

Consultation on proposals for consumer lending regulation

Insights - 07/09/2016

Consultation on proposals for consumer lending regulation

What's happening?

On 26 August 2016 the Guernsey Financial Services Commission (the **GFSC**) issued a [discussion paper on proposals to revise one aspect of the regulatory regime for lending, credit and finance in the Bailiwick of Guernsey \(Guernsey\)](#).

What's proposed?

The current regime for the regulation of deposit taking in Guernsey will remain unchanged.

The paper proposes to introduce new legislation specifically addressing consumer lending and oversight. It is also proposed to repeal the Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (which currently only really regulates the anti-money laundering aspects of this sector).

The proposed legislation aims to:

-
-
-
-
-

It is proposed that the new law would be applicable to all Guernsey lending, credit and finance

businesses as well as certain other non-lending non-regulated FSBs (**NRFSBs**) and would impose rules and standards (including integrity and fair treatment of consumers, affordability checks on borrowers, and the regulation of the marketing of lending and credit services) on firms providing relevant services to retail clients.

It is further proposed that the new law would address regulatory needs for the expanding sector of alternative funding such as peer-to-peer lending and crowdfunding.

To ensure that controls are proportionate to the risks presented, it is proposed to implement a risk-based categorisation system for licensing as set out in the table below.

Category 1	LCF Licence	All firms lending and/or providing credit facilities to retail clients (including individuals)	Credit providers to retail clients, hire purchase firms and firms exercising rights or performing obligations of a credit provider or lessor	Subject to the consumer credit controls and measures set out in the new law
Category 2	Limited Licence	Firms whose activities are associated or connected to lending, credit and finance activities	Innovative FSBs with an institutional focus, credit brokers or existing NRFSBs The legislation seeks in particular to enable (technological) advances in the industry	Permissible derogation of elements of the controls and measures in the new law which are not applicable

Category 3	Registration	NRFSB firms	Firms	
		not involved in lending credit and finance	peripheral to agreements such as those providing advice on capital structure or mergers	Requirement to register as part of AML/CFT obligation

Specific exemptions are also proposed. Firms which carry out activities which are suitably low risk will not be subject to the proposed law. Suggested examples of such risk-based exempted activities might be closed loop cards, or intercompany loans.

The GFSC invites any interested parties to submit responses before 24 October 2016.

What’s our view?

Few would question the principle of regulating the provision of consumer credit to retail customers provided that such regulation is proportionate and correctly focused upon protecting those who require it. Indeed, many of the other leading offshore jurisdictions regulate consumer credit in some way, but all take different approaches to the issue.

It is extremely important, however, that unintended consequences be avoided. Any new legislation must be carefully drafted so as to clearly and unequivocally exclude genuine international commercial financing activities (such as intra-group company loans and the operation of group treasury companies) which are a legitimate and important part of business life in an international finance centre such as Guernsey.

Ogier will be making submissions to the GFSC on this basis.

If you would like assistance in making submissions to the GFSC on these proposals or would like to discuss any aspect of the proposals and how they may affect your business, please contact either of the authors or your usual Ogier contact.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide

legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



[Christopher Jones](#)

Partner

[Guernsey](#)

E: christopher.jones@ogier.com

T: [+44 1481 752337](tel:+441481752337)

Related Services

[Banking and Finance](#)