

EXPLANATORY NOTE

The Financial Services (Jersey) Amendment Law 202- amends the Financial Services (Jersey) Law 1998 (the “1998 Law”) in relation to the regulation of consumer credit business, and makes a related amendment to the Loi (1880) sur la propriété foncière.

Part 1 (Articles 1 to 7) amends the 1998 Law as follows:

Article 2 inserts a definition of “consumer credit business” referencing new Article 2(12) inserted by *Article 3*, which provides that a person carries on consumer credit business if by way of business they carry on an activity described in Parts 2 to 4 of Schedule 1A (inserted by *Article 5*). *Article 3* amends Article 2(1) to add consumer credit business to the list of types of financial service business that are regulated by the 1998 Law.

Article 4 inserts new Article 31A, which provides that 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). The Regulations may include –

- requirements to ensure that consumers entering into agreements have legal capacity and the ability to understand the terms and conditions;
- restrictions or prohibitions on consumer credit business involving high-interest, short-term or unsecured lending, or agreements attracting certain fees, charges, interest or penalties;
- provisions for the consequences of agreements entered into in contravention of the 1998 Law or its Regulations, including enforceability, avoidance, modification, mitigation, disapplication or replacement;
- provisions for cooling-off periods and rights to cancel, rescind or withdraw from agreements;
- restrictions or prohibitions on unfair terms and conditions of agreements;
- restrictions or prohibitions on unsolicited communications relating to consumer credit business;
- provisions for the form and manner of communications relating to consumer credit business;
- regulation of restrictions on the rights of consumers, or restrictions on the liabilities of persons carrying on consumer credit business;
- coverage of secondary, linked and series of agreements; and
- provisions giving related powers, rights, obligations etc.

New Article 31A also allows the making of Regulations relating to consumer protection in connection with debt collection.

Article 5 inserts new Schedule 1A, which describes the activities that are consumer credit business.

Paragraph 1 of Schedule 1A contains definitions for the purposes of Schedules 1A and 2. “Consumer” is defined as an individual acting for purposes wholly or mainly outside their trade, business or profession, or who has no trade, business or profession. “Borrower” is defined as a consumer who receives credit under a consumer credit agreement or secured lending arrangement. “Credit” includes a cash loan and any other form of financial accommodation. “Hire-purchase agreement” means an agreement defined by another Law under which goods are let to a consumer. And a “secured lending arrangement” means an arrangement that creates, or may create, a security

given by a consumer for the repayment of a loan, or for the discharge of another obligation, against immovable property that is the consumer's primary residence in Jersey.

Paragraphs 2 to 8 of Schedule 1A describe the various activities that are consumer credit business. In summary, these are –

- entering as lender or owner into a consumer credit agreement, secured lending arrangement or hire-purchase agreement (a “regulated agreement or arrangement”);
- exercising, performing or obtaining rights or duties under a regulated agreement or arrangement;
- advising a consumer on a regulated agreement or arrangement;
- credit broking;
- debt adjusting;
- debt counselling; and
- debt administration.

Article 6 inserts new Part 6 into Schedule 2 to specify certain exemptions from consumer credit business. In summary, certain of the following activities are exempt –

- advising or credit broking via periodical publications, broadcasts or services;
- activities of professional trustees;
- advising in the course of a profession or business other than a financial service business
- activities in relation to a hire-purchase agreement for equipment used in the supply of gas, electricity, water or telecommunication services;
- activities of members of the legal profession;
- activities of liquidators;
- activities of a person from their place of business in the United Kingdom or Guernsey that are supervised in that country;
- activities of a person from their place of business in another country that were not directly solicited or were advised on by someone in Jersey;
- activities in relation to consumers who are high net worth individuals and have opted out; and
- activities of private lenders.

Article 7 inserts new paragraphs 5 to 8 into Schedule 5 to make transitional provision in relation to consumer credit business. Paragraph 5 defines “commencement”. Paragraph 6 ensures that activities count as consumer credit business only if they are carried on after commencement or in relation to new agreements or arrangements. Paragraph 7 protects certain persons from committing an offence of carrying on consumer credit business without being registered. The provision protects –

- an existing operator or a new operator who applies for registration within 6 months after commencement, or a later deadline allowed for them, while the application is determined; and
- an existing operator who stops carrying on the business within 12 months after commencement or a later time allowed for them.

Paragraph 8 empowers the making of Regulations to do the following if necessary or expedient as a consequence of amendments made by this amendment Law:

- amend other enactments; or

- create new transitional or supplementary provisions.

Part 2 (Articles 8 to 10) includes a related amendment and final provisions.

Article 8 amends the *Loi (1880) sur la propriété foncière* by amending Article 93 to require a statement of valuation of the property *en dégrèvement* to be submitted to the Greffier, indicating the means used to reach the valuation. It also inserts new Article 96A, which empowers the Royal Court to make any orders that it thinks fit if satisfied, having reviewed the valuation statement and other information, that a surplus (as defined in new Article 96B) would exist if the property *en dégrèvement* were sold. These may include:

- orders to secure sale of the property at a fair market value and requiring the surplus to be paid into the Court or to the insolvent; or
- 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.

The English translation of Articles 96A and 96B is as follows:

“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.”

Article 9 repeals the *Loi (1884) sur le prêt sur gages*, which regulates pawnbroking.

Article 10 replaces the definition of “consumer credit agreement” with a new definition that includes pawnbroking.

Article 11 names the amendment Law. It also provides that –

- most of the amendment Law comes into force on a day specified by Order; and
- *Articles 9 and 10* also come into force on a day specified by Order, but it may be a later date (to allow a delay before pawnbroking is regulated under the 1998 Law).

