

Licensing under the new lending, credit and finance law

Update prepared by Helen Wyatt (Guernsey)

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 creates a new regulatory framework by requiring specified financial services businesses and service providers that offer or intermediate certain services in or from within the Bailiwick of Guernsey to be licensed to do so. In this Update, we consider the licensing regime, including the application process and the different categories of licence available under the new law.

Introduction

The Guernsey Financial Services Commission (the **Commission**) is now accepting licence applications under the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**), ahead of *full* implementation of the LCF Law on **1 July 2023**.

The final rules and guidance which underpin the LCF Law, namely the Lending, Credit and Finance Rules and Guidance, 2023 (the **LCF Rules**) have been published ([here](#)), together with a 'Notice of Disapplication of Licensing Requirement (Exemptions)' setting out the 'class' exemptions that are available ([here](#)) (which we will consider separately in a future Update).

Any business activity that is within scope of the LCF Law is not permitted *without* a licence (or exemption, if eligible) *after 1 July 2023*. This applies to any *existing* business activity within scope of the LCF Law from **1 July 2023** onwards, as well as to new business undertaken from that date.

Licence applications

The window for licence applications opened on **1 February 2023**.

The Commission is aiming to process applications received *before 31 March 2023 by 1 July 2023*. In view of the significant number of licence applications that the Commission is anticipating, it cannot guarantee that an application received *after 31 March* will be processed in time for 1 July 2023 when the LCF Law will become fully operational.

There are two application forms ([here](#)), one for an applicant which is a legal person (company/partnership) and the other for an individual(s). The applicant must also complete the relevant annex(es) to the application form which contains specific questions according to the type of in-scope business activity proposed.

The application form includes a checklist setting out all the documentation and information that must be included, for example an organisation chart, the applicant's latest audited financial statements and a business plan, together with a declaration to be made by the applicant confirming that it has reviewed all relevant policies and procedures relevant to its in-scope business and made any necessary amendments to ensure they are compliant.

Individuals named in the application form, including those in a 'supervised role', ie certain ownership and/or management roles, are required to submit an online personal questionnaire and/or an online appointment form, if they have not already done so at the time of the licence application.

The signed and completed application form and supporting documents, together with an explanatory covering letter stating the rationale for the application, must be submitted to the Commission online along with payment of the requisite application fee.

Fees

A summary of the application and annual fees payable for the different categories of licences under the LCF Law is available [here](#). Notably, a **50 per cent discount** will be applied to any application received *before 31 March 2023*.

Annual licence fees will be payable from **1 July 2023** which, in the case of businesses currently registered as a 'non-regulated financial services business' (NRFBSB), will be pro-rated.

Licence categories

There are five categories of licence, depending on the type of in-scope business activity:

Part II licence categories:

- provision of credit in relation to a regulated agreement(s) and
- provision of services ancillary to credit in relation to a regulated agreement(s)

Part II of the LCF Law relates to the regulation of credit business within the Bailiwick of Guernsey (the **Bailiwick**). Anyone providing credit or services ancillary to the provision of credit within the Bailiwick requires a Part II (credit) licence to do so (unless they meet the criteria for exemption), even if they are already licensed under any of the Bailiwick's regulatory laws (**regulatory laws**).

Part III licence categories:

- financial firm business (**FFB**)

Anyone carrying out FFB by way of business in or from within the Bailiwick with or on behalf of a customer requires a licence to do so (unless otherwise exempt). This includes businesses which are currently in scope of the registration regime as an NRFBSB.

Notably a Part II (credit) licence holder or a licensee under any of the regulatory laws does not require a Part III (FFB) licence in respect of any FFB activity but it must comply with the LCF Rules applicable to those Part III (FFB) activities.

- virtual asset service provider (**VASP**)

The provision or carrying on of certain services or activities in relation to virtual assets by way of business in or from within the Bailiwick is a licensable activity under Part III (VASP) of the LCF Law, regardless of any other licence held under the LCF Law or any of the regulatory laws.

The Commission intends to use its Soundbox approach when considering potential VASP licensees, meaning that, in most cases, licences will initially be granted on a conditional and time-limited basis. The conditions may include restrictions on the volume or type of business the firm can carry out; more frequent reporting requirements; and additional capital and liquidity requirements. Following completion of the initial period of licensing, the Commission will decide whether to renew the licence, how long for, and whether to amend any of the restrictions.

The application for a Part III (VASP) licence also requires an environmental declaration about the carbon emissions and energy consumption generated by its virtual asset activities and its arrangements for the safekeeping of customers' virtual assets. More detailed guidance is provided in the LCF Rules.

Part IV licence:

- provision of financial platforms and intermediation, etc.

The provision of financial intermediation services which match investors to those seeking funding, ie peer to peer and crowdfunding services, is a licensable activity under Part IV of the LCF Law, again regardless of any other licence held under the LCF Law or any of the regulatory laws.

Dual licensing

There will be instances when more than one licence is required, whether that is under the different Parts of the LCF Law and/or any of the regulatory laws, depending on the type of in-scope business activity proposed.

Ongoing obligations of a licensee

A licensee is expected to continue to fulfil the minimum criteria for licensing set out in Schedule 4 of the LCF Law (which is also a prerequisite to licensing). In addition, the LCF Rules set out the standards of conduct and practice expected by the Commission together with guidance on how to comply.

Licensees under Part II (credit providers¹), Part III (FFB), Part III (VASP) and Part IV (platforms) are also required to comply with the Handbook on Countering Financial Crime and Terrorist Financing.

Existing in-scope businesses

Whilst existing businesses within scope of the LCF Law will require a licence (if not otherwise exempt) and will be subject to the LCF Rules, it is not necessary for them to retrospectively review prior agreements. Going forward, existing in-scope businesses must apply the relevant conduct rules to ensure customers are treated fairly.

If you are unsure whether a business activity requires a licence under the LCF Law, or is eligible for exemption, or if you have any other questions, please do not hesitate to get in touch with your usual Mourant contact.

We also have a series of Updates on the LCF Law on our website [here](#).

¹ credit providers who only provide credit for general insurance premium financing are excluded, as are Part II (ancillary service providers)

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