Lending by Insurers in Guernsey

Briefing Summary: Many Guernsey-licensed insurance companies extend loans to other companies in their group. Those lending activities are potentially subject to regulation under the new Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022. This briefing considers the impact of the Law on that lending activity.

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Sector: Insurance

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Introduction

Parts of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 ("Law") came into force on 1 January 2023.

The Law introduces new licensing regimes for lending, credit and finance activities and provides UK-style consumer protection for retail and home borrowers. The Law replaces the registration regime under the Registration of Non- Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 ("RNFSB").
This brings the Bailiwick into line with the latest Financial Action Task Force recommendations for the combatting of money laundering and terrorist financing and demonstrates the Bailiwick's commitment to compliance with international standards.

The Law will come into full effect on 1 July 2023 by which date any licences must be obtained.

Lending, Credit and Finance Rules and Guidance 2023 ("Rules") and a notice of exemptions dated 1 February 2023 ("Notice") have also been issued by the Guernsey Financial Services Commission ("Commission") in connection with the Law.

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Overview

The primary purpose of the Law is to regulate:

- the consumer credit and finance sector;
- financial firm business, this includes lending, guarantees and other activities previously regulated by the RNFSB;
- virtual asset service providers; and
- financial platform and intermediation services (such as peer to peer lending and crowdfunding).

A detailed analysis of the legislation can be found here.

Exemptions and exclusions

The Law is wide ranging and seeks to regulate many financing activities which are commonplace in Guernsey and were previously unregulated. The exemptions contained in the Law and the Notice are extensive. They permit many of the activities previously carried on by Guernsey's finance sector to continue unaffected by the new regime and so are vital in understanding the true impact of the Law.

It is common for Guernsey licensed insurers with significant assets to make loans to other members of the corporate group. Such intra-group lending is now caught by the Law. However, there are a number of exemptions which are relevant, as set out below.

Long-term insurers

Long-term insurers are exempt from licensing under Section 20(2)(a) of the Law.

Managed insurers

Section IX of the Notice exempts insurers which appoint a licensed insurance manager and whose lending is "one component of a holding structure of which the insurer 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)". Most insurers which appoint a manager and make loans to associated group companies will be exempt from licensing by this provision.

Lending to shareholders

The Notice exempts loans made to registered shareholders or beneficial owners. This would exempt any "upstream" loan made by a licensed insurer. However, it would not exempt loans made "downstream" to subsidiaries of the insurer or to related body corporates which are not shareholders or beneficial owners.

Lending to customers

Section 20(1)(g) of the Law exempts lending which is:

- made to customers of the main activity of the licensed insurer; and
- is not offered to the public.

This would exempt loans made by a captive insurer to group companies covered by the insurance policies issued by them. However, this exemption is unlikely to assist an insurer writing third party business nor insurers which write reinsurance business only.

Ancillary activity

Lending which is ancillary to the main activity of the insurer is exempt under the Notice. Section 20(1)(d) of the Law also exempts lending which is ancillary and directly related to the main activity of the lender. It is debatable whether lending is truly ancillary to insurance activity – the two activities are not necessarily related at all. Therefore some caution may be required when considering the scope of this exemption.

Applications

The Commission has published information on the application process alongside the application forms. Prospective licensees are invited to apply from 1 February 2023. Fees will comprise annual fees for licensees and application fees, both of which are set out here. There will be a 50% discount to the application fee for firms which submit high quality, complete application forms before 31 March 2023. The Commission does not guarantee that applications received after 31 March will be processed by 1 July 2023, when the Law comes into full effect.