SEPTEMBER 2023

mourant

Exemptions to the licensing requirements of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

Update prepared by Helen Wyatt and James Cousins (Guernsey)

Anyone conducting activities that are regulated by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) must be licensed by the Guernsey Financial Services Commission (the **Commission**) to do so unless they can rely on an appropriate exemption. In this Update, we consider some of the more notable exemptions that are available.

Introduction

The LCF Law became fully operational from 1 July 2023.

From that date, anyone undertaking a range of financial services business, including consumer credit business, financial firm business or virtual asset services, in or from within the Bailiwick of Guernsey (the **Bailiwick**), must be licensed unless relying on an appropriate exemption.

Exemptions

Assuming that the financial services undertaken do fall in scope of the LCF Law, there are various exemptions available according to the nature of those services and accordingly the part of the LCF Law under which they are licensable (eg Part II (consumer credit and home finance, including ancillary services); Part III (financial firm business (**FFB**) and virtual asset service providers (**VASPs**); and Part IV (financial platforms and intermediation)).

Statutory Exemptions

Within the LCF Law itself, there are a number of exemption routes to be aware of:

Part II

Sections 9 and 10 allow the States Policy and Resources Committee (**P&R**) to enact regulations exempting particular persons from the Part II licensing requirements. Pursuant to this power, the Lending, Credit and Finance (Designated Jurisdiction) Regulations, 2023 have been enacted to designate the United Kingdom as an equivalent jurisdiction for the purposes of the LCF Law, thereby enabling appropriately licensed UK entities who have given notice to the Commission to undertake credit business within the Bailiwick without being separately licensed by the Commission, subject to certain conditions.

Part III

Similarly, Section 21 allows P&R to enact regulations creating exemptions to the Part III licensing requirements. Currently no regulations have been enacted under this power, although P&R has been consulted on the disapplications published by the Commission (see below).

A further statutory exemption from Part III (FFB) licensing is found at section 20 and is in very similar terms to the exemption that previously existed under the Registration of Non-Regulated Financial Services

Businesses (Bailiwick of Guernsey) Law, 2008. This exemption is limited in its application and, among other things, will only be available where:

(a) total annual turnover in respect of the FFB does not exceed £50,000 per annum; and

(b) the FFB is ancillary, and directly related, to the main activity of the person carrying out the business and is provided only to customers of the main activity.

In addition, Schedule 1 of the LCF Law, which sets out what constitutes FFB, makes clear that business is not subject to licensing under Part III as FFB where:

(a) carried on by a *regulated business* within the meaning in Schedule 1 – the result is that most Guernsey licensees are not required to seek a FFB licence for carrying on that type of business; or

(b) constituting *incidental and other activities* within the meaning in Schedule 1 – the result being that lawyers, accountants, and actuaries (for example), as well as certain overseas investment or insurance businesses, may undertake certain FFB without a licence.

Class Exemptions

Empowered by the LCF Law to disapply the licensing requirement by instrument in writing, the Commission has published a 'Notice of Disapplication' (here) (**Disapplication Notice**) dated 1 February 2023 (as revised on 23 June 2023), which effectively constitutes a list of 'class exemptions' that are available to businesses conducting activities that would ordinarily require a licence under the LCF Law. There is no requirement to apply for, or otherwise notify the Commission to use, a class exemption unlike a 'discretionary' exemption (see below).

The class exemptions are set out according to the type of licence that would otherwise be required. They are very precisely drafted, and their exact terms, and any conditions or provisos, must be considered carefully before they are relied upon. The summary below is high-level only, and regard should be had to the Disapplication Notice in considering whether a class exemption can be relied upon.

Part II

The class exemptions applicable to Part II, broadly include, among others:

- extending credit to family members; registered directors, partners, and shareholders; beneficial owners; employees;
- Guernsey trustees, or companies which are part of a trust (and administered by the Guernsey trustee), extending credit to named beneficiaries (or who satisfy the class requirements for beneficiaries) of the trust from which the credit is sourced;
- Lombard lending to High Net Worth Individuals carried out by a Bailiwick regulatory licensee secured against marketable securities;
- hire or lease agreements which are not hire purchase agreements; and
- lending secured against real property which is not situated in the Bailiwick or if situated in the Bailiwick is not the borrower's residence.

Part III (FFB)

It is noticeable that whilst FFBs are those firms carrying out a range of financial services activities, including financial leasing, operating a money service business, providing financial guarantees/commitments, and safe custody, the class exemptions available for FFB are (in all but one case) limited to the activity of lending.

The class exemptions applicable to Part III (FFB), include, among others:

- lending to family members; registered directors, partners, and shareholders; beneficial owners; associated entities; employees;
- Guernsey trustees lending to named beneficiaries of the trust from which the credit is sourced;
- lending by persons who are administered by a licensee under any of the Protection of Investors (Bailiwick of Guernsey) Law, 2020, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 or the Insurance Managers and Insurance

Intermediaries (Bailiwick of Guernsey) Law, 2002 (the **regulatory laws**), provided that in each case the lending is:

  - ancillary to the main activity of the lending entity; or
  - one component of an investment, group or holding structure of which the lending entity forms a part where the primary purpose is not to act as a lender to unconnected third parties;

- lending by persons with an established place of business in the Bailiwick, either within their own group structure or, provided that the extension of credit is ancillary to the main activity, to other entities whose established place of business is also within the Bailiwick; and
- entities holding a Part III VASP licence.

Part III (VASP)

The class exemptions applicable to Part III (VASP), include:

- persons investing, holding or trading in virtual assets for their own benefit;
- licensees under one of the regulatory laws providing administration or management services, to VASPs which hold a Part III VASP licence or are exempt (under the previous exemption); and
- authorised or registered collective investment schemes investing, holding or trading in virtual assets.

Discretionary exemptions

In the absence of a relevant statutory or class exemption, it may be appropriate to apply for a discretionary exemption which will be assessed by the Commission on a case-by-case basis, subject to payment of a fee.

In our experience, depending on the specific fact pattern, it is likely that a discretionary exemption may be available in the case of one-off private lending arrangements or in respect of a loan book that is in run-off. The Commission is able to apply conditions to any discretionary exemption it is willing to grant which might include that the exempt person:

- remains administered by a specific licensee;
- makes only minor changes to the terms of outstanding loans; and
- conducts no new LCF business in the Bailiwick without the consent of the Commission.

A discretionary exemption will likely have an expiry date of 3 years from date of issue, after which it must be actively renewed if the licensable activity continues.

For Updates already published in our series on the LCF Law, visit our Lending, Credit and Finance Hub here.

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

Contacts

Frances Watson
Partner I Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 739 331
frances.watson@mourant.com

Gordon Dawes
Partner I Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 474
gordon.dawes@mourant.com

Helen Wyatt
Partner I Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 408
helen.wyatt@mourant.com

James Cousins
Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+44 1481 739 329
james.cousins@mourant.com

John Lewis
Partner I Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 505
john.lewis@mourant.com

Sally Rochester
Director
Mourant Consulting
+44 1481 731 508
sally.rochester@mourant.com

2021934/87689950/1