

Part II: Consumer credit and home finance

Briefing Summary: Part II (Regulation of Credit) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "LCF Law") creates a new statutory framework for the protection of retail customers who make use of consumer credit and the provision of home finance.

Service Area: Corporate, Banking and Finance, Corporate Regulation and Compliance, Regulatory, Corporate Regulation and Compliance

Sector: Banking

Location: Guernsey

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Overview

Persons undertaking "credit business" will need:

- a licence to do so (a "**Part II Licence**"); and
- to be regulated by the Guernsey Financial Services Commission (the "**Commission**").

A Part II Licence is only required where credit is provided to a customer:

- who is an individual; or
- which is secured against residential real estate located in the Bailiwick; and
- in either case, where interest or other charges may be levied; and
- where no exemption is available under the LCF Law or the "Notice with respect to the disapplication of the requirement to hold a licence under section 40 of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022" (the "**LCF Notice**").

Licensees under any of Guernsey's other regulatory laws who carry on activities regulated under Part II of the LCF Law must also hold a Part II Licence.

We have set out below a detailed analysis of the provisions of Part II of the LCF Law. To facilitate the analysis, we have prepared a Part II decision tree.

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Carey Olsen comment

The LCF Law introduces a new consumer finance regime into Guernsey which is aimed at protecting retail customers who enter into personal credit agreements and loans secured on their residential property. This should be welcomed by consumers, who will benefit from credit providers subject to a licensing regime, recognised standards of good practice, prudent liquidity requirements and fairness and transparency in their dealings.

In addition, it will permit Guernsey consumers to access credit products from providers outside the Bailiwick where the States of Guernsey have resolved that the jurisdiction in question provides consumer financial protection at least equivalent to that in the Bailiwick. The UK has been recognised as an equivalent jurisdiction pursuant to The Lending, Credit and Finance (Designated Jurisdiction) Regulations, 2023.

Detailed Analysis

A Part II Licence is required where a person (either in or from within the Bailiwick) or a Bailiwick body (in or from within any place whatsoever):

- provides, offer to provide or hold themselves out as being willing to provide;
- by way of business;

either:

- credit; or
- services ancillary to the provision of credit,

("credit business").

"By way of business"

Under the LCF Law, a person who provides any service or carries on any activity shall (unless the Commission decides otherwise) be deemed to do so "by way of business" if that person receives any income, fee, emolument or other consideration in money or money's worth for doing so.

"Credit"

Under the LCF Law, "credit" means:

- the provision or carrying on;
- to or in respect of a customer ("**A**");
- under a regulated agreement made with or on behalf of A,

of any of the following services or activities:

- credit, including a loan of money, whether in cash or any other form, and any other kind of financial accommodation;

[Carey Olsen comment: the wording "any other kind of financial accommodation" is unclear. Not all financial accommodation would in fact be "credit". The House of Lords in Dimond v Lovell [2002] 1 AC 384, citing Goode: Consumer Credit Law and Practice said that "credit [is] extended whenever the contract provides for the debtor to pay, or gives him the option to pay, later than the time at which payment would otherwise have been earned under the express or implied terms of the contract." "Credit" is therefore probably best considered to be provided if a debtor is granted a contractual right to defer payment of a debt.]

- the sale of goods or services on credit, including hire purchase;
- the hiring or leasing out of goods for more than three months;
- the issue of credit or charge cards; and
- other services or activities specified by the States of Guernsey Policy and Resources Committee.

"Services Ancillary to the provision of credit"

Under the LCF Law, "services ancillary to the provision of credit" means:

- the provision or carrying on;
- to or in respect of a person ("B"),

of any of the following services or activities:

- assisting B by undertaking preparatory work with a view to B entering into a regulated agreement with a provider of credit, lender or owner of goods or services;
- effecting an introduction, of B, to a provider of credit, lender or owner of goods or services, with a view to B entering into a regulated agreement;
- (without prejudice to the above paragraph), acting, in respect of B, in the course of a business of "credit brokerage" carried on by the person so acting, with a view to B entering into a regulated agreement;
- acting as an intermediary between a provider of credit, lender or owner of goods or services and B pursuant to a regulated agreement;
- entering into a regulated agreement on behalf of a provider of credit, lender or owner of goods or services, or B;
- debt administration to the extent that this may have an effect on the terms or conditions of the provision of credit (for example, debt administration which leads to restructuring of credit and payment of interest or which leads to other classes or descriptions of refinancing); and
- other services or activities specified by the States of Guernsey Policy and Resources Committee.

Late payment of invoices

The LCF Law specifically provides that the payment of any fee, interest, penalty or other charge in respect of the late settlement of an invoice does not constitute either the provision of credit or services ancillary to the provision of credit for the purposes of the LCF Law (unless and to the extent to which the Commission specifically provides otherwise in its rules).

"Regulated agreement"

Under the LCF Law, a "regulated agreement" is one made by or on behalf of, and between a provider of credit and:

- a customer who is an *individual*, acting for purposes wholly or mainly outside that individual's trade, business or profession, whereby:
 - (a) credit is provided; and
 - (b) interest or other charges may be levied on the customer; or
- *any* customer, whereby:
 - (a) credit is provided; and
 - (b) interest or other charges may be levied on the customer; and
 - (c) the credit is secured against real property situated in the Bailiwick which is used for residential purposes.

