



Jersey

## DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-

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Jersey

## DRAFT FINANCIAL SERVICES (JERSEY) AMENDMENT LAW 202-

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

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<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 –

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### 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 –

“consumer 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 consumer credit business”;
- (b) after paragraph (11) there is inserted –
- (12) A person carries on consumer credit business if by way of business the person carries on an activity described in Parts 2 to 4 of 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 consumer credit business, including an activity that would be consumer credit business if not for an exemption under –
  - (a) Article 3 and Part 6 of Schedule 2; or
  - (b) Article 7(2)(a)(ii) or (b) or an Order made under Article 4(1)(a).
- (2) The Regulations may include provisions that –
  - (a) require persons carrying on consumer credit business to take steps to ensure that consumers have legal capacity to enter into an agreement and understand the terms and conditions by which they will be bound;
  - (b) restrict or prohibit consumer credit business involving high-interest, short-term or unsecured lending, or agreements under which there are –
    - (i) high or unreasonable fees or charges, whether they are initial (such as for set up) or ongoing,
    - (ii) high or unreasonable interest rates or penalties, or
    - (iii) changes in the level of fees, charges, interest or penalties, or some other disadvantage, if the consumer fails to repay within a certain period or in other specified cases or circumstances;
  - (c) provide for the consequences of entering into an agreement in contravention of this Law or the Regulations, including the enforceability, avoidance, modification, mitigation, disapplication or replacement of –
    - (i) such agreements, and
    - (ii) the terms and conditions of such agreements;
  - (d) provide for 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 in which cooling-off periods and the rights do or do not apply,
    - (ii) the times at or periods within which, and the form and manner in which, the rights may be exercised,
    - (iii) the giving of information as to the rights, and the form and manner in which and the times at or periods within which, such information must be given, and
    - (iv) the restitution of property and the making and recovery of payments if the rights are exercised;
  - (e) restrict or prohibit unfair terms and conditions of agreements, including providing for –
    - (i) terms and conditions deemed to be unfair, including because they cause 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;
  - (iii) the enforceability, avoidance, modification, mitigation, disapplication or replacement of unfair terms and conditions; and
  - (iv) the terms and conditions that must or must not be included in agreements;
- (f) restrict or prohibit unsolicited communications relating to consumer credit business;
  - (g) provide for the form and manner of communications relating to consumer credit business;
  - (h) regulate –
    - (i) restrictions on the rights of consumers, or restrictions on the liabilities of persons carrying on consumer credit business, and
    - (ii) notices (however communicated) that purport to restrict such rights or liabilities;
  - (i) cover 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; or
  - (j) give powers to a public authority (as defined in Article 1(1) of the Data Protection (Jersey) Law 2018), and provide for rights, obligations, liabilities, remedies, penalties, sanctions and other consequences, in respect of matters set out in the preceding sub-paragraphs.
- (3) The States may make Regulations relating to consumer protection in connection with debt collection.
- (4) In this Article –
- “agreement” includes any regulated agreement or arrangement, as defined in paragraph 1 of Schedule 1A;
  - “consumer” has the meaning given in paragraph 1 of Schedule 1A;
  - “debt collection” has the meaning given in paragraph 1 of Schedule 1A.

## 5 Schedule 1A inserted

After Schedule 1 there is inserted –

### **SCHEDULE 1A**

(Article 2(12))

#### **CONSUMER CREDIT BUSINESS**

##### **PART 1 - INTERPRETATION**

### **1 Interpretation**

In this Schedule and in Part 6 of Schedule 2 –

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

“consumer” means an individual who is acting for purposes wholly or mainly outside their trade, business or profession or who has no trade, business or profession;

“consumer credit agreement” –

- (a) means an agreement under which a person provides a consumer with credit of any amount for which no security is given but excludes pawnbroking; and
- (b) to avoid doubt, includes a conditional sale agreement (as defined in Article 1 of the Supply of Goods and Services (Jersey) Law 2009) with a consumer;

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

“debt collection” means taking steps to procure the payment of a debt due under a regulated agreement or arrangement;

“hire-purchase agreement” means a hire-purchase agreement, as defined in Article 1 of the Supply of Goods and Services (Jersey) Law 2009, under which goods are let to a consumer;

