

Guernsey Financial Services Commission

**Discussion Paper on Proposals to Revise the Bailiwick's Financial  
Regulatory Infrastructure for Lending, Credit & Finance.**

Issued 26 August 2016



Guernsey Financial  
Services Commission

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## Responding to the Discussion Paper



Responses to this Discussion Paper are sought by Monday 24 October 2016.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question.

You can send your responses to us using the online submission tool, Citizen Space, accessible on our website at:

<https://consultationhub.gfsc.gg>

Or in writing to:

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# Introduction

## *Purpose of the Discussion Paper*

The Commission's primary objective is to regulate and supervise financial services in the Bailiwick of Guernsey, with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

Consistent with the Commission's objectives, the proposals in this Discussion Paper are designed to enhance the levels of confidence and security in the Bailiwick's lending, credit and finance infrastructure thereby further augmenting its development as a financial centre.

The purpose of this Discussion Paper is to seek feedback from all interested parties on potential proposals to amend aspects of some of the Bailiwick's supervisory and regulatory laws.

The Discussion Paper is an invitation to work in conjunction with the Commission to ensure that the Bailiwick's regulatory regime is as user-friendly as possible, while at all times complying with the relevant international standards.

The intention is that responses will be considered by the Commission, potentially leading to the publication of a Consultation Paper, which will provide feedback on the key outcomes arising from this Discussion Paper and propose a more detailed framework for further consideration.

This Discussion Paper is a working document and does not prejudice any final decision to be made by the Commission or the States of Guernsey.

## Who Should Read This Paper?

The Discussion Paper is relevant and will be of interest to a number of parties including:

*Please tick the box or boxes which best describe(s) your interest in this Discussion Paper.*

Consumer.

Financial Advisor.

Financial Service Business, including banks, insurance companies, investment companies, fund managers and fiduciaries.

FinTech, e.g. businesses looking to develop innovative ways to provide financial services, operate, or plan to operate, lending platforms.

Lending, Credit & Finance Business.

Representative of a consumer body, industry association, trade body or business organisation.

Existing Non-Regulated Financial Service Business.

Prescribed Business, (legal professionals, accountants, estate agents).

Other. *(Please provide a description below).*

## *Proposed Changes*

The majority of registered Non-Regulated Financial Services Businesses (“NRFSBs”) currently perform lending, credit and finance services. However the Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (“NRFSB Law”) is principally for the purposes of anti-money laundering and countering the financing of terrorism (“AML/CFT”) supervision. The NRFSB Law does not include specific provisions for consumer credit, prudential stability or supervisory oversight. The proposal is to address this by repealing the NRFSB Law and to introduce a new Lending, Credit and Finance Law (the “new Law”).

The new Law, it is proposed, could implement a framework that introduces rules and guidance relating to consumer credit and innovative financial service businesses, whilst still including all existing statutory AML/CFT and authorisation requirements, as currently described in the NRFSB Law.

The enactment of the new Law is not intended as a replacement for the use of codes, including those produced by trade and industry associations or other organisations. Codes are helpful in providing consistent clarity to a specific industry and therefore the intention would be to provide a law that can interact with current standards as opposed to detract from the value and benefit of industry and association codes. It is acknowledged that some codes in place, for example, ‘Borrowing Money? A Code of Practice for Consumer Lending’<sup>1</sup>, contains measures that could be incorporated into the new legislation. This could necessitate a period of transition to provide industry associations with an opportunity to review and adapt their codes and current practices.

## *Why Do We Want to Make Changes?*

The rationale for change is to reform the current regulatory framework in favour of one which enhances both the interests of the consumer and the competitiveness of the Bailiwick.

It is imperative to the Bailiwick’s reputation that consistent standards coupled with appropriate preventative and precautionary measures are in place, which protect the consumer, prevent exploitation by unscrupulous lenders and enable consumers to receive financial services and products that are suitable to their needs. The proposed framework will make it a formal requirement for firms providing lending, credit and finance to retail clients (including Bailiwick of Guernsey individuals) to apply standards and behaviours that are consistent, and in accordance with international standards. The proposed framework will also make it a requirement for firms to conduct themselves with integrity and treat customers fairly.

