

**CONSULTATION DRAFT**  
**(NON-STATUTORY CONSULTATION)**

**DRAFT FINANCIAL SERVICES OMBUDSMAN  
(EXEMPT BUSINESS) (JERSEY) ORDER 201-**

**Explanatory Note**

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This Order exempts certain business from being relevant financial services business for the purpose of the Financial Services Ombudsman (Jersey) Law 201[-].

*Article 1* defines the Financial Services Ombudsman (Jersey) Law 201[-] as the “Law”. It also relies on the definition of “main business” in Article 9(2) of the Law, which allows for some business to be classed as ancillary in relation to other business that is classed as main.

*Article 2* exempts all business except those described in any one or more of the sub-paragraphs of paragraph (2). Sub-paragraphs (a) to (i) of paragraph (2) mainly relate to business that cannot be carried on without registration with, or other permission from, the Jersey Financial Services Commission (“JFSC”) under the Financial Services (Jersey) Law 1998, the Banking Business (Jersey) Law 1991, the Collective Investment Funds (Jersey) Law 1988 and the Insurance Business (Jersey) Law 1996.

Sub-paragraph (a) means that deposit-taking business is not exempt if it must be registered under the Banking Business (Jersey) Law 1991. Sub-paragraph (b) means that deposit-taking business by the Channel Islands Co-operative Society Limited and Community Savings & Credit Limited is not exempt, even though they are exempt from registration with JFSC. Similarly, although industrial and provident societies do not need to register with JFSC to accept sums in the form of withdrawable share capital, sub-paragraph (b) means that that activity is not exempt for the purposes of the Ombudsman scheme.

Sub-paragraph (c) means that money service business is not exempt if it must be registered under the Financial Services (Jersey) Law 1998. Sub-paragraph (d) means that other money service business is not exempt, if the reason that it does not require registration with JFSC is the operation of Article 4 or 5 of the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007 (which relate to certain low turnover businesses and registered deposit-taking businesses).

Sub-paragraph (e) means that the business of a functionary, in relation to a recognized fund, is not exempt (but other business in relation to collective investment funds and

alternative investment funds is exempt unless caught by any of the other sub-paragraphs).

Sub-paragraph (f) means that general insurance mediation business is not exempt if it must be registered under the Financial Services (Jersey) Law 1998. Sub-paragraphs (g) and (h) mean that insurance business is not exempt if it must be covered by a permit under the Insurance Business (Jersey) Law 1996, or if no permit is required because the insurance business is carried on under authority of another enactment (such as the Jersey Mutual Fire Insurance Society Incorporated (Alteration of Names and Rules) Law 1952).

Sub-paragraph (i) means that investment business is not exempt if it must be registered under the Financial Services (Jersey) Law 1998.

Sub-paragraph (j) means that relevant pension business is not exempt, unless exempted by *Article 3*, which deals with occupational pensions (or by *Article 6*).

Sub-paragraph (k) means that relevant credit business is not exempt, unless exempted by *Article 4*, which deals with store credit, or by *Article 5*, which deals with debt advice (or by *Article 6*).

Sub-paragraph (l) means that relevant ancillary business is exempt, but only if the main business is itself exempt, or if the ancillary business is exempted by *Article 6*, which deals with brokerage that is not the principal business of the person carrying it on (see below).

There are some types of business that appear in Article 9(1) of the Law, but do not appear in *Article 2* of this Order in their own right, and are therefore exempt unless they also fall under one of the other descriptions in this Article in another capacity. They are trust company business under the Financial Services (Jersey) Law 1998 (but for example such business might not be exempt if it relates to pensions); the business of an AIF, of an AIFM or of a service provider under the Alternative Investment Funds (Jersey) Regulations 2012; business falling within paragraph 7 of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, for which registration is required under Article 10 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (but for example such business might not be exempt if it relates to credit); and other forms of business that are exempted from requirements for registration or other permission from JFSC.

*Article 3* exempts relevant pension business carried on by employers in relation to their occupational pension schemes, where the employer's principal business is not financial services. So if the employer relies on an external financial service provider for some or all aspects of the scheme, only the employer's business is exempt and not the financial service provider's (but the employee would only be an eligible complainant if they have the required relationship with the financial service provider, under Article 8(6) of the Law, taking account of the guidelines under that Article). The business will still not be exempt if it also falls under one of the other descriptions in *Article 2(a) to (i)* in another capacity.