"Customer"

Under the LCF Law, a "customer" means, in relation to any person ("**A**"):

- a person who has entered into or may enter into an agreement for the provision of services by A when A is carrying on business regulated by the LCF Law; or
- a person who has received or may reasonably expect to receive the benefit of services provided or arranged, or to be provided or arranged, by A when A is carrying on business regulated by the LCF Law.

Exemptions

The following exemptions should be considered carefully to determine whether or not the need for a Part II Licence can be avoided.

Section 9

Section 9 of the LCF Law provides that a Part II Licence is not required by:

- the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
- credit, business, services or transactions of a class or description specified by regulations of the States of Guernsey Policy and Resources Committee; and
- any person or class or description of person specified by regulations of the States of Guernsey Policy and Resources Committee. No such regulations have yet been proposed or published.

LCF Notice

Section 40(1) of the LCF Law enables the Commission to exempt persons from the requirement to hold a licence under any part of the LCF Law. The LCF Notice provides the following exemptions in respect of the requirement to hold a Part II Licence:

- persons¹ who extend credit to family members²;
- entities which extend credit to family members, where that entity is wholly owned by related family members (whether or not that credit is extended to the owners of that entity);
- entities which extend credit to their registered directors, registered partners, registered shareholders, or beneficial owners³. Shareholder loans will only qualify for the exemption where it is clear that the borrowers are *bona fide* shareholders of the entity i.e., that the shareholding has not been created solely for the purpose of the extension of credit;
- entities which extend credit to their employees⁴;
- Guernsey trustees who extend credit to named beneficiaries of the trust from which the credit is sourced;
- "Lombard lending", which is carried out by persons holding licences under another regulatory law, where lending is secured against marketable securities (of which, cash as a marketable security may represent no more than 50% of the total value of the loan made). This disapplication only applies where lending is to individuals who are High Net Worth individuals as defined in the Commission's Lending, Credit and Finance Rules and Guidance, 2023;
- hiring or leasing arrangements where such arrangements are not hire purchase agreements or other arrangements to purchase goods;
- secured lending where the security is held against real property which is not situated in the Bailiwick and is not the borrower's residence;
- secured lending where the security is held against real property which is situated in the Bailiwick and is not the borrower's residence;
- insurance intermediaries, licensed under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, and offering insurance payable in instalments, under finance agreements, where the credit facility is an arrangement made directly with the insurance provider;
- appointed retailers who provide credit facilities, through a single credit provider and subject to a written agreement with that credit provider, for goods and services offered by that retailer; and
- appointed motor traders who provide credit facilities, which are simple repayment loans, through a single credit provider and subject to a written agreement with that credit provider, for goods and services offered by that motor trader. This disapplication will only be available where simple repayment loans are offered provided that the total amount of credit extended, through the motor trader, does not exceed £250,000 per annum.

Persons regulated in equivalent jurisdictions

Section 10 of the LCF Law specifically exempts from the need to obtain a Part II Licence a person ("A") who:

- is not a Bailiwick body or an individual ordinarily resident in the Bailiwick;
- carries on that the activity which would otherwise require a Part II Licence in or from within the Bailiwick in a manner in which A is permitted to carry it on in or from within, and under the law of, a "designated jurisdiction";
- has A's principal place of business in that "designated jurisdiction" and does not carry on credit business from a permanent place of business in the Bailiwick;

- is (in the case of an individual) recognised as a national of that designated jurisdiction by the law of that designated jurisdiction or (in the case of a legal person) is registered, constituted or incorporated in that designated jurisdiction; and
- has given written notice to the Commission of the date from which A intends to carry on that activity in or from within the Bailiwick.

A "designated jurisdiction" means a jurisdiction designated by the States of Guernsey to have legislation for the protection of customers, clients and consumers at least equivalent to that provided by the provisions of the LCF Law and where the States of Guernsey is satisfied that to do so would not be prejudicial to the interests of the public or the reputation of the Bailiwick as a finance centre, or the performance by the States of Guernsey of its functions. The UK has been recognised as an equivalent jurisdiction pursuant to The Lending, Credit and Finance (Designated Jurisdiction) Regulations, 2023.

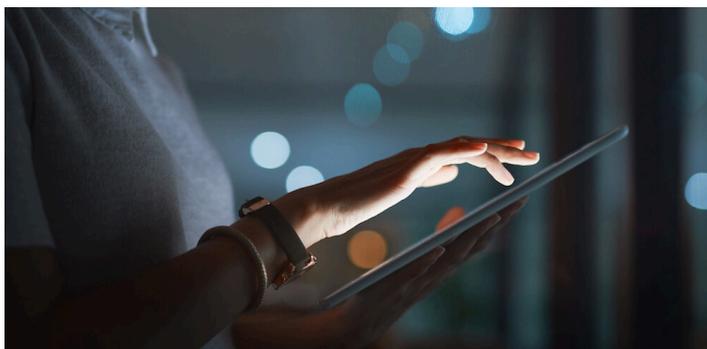
1 "Persons" includes legal persons.

2 Those persons falling under the definition of "family members" are set out at Appendix 1 to the LCF Notice.

3 "Beneficial owners" has the definition given to it under paragraph 22 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

4 "Employees" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment, following the definition set out in the Protection of Investors (Bailiwick of Guernsey) Law, 2020

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026



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