

Private Equity Employee Loan Structure Analysis

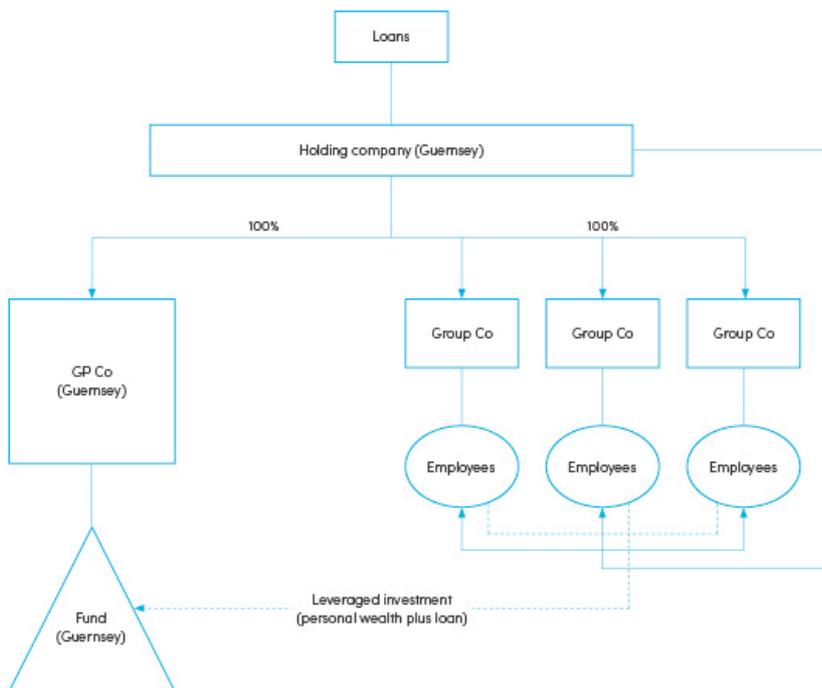
Briefing Summary: Definitions: "LCF Law" means The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022. "Notice" means the Guernsey Financial Services Commission's *Notice with respect to the disapplication of the requirement to hold a licence under section 40 of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022*.

Service Area: Banking and Finance, Corporate, Regulatory

Location: Guernsey

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Created Date: 16 February 2023



1. Loans to employees in order to fund / leverage their investment into a fund

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This might be subject to both:

- Part II of the LCF Law, as credit business; and
- Part III of the LCF Law, as "lending" (and thereby constituting "financial firm business").

However, the following exemptions apply:

Part II

- **Wholly or mainly outside that individual's trade, business or profession.**

Part II of the LCF Law applies where credit is extended for to a customer who is an individual acting for purposes wholly or mainly outside that individual's trade, business or profession. We consider that where a person employed by a fund management firm makes an investment in funds operated by that firm using borrowed moneys, such person is *not* "acting for purposes wholly or mainly outside that individual's trade, business or profession". We also consider that the same analysis applies to industry advisers who assist fund management firms and in return are offered participation in that fund management firm's funds (together with loans to facilitate such investment).

- **Credit to shareholders.** If the persons to whom the loans are made are shareholders in the entity making the loans or members of its group, the requirement for the entities to hold a licence under Part II of the LCF Law is disapplied under paragraph III of the first section of the Notice, which exempts "Entities which extend credit to their registered directors, registered partners, registered shareholders, or beneficial owners[1]". We consider that the use of the plural "entities" should be read to refer to a group and therefore "their" directors, registered partners, registered shareholders, or beneficial owners can refer to whichever entity in the group in respect of which they are directors, registered partners, registered shareholders, or beneficial owners – so the shareholders to whom the loan is made does not have to be a shareholder of the specific entity making the loan.
- **Credit to employees.** The requirement for the entities to hold a licence under Part II of the LCF Law is disapplied under paragraph IV of the first section of the Notice, which exempts "Entities which extend credit to their employees". We consider that the use of the plural "entities" should be read to refer to a group and therefore "their" employees can refer to whichever entity in the group they are employed by – so the employee to whom the loan is made does not have to be an employee of the specific entity making the loan. In addition, the definition of "employee" includes "... an individual ... (... who worked under) a contract of employment." Former employees are therefore "employees" under this definition.
- **Discretionary Exemption.** Non-bank "private lenders" (an "**Exempted Private Lender**") may be able to apply to the Commission for a Discretionary Exemption from licensing under [Part II] of the LCF Law (a "**Private Lender Exemption**"). Please refer to our Discretionary Exemption Briefing for further information on the availability of a Private Lender Exemption.