*Article 4* exempts relevant credit business carried on by those selling goods or supplying services (other than financial services), where the business mainly comprises the provision of credit by the seller or supplier to the customer to facilitate the sale or supply, and the provision of that credit does not require registration under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. Again such business will not be exempt if it also falls under one of the other descriptions in *Article 2(a) to (i)* in another capacity.

*Article 5* exempts relevant credit business that is merely debt-counselling (defined by Schedule 4 to the Law as the giving of advice to debtors about the liquidation of debts due under credit agreements) or debt-adjusting. Any debt-adjusting must only involve “negotiating with the creditor, on behalf of the debtor, terms for the discharge of a debt” (as described in paragraph 5(a) of that Schedule), or similar activity, and must not involve taking over the debtor’s obligation to discharge the debt. In addition, the advice or negotiation must not be connected with provision of credit, or brokerage of credit, by the person doing the advising or negotiating. Lastly the service must be provided without charge (and without deriving an income from it), or by a charity, or as an incidental business by a person whose principal business is not financial services in the broader meaning of Article 9(1) of the Law (sub-paragraphs (a) to (e), (h) and (i), which includes relevant credit business). Again such business will not be exempt if it also falls under one of the other descriptions in *Article 2(a) to (i)* in another capacity.

*Article 6* exempts relevant ancillary business if it is brokerage of financial services provided by others, and is carried on incidentally by a person who is not principally a financial service provider. Again such business will not be exempt if it also falls under one of the other descriptions in *Article 2(a) to (i)* in another capacity (such as registered general insurance mediation business). This exemption also only applies to the business of the person acting as the broker, not the business to which introductions are made. So if a shop selling goods refers buyers to a financial service provider for credit, or an employer refers employees to a financial service provider for a pension or other financial service, then that financial service provider’s business will not be exempt as such, but the shop’s or employer’s business in making the referral will be exempt (as long as it is incidental to their principal business).

*Article 7* names the Order and would bring it into force on the commencement of Article 9 of the Law.



**DRAFT FINANCIAL SERVICES OMBUDSMAN  
(EXEMPT BUSINESS) (JERSEY) ORDER 201-**

**Arrangement**

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**Article**

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## **CONSULTATION - DRAFT FINANCIAL SERVICES OMBUDSMAN (EXEMPT BUSINESS) (JERSEY) ORDER 201-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE MINISTER FOR ECONOMIC DEVELOPMENT**, in pursuance of Article 9 of the Financial Services Ombudsman (Jersey) Law 201-, orders as follows –

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### **1 Interpretation**

In this Order, unless the context otherwise requires –

“Law” means the Financial Services Ombudsman (Jersey) Law 201[-];  
“main business” has the meaning given by Article 9(2) of the Law.

### **2 Exempt business**

- (1) Business (“exempt business”) is exempted from being relevant financial services business for the purposes of Article 9 of the Law, if it does not fall within any one or more of the descriptions in the sub-paragraphs of paragraph (2).
- (2) Those descriptions are –
  - (a) deposit-taking business, within the meaning of the Banking Business (Jersey) Law 1991, for which the person carrying on the business must be registered under that Law;
  - (b) business for which the person carrying on the business would be required to be registered under the Banking Business (Jersey) Law 1991, but for the operation of Article 4 of, or Schedule 1 to, the Banking Business (General Provisions) (Jersey) Order 2002;
  - (c) money service business, within the meaning of the Financial Services (Jersey) Law 1998, for which the person carrying on the business must be a registered person under that Law;
  - (d) business for which the person carrying on the business would be required to be a registered person under the Financial Services (Jersey) Law 1998, but for the operation of either or both of

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Articles 4 and 5 of the Financial Services (Money Service Business (Exemptions)) (Jersey) Order 2007;

- (e) the business of a functionary of a recognized fund, within the meaning of the Collective Investment Funds (Jersey) Law 1988, for which the functionary must hold a permit under that Law;
- (f) general insurance mediation business, within the meaning of the Financial Services (Jersey) Law 1998, for which the person carrying on the business must be a registered person under that Law;
- (g) insurance business for the purposes of the Insurance Business (Jersey) Law 1996, for which the person carrying on the business must be authorized by a permit under that Law;
- (h) business for which the person carrying on the business would be required to be authorized by a permit under the Insurance Business (Jersey) Law 1996, but for Article 5(5)(d) of that Law;
- (i) investment business, within the meaning of the Financial Services (Jersey) Law 1998, for which the person carrying on the business must be a registered person under that Law;
- (j) subject to Articles 3 and 6, relevant pension business, within the meaning of Schedule 3 to the Law;
- (k) subject to Articles 4, 5 and 6, relevant credit business, within the meaning of Schedule 4 to the Law;
- (l) subject to Article 6, relevant ancillary business, within the meaning of Article 9(2) of the Law, in respect of which the main business falls within any one or more of sub-paragraphs (a) to (k).

