

Part III: Financial firm business

Briefing Summary: Part III (Regulation of Financial Firm Businesses and Virtual Asset Service Providers) of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "LCF Law") will repeal and replace the registration regime under the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008 (the "NRFBSB Law") with effect from 1 July 2023. Firms which are currently registered as a "financial services business" under the NRFBSB Law will need to be licensed as a "financial firm business" under the LCF Law.

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

Sector: Banking

Location: Guernsey

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Created Date: 16 February 2023

Overview

A "financial firm business" will need:

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

A Part III FFB Licence is only required where:

- the financial firm business is not a "regulated business";
- the financial firm business's activities are not "incidental and other activities"; and
- 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 are not required to hold Part III FFB Licence but must comply with the relevant rules in respect of any "financial firm business" activities. We await clarification from The Commission as to which "relevant rules" must be complied with.

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We have set out below a detailed analysis of the provisions of Part III of the LCF Law in relation to "financial firm business". In order to facilitate the analysis, we have prepared a Part III FFB Decision Tree.

Carey Olsen comment

The LCF Law provides the Commission with greater oversight over those entities undertaking financial firm business in the Bailiwick and requires those entities to meet appropriate regulatory standards.

It also recognises Guernsey's importance as a centre for the structuring of international capital flows by providing certain exemptions for investment structures whilst ensuring compliance with international standards through enhanced reporting to the Commission by local corporate service providers.

Detailed Analysis

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

- carries on, or holds themselves out as carrying on;
- by way of business;
- for, with or on behalf of a customer,

any of the following services or activities:

- lending;
- financial leasing;
- operating a money service business;
- buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps (subject to certain exceptions);
- facilitating or transmitting money or value through an informal money or value transfer system or network;
- issuing, redeeming, managing or administering means of payment;
- providing financial guarantees or commitments;
- trading (by way of spot, forward, swaps, futures, options, etc.) in
 - money market instruments
 - foreign exchange, exchange, interest rate or index instruments; and
 - commodity futures, transferable securities or other negotiable instruments or financial assets;
- participating in securities issues and the provision of financial services related to such issues;
- providing settlement or clearing services for financial assets;
- providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant;
- money broking;
- money changing;
- providing individual or collective portfolio management services or advice;
- providing safe custody services;

- providing services for the safekeeping or administration of cash or liquid securities on behalf of customers or clients;
- carrying on the business of a credit union;
- accepting repayable funds other than deposits; and
- otherwise investing, administering or managing funds or money on behalf of other persons,

("financial firm 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.

"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 to determine whether or not the need for a Part III FFB Licence can be avoided.

Section 20

Under section 20(1) of the LCF Law, a financial firm business will be exempt from the requirement to obtain a Part III FFB Licence where *each* of the following applies:

- the total turnover in respect of financial firm business of the person carrying on the business in question does not exceed £50,000 per annum;
- the business in question does not carry out "occasional transactions" (any transaction involving more than £10,000, carried out by the business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked);
- the business in question does not exceed 5% of the total turnover of the person carrying on the business;
- the business in question is ancillary, and directly related, to the main activity of the person carrying on the business;
- the business in question does not facilitate or transmit money or value by any means;
- the main activity of the person carrying on the business in question is not that of a financial firm business; and

- the business in question is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

Under section 20(2) and Parts B and C of Schedule 1 to the LCF Law, a financial firm business will be exempt from the requirement to obtain a Part III FFB Licence where:

