

UPDATE

An introduction to the new lending, credit and finance law

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New legislation has been approved in Guernsey, Alderney and Sark (the **Bailiwick**) to protect customers in the Bailiwick who use consumer credit, as well as to introduce the regulation of other specified financial services businesses, service providers in relation to virtual assets and crowdfunding/peer to peer intermediation services. This Update gives an overview of the new legislation, namely the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 together with key dates.

Introduction

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) was approved by the States of Guernsey on 14 July 2022, the Chief Pleas of Sark on 6 July 2022 and the States of Alderney on 20 July 2022. It is expected to come into force in two parts following its approval by the Privy Council: firstly, to enable licence applications on **1 January 2023**, with full implementation on **1 July 2023**.

The proposed rules and guidance, which will underpin the LCF Law (the **LCF Rules**), have been the subject of industry consultation (which closed on 15 September 2022 (the **Consultation**)) and are anticipated to be published by **31 December 2022** to tie in with the commencement date for licence applications on 1 January 2023.

Purpose

The primary purpose of the LCF Law is to regulate the credit and finance sector to protect consumers who make use of consumer credit, including individual loans, home finance and credit for the purchase of goods and services. Firms offering or intermediating such services in or from within the Bailiwick will need to be licensed to do so and regulated by the Guernsey Financial Services Commission (the **Commission**).

The LCF Law will also replace and repeal the registration regime under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (the **NRFSB Law**) meaning that firms that are currently registered as a non-regulated financial services business will need to apply for a licence under the LCF Law. This will include lending other than where already caught by the consumer credit regime.

In addition, the LCF Law will introduce regulation for a wide range of activities related to crypto currencies and other virtual assets that have not previously been regulated in the Bailiwick, which is essential to meet international standards.

Finally, it will cover financial intermediation services which match investors to those seeking funding, ie peer to peer and crowdfunding services, which are not regulated in the Bailiwick in their own right. This is to ensure that customers based in and outside the Bailiwick can be confident that the platform operator is properly regulated and has sufficient knowledge and resources to effectively provide the service. It is not intended to provide specific investor protection with respect to the underlying investments.

Structure

Despite there being four areas subject to regulation, the LCF Law is split into *three* main Parts, as follows:

- Regulation of consumer credit and the provision of *services ancillary to credit* (**Part II**)

- Regulation of financial firm business replacing the NREFSB Law and virtual asset providers (**Part III**) and
- Regulation of financial platforms and intermediation (**Part IV**).

The LCF Rules (currently only released as a consultation draft) are also split into different parts. For example there are specific rules pertinent to Part II (consumer credit) that impose an obligation to treat customers fairly and not to have any unfair contract terms in any regulated (ie consumer credit) agreement. The LCF Rules will apply to all licensees and insofar as they relate to consumer credit, are aligned with the UK albeit significantly streamlined for the Bailiwick.

Exemptions and/or exclusions

The Consultation proposes a number of exclusions, ie types of business which are seen as outside the scope of the LCF Law. An exclusion from one part of the LCF Law does not, necessarily, provide an exclusion from the other parts. For example, whilst the Commission has identified certain business as being outside the scope of a Part II licence (for example lending secured on property outside of the Bailiwick or on Bailiwick property which is not residential property), such lending would nevertheless fall under Part III as 'financial firm business' and require a licence.

The Commission can also grant (and is proposing a number of) exemptions, which may be for a particular type of activity, ie a 'class exemption' which will be published on its website or, on a case-by-case basis (a 'discretionary exemption') which will need to be applied for individually and subject to payment of a fee.

Notably it is anticipated that there will be an 'equivalence' exemption in the context of consumer credit which is intended to allow firms operating from a jurisdiction that has been deemed equivalent for this purpose (currently only the UK) to offer consumer credit to residents of the Bailiwick.

As noted above, the Consultation has now closed and we await the final published exclusions and class exemptions (which may have changed following industry feedback).

When to apply

The window for licence applications is expected to open on **1 January 2023** in order to meet the full implementation date on 1 July 2023. The Commission will apply a discount of 50 per cent to complete and accurate applications received by **28 February 2023**. Applications received after that date will be charged the full fee. Furthermore, applications received after **31 March 2023** are not guaranteed a licence in time to continue or commence business from 1 July 2023.

Applications for a discretionary exemption should also be submitted early in 2023. Class exemptions will apply automatically where relevant.

Conclusion

This Update gives a brief overview of the LCF Law and an indicative timeframe to implementation.

We will be issuing a series of Updates over the coming weeks focussing on specific aspects of the LCF Law, starting with Part II in relation to the regulation of **credit and consumer business**.

If you have any questions or queries, please get in touch with your usual Mourant contact.

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