1997, or
 - (ii) a person who is qualified to act as a solicitor under any of section 1 of the Solicitors Act 1974 of the United Kingdom, Article 4 of the Solicitors (Northern Ireland) Order 1976 or section 4 of the Solicitors (Scotland) Act 1980 and who is, for the time being, practising as such from or within Jersey.

31 Activities carried on by liquidators

The carrying on of an activity described in paragraphs 7 to 11 of Schedule 1A by a person acting as a liquidator under the Bankruptcy (Désastre) (Jersey) Law 1990 or the Companies (Jersey) Law 1991 or acting in reasonable contemplation of that person’s appointment as such a liquidator.

32 Buy-to-let secured lending arrangements

- (1) The carrying on of credit business in relation to a buy-to-let secured lending arrangement which provides that the immovable property subject to the secured lending arrangement cannot at any time be occupied as a dwelling by the borrower or by a related person, and is to be occupied as a dwelling on the basis of a rental agreement.
- (2) In this paragraph “related person”, in relation to a person (“P”), means –
 - (a) P’s spouse or civil partner,
 - (b) a person (whether or not of the opposite sex) whose relationship with P has the characteristics of the relationship between husband and wife, or
 - (c) P’s parent, brother, sister, child, grandparent or grandchild.”

7 Schedule 5 (transitional provisions) amended

In Schedule 5, after paragraph 3 there is inserted –

“4 Credit business

- (1) Despite anything in this Law, a person who carried on credit business at any time during the [6 months] immediately before the commencement day is not to be taken to have committed an offence under Article 7(4) by virtue of any action that is taken, or not taken, by the person in the course of carrying on that business during the period –

- (a) on and from the commencement day until the day [6 months] after the commencement day or, if a day is specified under sub-paragraph (3) in relation to the person, until that day; or
 - (b) if the person applies, before [6 months] after the commencement day, for registration under this Law as a person entitled to carry on credit business, on and from the commencement day until the day the application is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn.
- (2) The following modifications to the provisions of this Law apply to and in relation to a person to whom sub-paragraph (1) applies and who has applied for registration under this Law as a person entitled to carry on credit business –
- (a) a reference in this Law to the period during which a person is registered is taken to be a reference to the period between –
 - (i) the date of the application, and
 - (ii) the date on which the application is granted or refused by the Commission, is finally determined (including as a result of an appeal to the Court under Article 11) or is withdrawn;
 - (b) a reference in this Law to the terms of a registration is taken to be a reference to the terms of the application; and
 - (c) a reference in Article 11 to the Commission, acting under Article 9, revoking a registration is taken to be a reference to the Commission refusing an application under Article 9.
- (3) On the application of a person, the Commission may, by notice in writing, specify a day in relation to the person for the purposes of sub-paragraph (1)(a).
- (4) The Commission must not specify a day under paragraph (3) unless –
- (a) the Commission is satisfied that there are exceptional circumstances that justify the extension of the period during which the person will not be taken to have committed an offence under Article 7(4) by reason only of carrying on credit business; and
 - (b) the day is not later than [12 months] after the commencement day.
- (5) In this paragraph, “commencement day” means the day on which the Financial Services (Amendment No.5) (Jersey) Law 202- comes into force.”.

PART 2

RELATED AMENDMENT AND FINAL PROVISIONS

8 **Loi (1880) sur la propriété foncière amended**

- (1) This Article amends the Loi (1880) sur la propriété foncière.
- (2) In Article 93, after “were sent” there is inserted “, together with a statement of valuation of the property *en dégrèvement* [or the corporeal hereditament of which the property forms part] [indicating the means used to reach the valuation].”
- (3) After Article 96 there is inserted -
 - “96A Where the Royal Court, [having reviewed the statement of valuation submitted under Article 93, any submissions of [the tenant or insolvent], and

such other information as it considers necessary,] is satisfied that a surplus would exist if the property comprising the tenancy were sold, the Court may make such orders as it thinks fit to secure that -

- (a) the property is sold [as soon as possible];
- (b) a fair market value is realised; and
- (c) any surplus is paid [into the Court or] [to the insolvent].

96B For the purposes of Article 96A, “surplus” means any amount left over from the sale of the property following the settlement of the amount outstanding on the debt owed to the tenant, the tenant’s reasonable expenses generated in the course of realising the security, and any other amount paid or payable by the tenant in satisfaction of the obligations arising by virtue of their tenancy under this Law.]”

9 [Consequential, transitional and supplementary provision

The States may by Regulations make such amendments to any enactment, and such transitional and supplementary provision, and as appear to the States to be necessary or expedient in consequence of any amendment made by this Law.]

10 Citation and commencement

This Law may be cited as the Financial Services (Amendment No. 5) (Jersey) Law 202- and comes into force [7 days after it is registered].