Part III

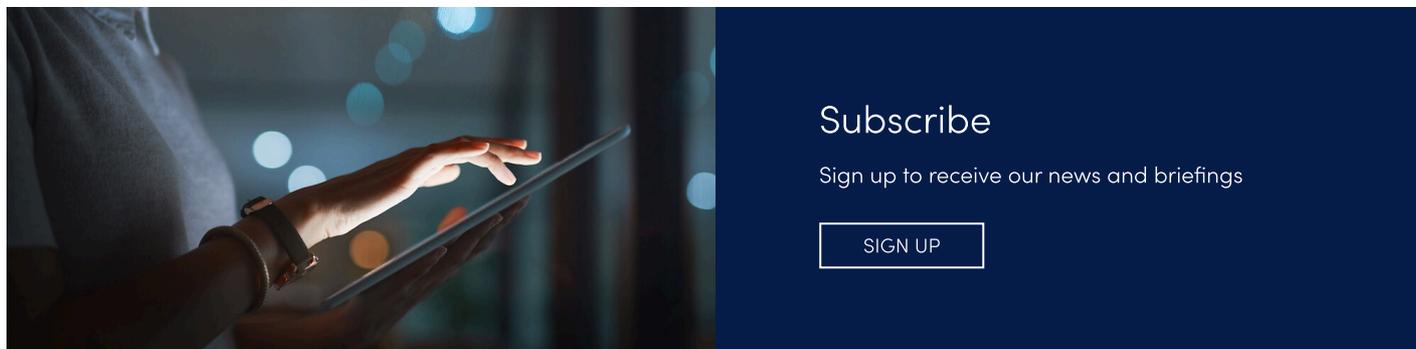
- **Lending to shareholders.** If the persons to whom the loans are made are shareholders in the entity making the loans or members of its group, the requirement for the entities to hold a licence under Part III of the LCF Law is disapplied under paragraph III of the second section of the Notice, which exempts "Persons who carry out lending to their registered directors, registered partners, registered shareholders, or beneficial owners". Note that there is no need that the shareholder be a *bona fide* shareholder, as is the case for the equivalent exemption in respect of Part II of the LCF Law. We consider that the use of the plural "persons" should be read to refer to a group and therefore "their" directors, registered partners, registered shareholders, or beneficial owners can refer to whichever person in the group in respect of which they are directors, registered partners, registered shareholders, or beneficial owners – so the shareholders to whom the loan is made does not have to be a shareholder of the specific person making the loan.
- **Lending to employees.** The requirement for the entities to hold a licence under Part III of the LCF Law is disapplied under paragraph V of the second section of the Notice, which exempts "Persons who carry out lending to their employees". We consider that the use of the plural "persons" should be read to refer to a group and therefore "their" employees can refer to whichever person in the group they are employed by – so the employee to whom the loan is made does not have to be an employee of the specific person making the loan. In addition, the definition of "employee" includes "... an individual ... (... who worked under) a contract of employment." Former employees are therefore "employees" under this definition.
- **Lending by an administered entity.** As the Holding company is administered by an entity licenced under the Protection of Investors (Bailiwick of Guernsey) Law, 2020, the requirement for the Holding company to hold a licence under Part III of the LCF Law is disapplied under paragraph VII of the second section of the Notice, as either:

1. the extension of credit is ancillary to the main activity of the Holding company; or

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).

[1] Note that such 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.

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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