

LENDING INTO JERSEY

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Institutions not established in Jersey, wishing to lend to customers based in Jersey, should consider the following laws and regulations.

FINANCIAL SERVICES REGULATION

Pure lending in Jersey is not itself an activity regulated by the Jersey Financial Services Commission (**JFSC**), but if lenders are also taking deposits, they will be caught by the requirements of the Banking Business (Jersey) Law 1991 (**Banking Law**). Under the Banking Law, a person needs to be registered with the JFSC if they carry on, or hold themselves out as carrying on, a deposit-taking business in or from within Jersey.

Where lenders do not take deposits in Jersey from customers, are not incorporated in Jersey and do not hold themselves out as accepting deposits in Jersey, registration with the JFSC should not be required. Particular care should, however, be taken when entering into agency and/or services agreements with providers established in Jersey as this may have an impact on the need for registration. Similar care should be taken if the corporate name of the institution lending into Jersey contains the term "Bank" (e.g. "[Name] Bank Limited") and that institution intends on using this name in any transactional or ancillary documentation. Early discussion with the JFSC is recommended.

ANTI-MONEY LAUNDERING

Lenders should already have relevant policies and procedures in place to comply with anti-money laundering laws and anti-bribery and corruption laws within their own jurisdictions. Notwithstanding this, under the Money Laundering (Jersey) Order 2008, a person lending in or from within Jersey must maintain appropriate policies

for due diligence, record-keeping and reporting in order to prevent activities relating to money laundering, as well as being required to comply with the Corruption (Jersey) Law 2006.

Unless a lender is already engaged in and registered to carry on a regulated business in Jersey (such as deposit-taking), a lender intending to provide credit to third parties in or from within Jersey, is required to be registered under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. What constitutes "in or from within Jersey" is not clearly defined within the anti-money laundering laws. Therefore lenders should seek advice on the applicability of these laws to any given lending proposal on a case-by-case basis.

DATA PROTECTION

Data protection is governed by the Data Protection (Jersey) Law 2005 (**DP Law**). Under the DP Law, a data controller (that is, a person who determines the purposes for which, and the manner in which, any personal data is processed) is required to notify the Data Protection Commissioner and comply with the DP Law, including eight enforceable principles of good information handling practice.

The DP Law will only be applicable if a person (i) is a body incorporated under the laws of Jersey, (ii) maintains an office, branch or agency in Jersey, through which the person carries on any activity, or (iii) maintains a regular practice in Jersey, and the data is processed in the context of any such establishment.

BUSINESS LICENCING

The Control of Housing and Work (Jersey) Law 2012 (**CHW Law**) regulates the commencement of businesses in Jersey and the employment of staff.

Under the CHW Law, the physical presence of a business in Jersey requires an appropriate licence. "Physical presence" may refer to the physical presence in Jersey of any person in or for the business, in essence excluding scenarios where (1) a lender is not ordinarily resident in Jersey, (2) employees do not visit Jersey for business purposes, and (3) all dealings with customers in Jersey are carried out remotely from the lender's jurisdiction.

Where business licences are required, they are granted through the Population Office. The two main types of business licence tend to be "resident" (where, for example, the majority of employees are ordinarily resident in Jersey) and "non-resident" (where, for example, the majority of employees are not ordinarily resident in Jersey). If employees are to be based in Jersey, certain other licencing requirements will need considering.

REGISTRATION OF BUSINESS NAMES (JERSEY) LAW 1956

Under the Registration of Business Names (Jersey) Law 1956, every body corporate carrying on business in Jersey under a business name other than its full corporate name is required to register its business name with the Registrar of Business Names at the JFSC. Where the full corporate name is being used, this registration requirement falls away. However, please note the comments on the use of "Bank" and similar words in corporate and/or business names in the Financial Services Regulation section above.

GOODS AND SERVICES TAX

Goods and Services Tax (**GST**) was introduced in Jersey in 2008 pursuant to the Goods and Services Tax (Jersey) Law 2007 (**GST Law**). GST is charged at 5% on the majority of goods and services supplied in Jersey for local use (including imports), and if a business has a turnover of more than £300,000 then it must register with the Taxes Office. Lending to customers in Jersey, however, is unlikely to attract GST as the GST Law exempts services pertaining to the granting of credit.

CODE OF PRACTICE FOR CONSUMER LENDING

In June 2007 the Consumer Lending Steering Group drafted a cross-industry, voluntary code of practice (**Code**). The Code, which is currently under review, sets standards of good lending practice and applies to formally agreed lending of £500 or more. Subscribers to the Code agree to provide customers with key information (such as cancellation rights), allowing customers to come to an informed decision about their entry into any credit agreement.

CHANNEL ISLANDS FINANCIAL OMBUDSMAN

In 2014, Jersey introduced the Channel Islands Financial Ombudsman (**Ombudsman**) pursuant to the Financial Services Ombudsman (Jersey) Law 2014. The Ombudsman's remit extends to resolving complaints about lenders operating in or from within Jersey. If the lender is registered in and operating from a different jurisdiction, however, it is likely that complaints would need to be referred to the lender's local ombudsman or financial services regulator.

SECURITY

The Security Interests (Jersey) Law 2012 governs the creation of a security interest over intangible movable property (e.g. shares in a Jersey company, units in a Jersey property unit trust or deposit accounts maintained in Jersey). Security over assets situated in Jersey will not be recognised by the Jersey courts unless the manner in which it is created complies with Jersey law. To that extent, any security over intangible movable property needs to be in writing, correctly "attached" and "perfected".

"Attachment" refers to specific requirements that need to be satisfied in order for any security interest to be enforceable against the grantor of such security. "Perfection" can, and tends to, occur by registering the security on the Security Interests Register.

Separate security over Jersey immovable property is available and would require consideration of other processes.

SUPPLY OF GOODS AND SERVICES

The Supply of Goods and Services (Jersey) Law 2009 and related Regulations impose contractual warranties and terms including in regards to reasonable care and skill, reasonable timescales and reasonable pricing into service contracts (amongst others). These warranties and terms are statutory and to the extent that they are not excluded or varied in accordance with Regulations or unfair contract terms, they will automatically apply to contracts for lending in Jersey.

DISTANCE SELLING

The Distance Selling (Jersey) Law 2007 (**Distance Selling Law**) concerns the sale of goods and services by mail, internet and other means of communication over distance. The Distance Selling Law does not, however, apply to or in respect of a contract relating only to a financial service (where the term "financial service" is taken to include credit services).

CONCLUSION

Lending into Jersey requires consideration of applicable codes, legal technicalities and regulatory provisions to ensure potential pitfalls are considered and addressed.

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