Despite effective, equitable and transparent consumer credit legislation being an expected and essential component of a modern economy, the Bailiwick of Guernsey does not currently have consumer credit lending legislation. The pace of change in the global finance industry is such that the Bailiwick needs to be able to respond quickly and appropriately to ensure suitable prudential, consumer and financial crime protection is in place. The rapid advancements in technology and the diversity of products and services offered by financial services businesses necessitates changing existing informal general standards and behaviour into a formal infrastructure that is flexible and yet provides adequate supervisory and

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<sup>1</sup> *Borrowing Money? A Code of Practice for Consumer Lending is a Jersey Consumer Council Code implemented in June 2007 and is currently under review by the Jersey Consumer Council. There is currently no Guernsey equivalent, however a number of Guernsey companies subscribe to the Code as they have pan-island businesses and it is advantageous to display that they support and follow the Code’s standards.*

enforcement powers. The ability to respond swiftly is also needed to support the Bailiwick's financial services industry in extending the range of services on offer, to compete effectively and to contribute to the Bailiwick's reputation as a progressive and trusted financial jurisdiction. This Discussion Paper seeks to promote growth and expansion whilst protecting the interests of the consumer.

The proposal is to introduce proportionate controls and measures through legislation which balance affordability, transparency, financial awareness and financial promotions (including all forms of advertising and marketing). It is envisaged that in developing legislative controls that concentrate upon these areas the Bailiwick will implement a suitable framework that is primarily beneficial to consumers and meets international standards.<sup>2</sup>

Prior to the change announced on the 4 August 2016, reducing Bank Rate to 0.25%<sup>3</sup>, the Bank of England Base Rate had remained at 0.5% since March 2009<sup>4</sup> and this long period of low interest rates has created a sense of stability and affordability that may not be sustainable. The sustained period of low interest rates coupled with a diverse range of easy access lending has created a risk of reliance upon the availability of low interest credit and an increasing use of credit. An indication on the level of consumer debt is that the estimated average total debt, (including a mortgage), per UK household is £54,740 and the average credit card debt per household is £2,397.<sup>5</sup>

The consumer credit proposals would include high interest, short term, unsecured, non-bank lending,<sup>6</sup> roll-over loans, offering goods for hire and hire purchase credit facilities. The proposed controls would include completing affordability checks on borrowers, ensuring that borrowers are provided with sufficient clear information on any lending or credit facility and that all adverts or promotions are clear, fair and not misleading. Suggested measures would also address innovative changes that have occurred within the traditional sources of lending market, including crowdfunding and peer-to-peer lending.

It is also important that consumers are able to exercise choice and avail themselves of new options confident in the knowledge that providers are applying a consistent standard of conduct.

The following is a summary of the reasons for change:

- Protecting consumers;
- Providing a stable regulatory framework for some classes of innovative FSBs; and
- Underpinning the Bailiwick's reputation by bringing it in line with other reputable financial jurisdictions which have established consumer credit legislation.

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<sup>2</sup> *The closest relevant existing Law and Ordinance to the subject is the 1929 Law Relating to Debtors and Renunciation and an Ordinance enabling the Court to reduce excessive interest; 1930 Odonnance Domant Pouvoir a la Cour de Reduire les Interets Excessifs.*

<sup>3</sup> <http://www.bankofengland.co.uk/Pages/home.aspx>

<sup>4</sup> <http://themoneycharity.org.uk/money-statistics> February 2016

<sup>5</sup> <http://themoneycharity.org.uk/money-statistics/>

<sup>6</sup> [Policy on High Interest, Short-term, Unsecured, Non-Bank Lending.](#)

*In June 2012 the Commission adopted a policy that it should ordinarily refuse applications to register financial services businesses under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, where the business consists of offering high interest, short-term, unsecured lending facilities to retail customers outside the Bailiwick. This policy has been adopted on the basis that such business is likely to adversely affect the reputation of the Bailiwick.*

## *Objectives*

The objective of this Discussion Paper is to propose the introduction of measures which provide:

- appropriate consumer credit controls for consumers using Bailiwick lending, credit and financial products, and services;
- for the advancement of innovative lending financial services;
- proportionate conduct and reputational measures;
- an environment which can help to foster and stimulate business growth; and
- a framework that supports the reputation of the Bailiwick as a sound financial services jurisdiction and a good place to do business.