- it is a "regulated business", being:
 - an entity which holds a licence under Part II (Regulation of Credit) of the LCF Law;
 - an entity which holds a licence under the Banking Supervision (Bailiwick of Guernsey) Law, 2020;
 - an entity which holds a licence under, or which is authorised or registered collective investment scheme within the meaning of, the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the "**POI Law**");
 - an entity which holds a licence under the Insurance Business (Bailiwick of Guernsey) Law, 2002;
 - an entity which holds a licence under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002; or
 - an entity which holds a licence under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020; or
- its activities are "incidental and other activities", being:
 - financial firm business carried on in the course of carrying on the profession of a lawyer, an accountant or an actuary, in each case where such financial firm business is incidental to the provision of such legal, accounting or actuarial services;
 - financial firm business carried on by way of the provision of legal, accountancy or actuarial services to a financial services business, whether in-house or by way of profession;
 - the restricted activities of dealing, advising and promotion for the purposes of the POI Law, subject to certain requirements that the activities are carried out by supervised persons who are not incorporated, registered or with a physical presence in the Bailiwick, where those activities are carried on in an Appendix C country and are subject to AML/CFT regulations;
 - certain insurance business, within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002; or
 - the safekeeping or administration of cash or liquid securities, accepting repayable funds other than deposits, and otherwise investing, administering or managing funds or money on behalf of other persons, carried on in the course of carrying on the business of auditor, external accountant, insolvency practitioner or tax adviser, where the business concerned is registered under Schedule 5 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

Section 21

Section 21(1) of the LCF Law provides that a Part III FFB Licence is not required by 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 III FFB Licence:

- persons¹ who carry out lending to family members²;
- persons who carry out lending 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);
- persons who carry out lending to their registered directors, registered partners, registered shareholders³, or beneficial owners⁴;
- registered directors, registered partners, registered shareholders, or beneficial owners who carry out lending to associated entities;
- persons who carry out lending to their employees⁵;
- Guernsey trustees who persons who carry out lending to named beneficiaries of the trust from which the credit is sourced;
- persons who carry out lending and are administered by a licensee which holds a licence under:
 - 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
 - Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- where either:
 - the extension of credit is ancillary to the main activity of the entity offering the credit facilities; or
 - the extension of credit is one component of an investment, group, or holding structure of which the entity which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties);

- individuals, who are investors, who carry out lending to administered entities. This disapplication will only be available where either:
- the extension of credit is ancillary to the main activity of the individual offering the credit facilities; or
- the extension of credit is one component of an investment, group, or holding structure of which the individual which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties);
- persons who carry out lending internally, within the group structure to which they belong, where the lending entity has an established place of business in the Bailiwick⁶;
- persons, whose established place of business is within the Bailiwick, who carry out lending to other entities whose established place of business is also within the Bailiwick. This disapplication will only be available where the extension of credit is ancillary to the main activity of the entity offering the credit facilities; and
- entities holding a licence issued to virtual asset service providers under the Part III of the LCF Law.

1. *"Persons" includes legal persons.*

2. *Those persons falling under the definition of "family members" include "close relatives" of a person, as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, and the "extended family" of a person, the meaning of which is provided in the States of Guernsey Guidance on housing.*

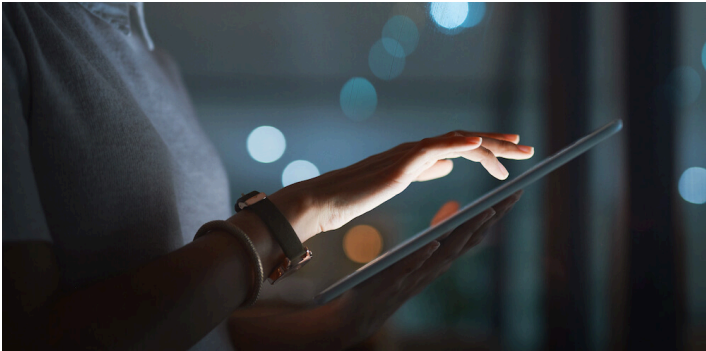
3. *Note that, unlike the equivalent exemption in respect of Part II, there is no requirement that borrowers are bona fide shareholders of the entity i.e., that the shareholding has not been created solely for the purpose of the extension of credit.*

4. *"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.*

5. *"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*

6. "Established place of business", in relation to a body, and without limitation, does not include an office in the Bailiwick of Guernsey at which is transacted only such administrative business as is necessary to enable that body to comply with the requirements of the Companies (Guernsey) Law, 2008, the Companies (Alderney) Law, 1994, the Partnership (Guernsey) Law, 1995, the Limited Partnerships (Guernsey) Law, 1995, the Foundations (Guernsey) Law, 2012, or any corresponding legislation in force in any jurisdiction outside the Bailiwick of Guernsey, following the definition set out in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (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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