“hirer” means a consumer to whom goods are let under a hire-purchase agreement;

“lender” means –

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

“owner” means –

- (a) the person who lets goods to another person under a hire-purchase agreement; or
- (b) a person who exercises, or has the right to exercise, the rights and duties of a person who lets goods to another person under a hire-purchase agreement;

“pawnbroking” means providing a loan to a consumer in return for the consumer pledging an object as a pawn;

“regulated agreement or arrangement” means a –

- (a) consumer credit agreement;
- (b) secured lending arrangement; or
- (c) hire-purchase agreement;

“secured lending arrangement” –

- (a) means an arrangement that creates, or may create, a security given by a consumer –
  - (i) for the repayment of a loan or for the discharge of another obligation, and
  - (ii) against immovable property that is the consumer’s primary residence in Jersey; and
- (b) includes, for example –
  - (i) a hypothec under the Loi (1880) sur la propriété foncière; and

- (ii) 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 enters into the following as lender –
  - (a) a consumer credit agreement; or
  - (b) a secured lending arrangement.
- (2) A person enters into a hire-purchase agreement as owner.

### **3 Exercising, performing or obtaining rights or duties under regulated agreements or arrangements**

- (1) A person exercises or performs the lender's rights and duties under a consumer credit agreement or secured lending arrangement, or obtains those rights and duties.
- (2) A person exercises or performs the owner's rights and duties under a hire-purchase agreement, or obtains those rights and duties.

## **PART 3 – ADVISING ON REGULATED AGREEMENTS AND ARRANGEMENTS**

### **4 Advising on regulated agreements and arrangements**

A person advises –

- (a) another person on the merits of –
  - (i) entering into a particular consumer credit agreement or secured lending arrangement as borrower, or
  - (ii) varying the terms of their obligations as borrower under such an agreement or arrangement; or
- (b) another person on the merits of –
  - (i) entering into a particular hire-purchase agreement as hirer, or
  - (ii) varying the terms of their obligations as hirer under such an agreement.

## **PART 4 – CREDIT BROKING AND DEBT-RELATED ACTIVITIES**

### **5 Credit broking**

- (1) A person –
  - (a) introduces another person who wishes to enter into a consumer credit agreement or secured lending arrangement to a third person with a view to the third person, by way of business, entering into the agreement or arrangement as lender;

- (b) introduces another person who wishes to enter into a hire-purchase agreement to a third person with a view to the third person, by way of business, entering into the agreement as owner;
  - (c) introduces another person who wishes to enter into a regulated agreement or arrangement to a third person who, by way of business, makes an introduction of the kind described in sub-paragraph (a) or (b);
  - (d) presents or offers a regulated agreement or arrangement to another person with a view to the other person entering into it as borrower or hirer;
  - (e) assists another person by undertaking preparatory work with a view to the other person entering into a regulated agreement or arrangement as borrower or hirer;
  - (f) enters into a consumer credit agreement or secured lending arrangement on behalf of a lender; or
  - (g) enters into a hire-purchase agreement on behalf of an owner.
- (2) For the purposes of sub-paragraph (1) –
- (a) it does not matter whether the agreement or arrangement is subject to the law of a jurisdiction outside Jersey; and
  - (b) a person does not carry on an activity under the sub-paragraph if they only provide details of potential lenders or owners to another person.

## **6 Debt adjusting**

- (1) A 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 obligation to discharge a debt; or
  - (c) carries on any similar activity concerned with the liquidation of a debt.
- (2) A person, in relation to debts due under a hire-purchase 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 obligation to discharge a debt; or
  - (c) carries on any similar activity concerned with the liquidation of a debt.

## **7 Debt counselling**

- (1) A person advises a borrower about the liquidation of a debt due under a consumer credit agreement or secured lending arrangement.
- (2) A person advises a hirer about the liquidation of a debt due under a hire-purchase agreement.

