



ADVISORY
Industry Information

Guernsey Approves New VASP & Consumer Lending Law

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Introduction

The States of Guernsey has approved the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the “LCFL”) which will regulate various virtual asset service providers (“VASPs”) and financial services businesses (“FSBs”) that were previously not regulated in Guernsey. The LCFL now awaits Royal Sanction. The LCFL and the associated licensing regimes are expected to come into effect from 1 January 2023.

This briefing is the first in a series of briefings by Walkers on the LCFL and provides a summary overview of the businesses that will be regulated by the Guernsey Financial Services Commission (the “GFSC”) under the LCFL.

We will publish subsequent briefings on each of the licensing regimes in due course.

The new licensing regimes

There are four new licensing regimes under the LCFL, which apply to the following services or activities:

- Providing consumer credit, including unsecured loans, mortgages, goods on HP and credit cards, or services ancillary to the provision of consumer credit, such as introduction services and credit brokerage – this will require a “Part II Licence”;
- Carrying on “financial firm business”, being activities that were previously registerable under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (the “NRFBSB Law”), such as payment handling services and lending – this will require a “Part III FFB Licence” (the NRFBSB Law will be repealed);
- Certain services or activities in relation to virtual assets, such as ICOs, issuing tokens, exchanging between virtual assets and fiat currencies and exchanging between one or more forms of virtual asset – this will require a “Part III VASP Licence”; and
- Operating a peer to peer platform or a crowdfunding platform, or providing non-bank credit or finance intermediation or brokerage services for the purposes of matching lenders with borrowers – this will require a “Part IV Licence”.

In all cases the licensing requirement applies to:

- a Guernsey entity providing (or holding itself as being willing to provide) any of the above services or activities anywhere in the world; and
- a non-Guernsey business providing (or holding itself out as being willing to provide) any of the above services or activities in or from within the Bailiwick of Guernsey.

Certain exemptions do apply, most notably there is a notification regime for non-Guernsey businesses regulated in a “designated jurisdiction” wishing to provide services in Guernsey that would normally require a Part II Licence (conditions apply), and businesses regulated by the GFSC under certain other regulatory laws do not need to obtain a Part III FFB Licence. The GFSC also have the discretion to exempt a person from the requirement to hold any of the above licences.



Applications for licences under the LCFL will need to meet the minimum criteria for licensing set out in the LCFL (similar to that in other regulatory laws in Guernsey). The GFSC will also have the full range of supervisory, enforcement and rule-making powers under the LCFL that it enjoys under those other regulatory laws.

Walkers' comment

The LCFL widens the scope of regulated financial services business and for the first time will regulate consumer lending and mortgages in Guernsey. Crucially, the LCFL also introduces a VASP licensing regime in Guernsey. By licensing these activities, Guernsey is also applying its world-leading standard anti-money laundering and countering financing of terrorism ("AML/CFT") regime to these activities (although the AML/CFT regime already applies to activities under the NFRSB Law). This is especially welcome for virtual assets as Guernsey is aligning itself with FATF guidance on virtual assets – a key move in Guernsey's development as a leading VASP jurisdiction.

We await the publication of the related GFSC rules and guidance which will provide much more details on how regulation under the LCFL will work in practice.

Although the LCFL is not expected to come into force until the start of 2023, we are not anticipating there to be any transitional period, nor will there be a grandfathering regime for those entities registered under the NFRSB Law, - the VASPs and FSBs that are covered by the LCFL, including those that are already registered with the GFSC under the NFRSB Law, may well need to ensure that they have the appropriate licences in place by the end of the year.

About Walkers' Guernsey regulatory team

Walkers' regulatory team can advise on the new LCFL. We have a team of regulatory experts spanning all practice areas who regularly advise on all aspects of Guernsey regulation, including financial services, AML, sanctions, data protection, tax, economic substance, FATCA and the CRS.

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