

Replacement of the non-regulated financial services businesses regime (NRFSB)

UPDATE

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The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) will repeal and replace the existing registration regime under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 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 new consumer credit regime.

Latest developments

The States has approved the commencement ordinance bringing the Lending Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) into force in two parts: on **1 January 2023** and on **1 July 2023** when the LCF Law will be fully operational.

Publication of the final rules and guidance that will underpin the LCF Law (the **LCF Rules**) has been delayed to the end of **January 2023** (not 31 December 2022 as originally anticipated). In its latest announcement ([here](#)), the Guernsey Financial Services Commission (the **Commission**) indicates that the window for licence applications will also open at that time.

We are issuing a series of Updates considering the different aspects of the LCF Law, which can be accessed via our dedicated Lending Credit and Finance Hub [here](#).

Regulation of financial firm businesses

Part III of the LCF Law (**Part III**) regulates both financial firm businesses (**FFBs**) and virtual asset service providers (**VASPs**). We will look at VASPs separately in our next Update.

FFBs are those firms carrying out a range of financial services activities that are set out in Part A of Schedule 1 to the LCF Law (**Financial Firm Business**) and which mirror those 'financial services businesses' listed in Part I of Schedule 1 to the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (the **NRFSB Law**). There are subtle, but important, differences in the two regimes (see below).

Financial Firm Business includes, among other things, lending, financial leasing, operating a money service business, providing financial guarantees/commitments, trading in money market instruments/foreign exchange/commodity futures, money broking/changing and providing safe custody services.

The rationale for regulating FFBs is to ensure that anyone carrying out Financial Firm Business is properly regulated for the purposes of anti-money laundering and the countering the financing of terrorism (**AML/CFT**), including obligations to identify and verify customers and maintain effective policies, procedures and controls to ensure compliance with the relevant AML/CFT laws, regulations and rules.

Licensing

Anyone carrying out Financial Firm Business 'by way of business' in or from within the Bailiwick with or on behalf of a 'customer' is classed as an FFB for the purposes of the LCF Law. Whilst this accords with the NRFSB Law, the LCF Law is more prescriptive in that:

- (a) an FFB will be acting by way of business if it 'receives any income, fee, emolument or other consideration in money or money's worth for doing so', and
- (b) a customer is a person who has entered into (or may enter into) an agreement for the provision of services, or a person who has received the benefit of services provided, by a person carrying on business regulated by the LCF Law, eg an FFB.

Businesses which are currently in scope of the registration regime under the NRFSB Law will certainly constitute FFBs under the LCF Law. As the NRFSB Law is due to be repealed and replaced by the LCF Law, those financial services businesses will need to apply for a licence under the LCF Law, subject to reliance on any exemptions or exclusions. The descriptions of when an activity is carried on 'by way of business' for a 'customer' may result in additional persons being caught by the LCF Law FFBs regime than was previously the case under the NRFSB Law.

Under the new arrangements, FFBs must meet the minimum criteria for licensing (including acting in accordance with the Principles of Conduct of Finance Business), follow the relevant conduct rules and comply with the AML/CFT Handbook. According to the latest draft LCF Rules, there are no additional conduct rules for particular classes of FFB, but they will need to follow the rules which apply to licensees generally, including those relating to Bailiwick residence, requiring at least two individuals directing the business to be based in the Bailiwick.

Exclusions and exemptions

As was the case under the NRFSB Law, 'regulated businesses', ie firms already licensed under one of the regulatory laws, are excluded, ie outside the scope of Part III of the LCF Law. In addition, funds authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and any firm which holds a licence under Part II (consumer credit and home finance) of the LCF Law, are excluded and therefore outside the scope of Part III of the LCF Law.

It is important to note that while an activity may not be in scope of Part III, it may be in scope of another Part of the LCF Law. For example, funds entering into regulated agreements for consumer credit or home finance will require a licence under Part II of the LCF Law (notwithstanding that they are excluded under Part III of the LCF Law).

There will also be exemptions under the LCF Law, either in the form of 'class' exemptions or those which need to be applied for on a case-by-case basis. We will consider those separately in a subsequent Update by which time we hope to have sight of the final published LCF Rules.

Next time

In our next Update, we will be looking at the regulation of VASPs and peer-to-peer platforms.

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

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