**8 Debt administration**

- (1) A person takes steps –
  - (a) to perform duties under a consumer credit agreement or secured lending arrangement on behalf of the lender; or
  - (b) to exercise or to enforce rights under a consumer credit agreement or secured lending arrangement on behalf of the lender, but only so far as the activity is not debt collection.
- (2) A person takes steps –
  - (a) to perform duties under a hire-purchase agreement on behalf of the owner; or
  - (b) to exercise or to enforce rights under a hire-purchase agreement on behalf of the owner, but only so far as the activity is not debt collection.

**6 Schedule 2 (exemptions) amended**

In Schedule 2, at the end there is inserted –

**PART 6 – CONSUMER CREDIT BUSINESS****24 Advising or credit broking in newspapers etc.**

- (1) A specified activity that is carried on by way of a newspaper, journal, magazine, television broadcast, teletext service or sound broadcast, or any other periodical publication, broadcast or electronic information service, if –
  - (a) the principal purpose of the publication, broadcast or service, taken as a whole and including any advertisements contained in it, is not the carrying out of the activity; or
  - (b) the publisher, broadcaster, service provider or producer of the publication, broadcast or service does not derive any direct benefit from any business resulting from the activity.
- (2) A specified activity is –
  - (a) advising, as described in paragraph 4 of Schedule 1A;
  - (b) introducing, as described in paragraph 5(1)(a) to (c) of Schedule 1A; or
  - (c) presenting or offering an agreement or arrangement, as described in paragraph 5(1)(d) of Schedule 1A.

**25 Activities of professional trustees**

- (1) The carrying on of consumer credit business by a professional trustee who –
  - (a) is acting in administering the trust and for the purposes of the trust; and
  - (b) receives no remuneration for the activity that is additional to their remuneration as trustee.
- (2) In this paragraph –
  - (a) “professional trustee” means a trustee who is registered to carry on trust company business; and



- (b) remuneration is not additional merely because it is calculated by reference to time spent.

## **26 Advising in the course of a profession or business (other than financial service business)**

- (1) Advising of the kind described in paragraph 4 of Schedule 1A that –
  - (a) is done in the course of carrying on any profession or business that does not otherwise consist of financial service business;
  - (b) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business; and
  - (c) is not remunerated additionally to the adviser’s remuneration for the other services.
- (2) In this paragraph, remuneration is not additional merely because it is calculated by reference to time spent.

## **27 Agreements for supply of essential services and telecommunication services**

- (1) The carrying on of consumer credit business in relation to a hire-purchase agreement if –
  - (a) the owner is a body corporate that 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 that is used (or is to be used) in connection with the supply of gas, electricity or water.
- (2) The carrying on of consumer credit business in relation to a hire-purchase agreement if –
  - (a) the owner is a body corporate that is authorised by or under an enactment to supply telecommunication services; and
  - (b) the subject of the agreement is any equipment that is used (or is to be used) in connection with the supply of telecommunication services.
- (3) In this paragraph, “telecommunication service” has the meaning given in Article 1(1) of the Telecommunications (Jersey) Law 2002.

## **28 Activities of members of the legal profession etc.**

- (1) The carrying on of an activity described in paragraphs 4 to 8 of Schedule 1A by –
  - (a) a practising lawyer acting in that capacity; or
  - (b) a person working under the supervision of a practising lawyer acting in that capacity.
- (2) In this paragraph, “practising lawyer” has the meaning given in paragraph 20(2).

**29 Activities of liquidators**

The carrying on of an activity described in paragraphs 4 to 8 of Schedule 1A by a person –

- (a) acting as a liquidator under the Bankruptcy (Désastre) (Jersey) Law 1990 or the Companies (Jersey) Law 1991 or otherwise; or
- (b) acting in reasonable contemplation of their appointment as such a liquidator.

**30 Activities of certain persons in United Kingdom or Guernsey**

The carrying on of consumer credit business –

- (a) by a person from their place of business in the United Kingdom or Guernsey;
- (b) with a borrower or hirer in Jersey; and
- (c) for which the person is supervised for carrying on that type of consumer credit business, and by a relevant supervisory authority, in the United Kingdom or Guernsey.