### **3 Exempt occupational pension business**

- (1) Relevant pension business is exempt business if –
  - (a) it does not fall within any of sub-paragraphs (a) to (i) of Article 2(2); and
  - (b) it is relevant occupational pension business.
- (2) Business is relevant occupational pension business if –
  - (a) it is carried on by an employer, whose principal business does not fall within any sub-paragraph of Article 2(2), as incidental to that principal business; and
  - (b) the pension scheme to which it relates has, or is held out by the employer as having or as being capable of having, effect so as to provide benefits primarily to or in respect of persons who are or have been employees of that employer.

### **4 Exempt store credit business**

- (1) Relevant credit business is exempt business if –
  - (a) it does not fall within any of sub-paragraphs (a) to (i) of Article 2(2); and
  - (b) it is relevant store credit business.



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- (2) Business is relevant store credit business if –
- (a) it is carried on by a person in the course of, and as being incidental to, that person’s principal business of –
    - (i) selling goods,
    - (ii) letting goods under a hire-purchase agreement, or
    - (iii) supplying services, other than services provided by way of relevant credit business;
  - (b) it mainly comprises the provision of credit under a credit agreement, within the meaning of paragraph 1(a) of Schedule 4 to the Law;
  - (c) the credit is provided to the person to whom the goods are sold or let or the services supplied, with a view to facilitating that sale, letting or supply; and
  - (d) it is not specified Schedule 2 business, within the meaning of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 –
    - (i) by virtue of falling within paragraph 7(1)(b) or (e) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, and
    - (ii) in respect of which Article 10 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 requires the person carrying on the business to be a registered person within the meaning of that Law.
- (3) Terms used in paragraph (2)(a)(i) to (iii) have the meanings assigned by the Supply of Goods and Services (Jersey) Law 2009.

## **5 Exempt debt advice business**

- (1) Relevant credit business is exempt business if –
- (a) it does not fall within any of sub-paragraphs (a) to (i) of Article 2(2); and
  - (b) it is relevant debt advice business.
- (2) Business is relevant debt advice business if –
- (a) it constitutes –
    - (i) debt-counselling, as defined by paragraph 6 of Schedule 4 to the Law, or
    - (ii) debt-adjusting that falls within paragraph 5(a) of that Schedule, or within paragraph 5(c) of that Schedule in relation to paragraph 5(a);
  - (b) the person carrying it on does not, in connection with the business or in relation to the complainant –
    - (i) carry on any business falling within paragraph 1(a) of Schedule 4 to the Law, or
    - (ii) carry on any business that is relevant ancillary business, by virtue of Article 9(2)(b) of the Law, in respect of which the

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main business falls within paragraph 1(a) of Schedule 4 to the Law; and

- (c) it is carried on –
  - (i) without any charge or fee, and in such a manner that no income is derived from it, or
  - (ii) by a person whose income is exempt from income tax under Article 115(a), (aa) or (ab) of the Income Tax (Jersey) Law 1961, or
  - (iii) by a person whose principal business does not fall within any of sub-paragraphs (a) to (e), (h) and (i) of Article 9(1) of the Law, as wholly incidental to that principal business.

## **6 Exempt ancillary brokerage business**

- (1) Business is exempt business if –
  - (a) it does not fall within any of sub-paragraphs (a) to (i) of Article 2(2); and
  - (c) it is relevant brokerage business.
- (2) Business is relevant brokerage business if it –
  - (a) is carried on, by a person whose principal business does not fall within any sub-paragraph of Article 2(2), as wholly incidental to that principal business; and
  - (b) is relevant ancillary business, by virtue of Article 9(2)(b) of the Law, in respect of which the main business –
    - (i) is carried on by another person, and
    - (ii) falls within any one or more of sub-paragraphs (a) to (k) of Article 2(2).
- (3) Nothing in this Article is to be read, without more, as exempting the business that is the main business in relation to the exempt ancillary business.

## **7 Citation and commencement**

This Order may be cited as the Financial Services Ombudsman (Exempt Business) (Jersey) Order 201- and comes into force on the commencement of Article 9 of the Law.