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Guernsey's New Licensing Regime for Financial Firm Business

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Introduction

This briefing is the third in a series of briefings by Walkers on the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "LCFL"), and provides an overview of the licensing regime applicable to "financial firm business" under Part III of the LCFL (a "Part III FFB Licence"). Our previous briefings, which provide a general introduction to the LCFL and an overview of the Part II Licence regime can be found [here](#) and [here](#).

The Guernsey Financial Services Commission (the "GFSC") has been consulting on draft rules and guidance applicable to all licensees under the LCFL (the "Rules"). The consultation has now closed and we await the final form of the Rules, which are due by the end of 2022. Key aspects of the Rules applicable to the holder of a Part III FFB Licence, which are not yet final and are subject to change, will also be covered in this briefing.

Who will need a Part III FFB Licence?

All businesses that carry on "financial firm business" in or from within the Bailiwick of Guernsey ("Guernsey") will need a Part III FFB Licence unless an exemption applies. Further, all Guernsey businesses that carry on financial firm business anywhere in the world will need a Part III FFB Licence unless an exemption applies. Carrying out any of these activities without a Part III FFB Licence or an applicable exemption is a criminal offence.

"Financial firm business" covers all of the activities that are subject to the current registration regime set out in the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 ("NRFSB Law"), which covers various unregulated financial services business, such as money services, payment handling, foreign exchange, lending and credit businesses.

Businesses that are currently registered under the NRFSB Law will, subject to any applicable exemptions, need to obtain a Part III FFB Licence. However, lending and credit businesses that provide loans and credit to retail consumers, will need to obtain a Part II Licence under the new consumer credit regime (although it will need a Part II Licence if it provides loans to retail costumers).

What if the business is already regulated?

Holders of any other licence under other regulatory laws in Guernsey, and holders of a Part II Licence under the LCFL, do not need to obtain a Part III FFB Licence in order to undertake firm financial business activities. However, such businesses are expected to comply with the Rules in relation to their financial firm business activities. Therefore a bank, for instance, which provides corporate loans will not need a Part III FFB Licence in addition to its banking licence, but it will need to comply with applicable parts of the Rules (although it will need a Part II Licence if it provides loans to retail costumers).

Are there any exemptions?

In addition to businesses already regulated by the GFSC under another licensing regime, a number of exemptions are proposed, including an exemption for debt funds regulated in Guernsey, and an exemption for intra-group lending. A number of further exemptions are expected. However, there is no equivalence-based exemption from a Part III FFB Licence in respect of businesses regulated in jurisdictions considered to offer appropriate or equivalent protections.



Financial firm business activities carried on for no consideration, such as lending for no interest or fee, are not in scope of the Part III FFB Licence regime.

The GFSC also have the discretion to exempt a person from the requirement to hold a Part III FFB Licence, and we await guidance as to the circumstances where the GFSC may do so.

What requirements apply to a holder of a Part III FFB Licence (a "Licensee")?

Financial resources, capital adequacy, liquidity and insurance

The Rules apply financial resources requirements, however these do not apply to a holder of a licence under either the Banking Supervision (Bailiwick of Guernsey) Law, 2020 or the Insurance Business (Bailiwick of Guernsey) Law, 2002.

Licensees must ensure that they always hold sufficient liquid resources in reserve to allow for an orderly wind-down over a three-month period. Further, the level of these resources must be monitored and checked at least quarterly and the Licensee must immediately notify the GFSC where it is found that the resources are no longer sufficient (the notification must include the steps being taken to rectify the breach).

Other requirements

The Rules also include requirements relating to:

- Minimum criteria for licensing - a Licensee must meet the minimum criteria for licensing set out in the LCFL (the requirements are similar to that in other regulatory laws in Guernsey);
- Conduct of business principles – these ten principles relate to integrity, skill, care and diligence, conflicts of interest, information about customers, customer assets, market practice, financial resources, internal organisation, and relations with the GFSC;
- Accounts – Licensees must have audited accounts that are available to the public on request;
- Annual return – Licensees must submit an annual return to the GFSC, including a copy of their accounting records for the relevant year along with data on the volume and type of business carried out;
- Outsourcing – Licensees remain responsible for outsourced activities and must have appropriate systems in place to control and monitor outsourced activities;
- Complaints – including a requirement for a complaints procedure and a complaints log, together with an escalation process and GFSC notification;
- Customer money – customer money is required to be held in a customer money bank account with an approved bank; and
- Marketing – Licensees must ensure that promotions and advertising are fair, transparent, and honest and include sufficient information for customers to understand the cost of credit providers, particularly the likely total cost of credit. Other requirements apply to advertising and promotions.

When must a business have its Part III FFB Licence in place?

The window for licence applications will open on 1 January 2023. There will then be a six-month period during which affected businesses must obtain a Part III FFB Licence (or a Part II Licence if they are lending or providing credit to retail consumers). The LCFL and Rules are due to come into full force on 1 July 2023, at which point businesses must have their licence in place.

The GFSC have stated that there will be a 50% discount to the relevant application fee where it receives the full licence application before 28 February 2023. If the GFSC receive a licence application after 31 March 2023 there is a risk that the licence will not be granted in time, so affected businesses should look to make their applications early in 2023.



Applications for licences are required to specify the regulated activities to be undertaken by a Licensee and such Licensee must not engage in activities not declared on the licence application, save with the GFSC's prior written approval.

Walkers Commentary

The Part III FFB Licence and Rules transition the current registration regime under the NRFSB Law into a full licensing regime.

Businesses operating in a number of sectors which provide various financial services such as payment handling and foreign exchange services, lending and credit, including informal or non-bank/private lenders, credit card issuers, and mortgage lenders, may well be caught within the scope of the Part III FFB Licence regime (although businesses that lend or provide credit to retail consumers will generally be within the Part II License regime). Affected businesses will need to consider factors such as reviewing or preparing relevant business risk assessments, business plans, and their terms and conditions of business, policies and procedures to ensure that they are ready for the LCFL.

About Walkers' Channel Islands regulatory team

Walkers' Channel Islands regulatory team in Guernsey is fully equipped to advise on all aspects of the new LCFL and Rules, including advising on their application, assisting with licence applications (including business plans and business risk assessments), drafting policies and procedures, and drafting customer terms and conditions.

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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