**31 Activities of certain overseas persons**

(1) The carrying on of consumer credit business –

- (a) by an overseas person from their place of business in a country other than the United Kingdom or Guernsey;
- (b) with a borrower or hirer in Jersey; and
- (c) that –
  - (i) was not directly solicited, or
  - (ii) was directly solicited but in relation to which another person in Jersey, by way of business, gives to the borrower or hirer advice of the kind described in paragraph 4 of Schedule 1A about the relevant agreement or arrangement.

(2) In this paragraph –

“directly solicited” means that the consumer credit business resulted –

- (a) only because the overseas person, or a person on their behalf –
  - (i) approached the person in Jersey, or
  - (ii) solicited the business from the person in Jersey; and
- (b) not merely because of an advertisement that complied with any Order made under Article 31 of this Law;

“overseas person” means a person who –

- (a) has no place of business in Jersey from which they carry on consumer credit business in or from Jersey; and
- (b) is not –
  - (i) a company incorporated in Jersey, or
  - (ii) a limited liability company registered in Jersey.

**32 Activities in relation to certain high net worth individuals**

- (1) The carrying on of consumer credit business in relation to a regulated agreement or arrangement for which a high net worth individual –
  - (a) is the borrower or hirer; and
  - (b) has opted out.
- (2) A “high net worth individual” means an individual who had –
  - (a) in the calendar year before the year in which they enter into a consumer credit agreement or hire-purchase agreement –
    - (i) net income of £150,000 or more; or
    - (ii) net assets worth £500,000 or more throughout the year; or
  - (b) in the calendar year before the year in which they enter into a secured lending arrangement –
    - (i) net income of £300,000 or more; or
    - (ii) net assets worth £3,000,000 or more throughout the year.
- (3) The “net assets” of a high net worth individual exclude –
  - (a) their primary residence and any loan secured against it; and
  - (b) any benefits (such as a pension or lump sum) payable if their employment ends.
- (4) A high net worth individual has opted out in respect of a regulated agreement or arrangement if paragraphs (5) and (6) are satisfied.
- (5) Before the individual entered into the agreement or arrangement –
  - (a) the lender or owner confirmed that the individual had, in the previous calendar year, the net income or net assets to qualify as a high net worth individual; and
  - (b) the individual signed a written statement describing the agreement or arrangement and declaring that they agreed that –
    - (i) no person’s activities in relation to the agreement or arrangement will count as consumer credit business; and
    - (ii) the individual’s only protections or remedies under this Law, in relation to the agreement or arrangement, will be those provided by Regulations relating to consumer protection.
- (6) The lender or owner holds a copy of the signed written statement.

**33 Activities of private lenders**

- (1) The entry into a regulated agreement or arrangement as lender or owner, as described in paragraph 2 of Schedule 1A, if –
  - (a) the lender or owner is a private lender; and
  - (b) for an agreement or arrangement that is significant, a person in Jersey, by way of business, gives to the borrower or hirer advice of the kind described in paragraph 4 of Schedule 1A about the agreement or arrangement.
- (2) In this paragraph –

- (a) “private lender” means a lender or owner whose credit given to non-family members under regulated agreements or arrangements, at all times –
  - (i) totals £5,000,000 or less, and
  - (ii) is given to 10 or fewer consumers;
- (b) a lender’s or owner’s “family members” means –
  - (i) their spouse or civil partner,
  - (ii) another person (whether of the same or a different sex) with whom they live as partner in an enduring family relationship, and
  - (iii) their children, stepchildren, parents, sisters, brothers, grandparents, grandchildren, aunts, uncles, nephews, nieces and first cousins (meaning cousins with whom they share grandparents); and
- (c) an agreement or arrangement is “significant” if it is –
  - (i) a secured lending arrangement, or
  - (ii) a consumer credit agreement or hire-purchase agreement for credit of more than £30,000.

## 7 Schedule 5 (transitional provisions) amended

In Schedule 5, after paragraph 4 there is inserted –

### 5 Interpretation: consumer credit business

In paragraphs 6 and 7, “commencement” means the time at which those paragraphs come into force.

### 6 No consumer credit business if agreement or arrangement entered into, or activity carried on, before commencement

- (1) If a person carries on an activity described in Parts 2 to 4 of Schedule 1A and that description means that –
  - (a) the activity must be carried on in relation to an agreement or arrangement that has already been entered into, the person does not carry on consumer credit business if the agreement or arrangement was entered into before commencement; or
  - (b) clause (a) does not apply, the person does not carry on consumer credit business if they carry on the activity only before commencement.
- (2) This paragraph overrides Article 2(12).

### 7 Initial protection of persons carrying on consumer credit business

- (1) An existing operator or a new operator is protected during the period starting on commencement and ending –
  - (a) on the day that their application is finally determined (including on appeal) or is withdrawn, if they apply to be registered for their consumer

- credit business within 6 months after commencement or by any later deadline specified for the person; or
- (b) 12 months after commencement, or at any later time specified for the person, if they are an existing operator that stops carrying on consumer credit business by then.
- (2) The Commission may, on application, give written notice to a person specifying –
- (a) a later deadline for the purposes of sub-paragraph (1)(a) (deadline for registration) that is 12 months or less after commencement; or
- (b) a later time for the purposes of sub-paragraph (1)(b) (extension of protected period).
- (3) The Commission may specify a later deadline or time only if it is satisfied that the later deadline or time is justified by exceptional circumstances.
- (4) This Law is modified as follows in respect of a person who applies for registration in accordance with sub-paragraph (1)(a) –
- (a) a reference to the period during which a person is registered is taken to be a reference to the period –
- (i) starting on the date of the application, and
- (ii) ending on the date on which the application is finally determined (including on appeal) or is withdrawn;
- (b) a reference 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.
- (5) In this paragraph –
- “existing operator” means a person who carried on consumer credit business at any time during the 12 months immediately before commencement;
- “new operator” means a person who first carried on consumer credit business at any time during the 12 months starting on commencement;
- “protected” means that a person’s conduct in carrying on consumer credit business during the relevant period does not constitute commission of an offence under Article 7(4), despite anything in this Law.

## **8 Regulations for consequential amendments or provisions**

The States may by Regulations amend any enactment, or provide for any transitional or supplementary matter, as appears to the States to be necessary or expedient as a consequence of an amendment made by the Financial Services (Jersey) Amendment Law 202-.

## PART 2

### RELATED AMENDMENTS AND REPEAL 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, at the end of the first sentence, 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 (1) The Royal Court may make any orders that it thinks fit if –
    - (a) it reviews the information mentioned in paragraph (2); and
    - (b) it is satisfied that a surplus would exist if the property comprising the tenancy were sold.
  - (2) The information is –
    - (a) the statement of valuation submitted under Article 93;
    - (b) any submissions of the tenant or insolvent or any other person required to appear before the Greffier under Article 92; and
    - (c) any other information that the Court considers necessary.
  - (3) Orders under paragraph (1) may include –
    - (a) orders to secure that the property is sold, that a fair market value is realised and that any surplus is paid into the Court or to the insolvent; or
    - (b) with the consent of the tenant and insolvent, orders that will result in an amount being paid into the Court or to the insolvent without sale of the property.
  - 96B In Article 96A, “surplus” means any amount left over from the sale of the property after payment of –
    - (a) the remaining debt owed to the tenant;
    - (b) the tenant’s expenses generated in the course of realising the security; and
    - (c) any other amount payable by the tenant to satisfy the obligations arising from their tenancy under this Law.

#### 9 **Loi (1884) sur le prêt sur gages repealed**

The Loi (1884) sur le prêt sur gages is repealed.

#### 10 **Financial Services (Jersey) Law 1998 amended**

In Schedule 1A, paragraph 1, for the definition “consumer credit agreement” there is substituted –

“consumer credit agreement” –

- (a) means an agreement under which a person provides a consumer with credit of any amount for which no security is given and includes pawnbroking; and
- (b) to avoid doubt, includes a conditional sale agreement (as defined in Article 1 of the Supply of Goods and Services (Jersey) Law 2009) with a consumer;

## **11 Citation and commencement**

- (1) This Law may be cited as the Financial Services (Jersey) Amendment Law 202-.
- (2) All but Articles 9 and 10 come into force on a day specified by the Minister by Order (the “first date”).
- (3) Articles 9 and 10 come into force on a day that –
  - (a) is the same as, or later than, the first date; and
  - (b) is specified by the Minister by Order.