## *The Development of this Paper*

The Commission, as the financial services regulator for the Bailiwick, appreciates that the development of an efficient regulatory regime requires the input of a range of stakeholders and entities. The Commission also recognises its role in meeting international standards and protecting the Bailiwick's reputation as an accessible, high-quality international financial centre.

The proposals in this Discussion Paper have been developed with assistance from focus groups that include representatives of industry, trade and professional associations, consumer bodies and the States of Guernsey. We are grateful for all the contributions, support and input provided.

A voluntary completion survey of NRFSBs was conducted in 2014/2015. The information provided key baseline data and illustrated the level of lending provided by the current registered firms.







# Proposed Licensing Categories

Consumer credit is a fundamental and expected component of a mature financial jurisdiction’s legislative framework. The absence of consumer credit legislation exposes the Bailiwick to conduct and reputational risk. The proposals outlined in this Discussion Paper seek to address these risks.

It is proposed to repeal the current NRFSB Law and replace it with a new Law. The new Law would apply to all Bailiwick of Guernsey lending, credit and finance businesses and NRFSB firms that are non-lending, credit and finance businesses. In order to accommodate the differing types of business and the activities conducted, it is proposed to introduce categories of licence within the new Law. Firms would be able to identify which category their business would be licensed under from the descriptions stated in the new Law.

The table below depicts the proposed categories using the differing types of milk as an analogy to describe the differences between each category.

| Category 1  | Category 2   | Category 3  | Risk Based Exemptions & Not Required to Register                                    |  |
|---|--|---|---|--|
| LCF Licence   | Limited Licence  | Registration  |   |  |
|                                      |   |  |  |  |
| Red (full fat).   | Blue (standard).   | Green (skimmed).  |   |  |
| <b>Firms</b>  |  |   |   |  |
| All firms lending and/or providing credit facilities to retail clients (including Bailiwick of Guernsey individuals). | Firms whose activities are associated/connected to lending credit and finance activities include innovative financial service businesses with an institutional focus. <sup>7</sup> | Firms who are not involved in lending, credit and finance.                          | Activities that are of a suitably low risk nature to merit exclusion.               |  |
| <b>Controls &amp; Measures</b>  |  |   |   |  |
| Must comply with the consumer credit controls and measures stipulated in the new Law.                                 | Permissible derogation of certain elements of the controls and measures stipulated by the new Law that are not applicable.   | Firms are required to register as part of their AML/CFT obligations.                |   |  |
| Countering Financial Crime and Terrorist Financing.   |  |   |   |  |
| Principles of Conduct of Finance Business.  |  |   |   |  |

<sup>7</sup> Page 12, Category 2, LCF Limited Licence.

It is envisaged that through the introduction of the three categories it will be possible to introduce a level playing field that provides appropriate consumer credit controls, which are proportionate to the type of activities undertaken by lending, credit and finance providers, or those businesses peripheral to lending credit and finance activity.

The focus groups that participated in developing this Discussion Paper highlighted that the framework needs to be proportionate and not restrain business growth and expansion. The focus groups further recommended that there should be recognition and provision in the new Law for instances where certain activities need not be included. Examples of items considered as not requiring inclusion are stated in the Discussion Paper section titled Risk-Based Exemptions. However, respondents are invited and encouraged to provide opinion and suggestion on any further examples that should be considered outside the scope of the new Law.

| Do you agree with the proposal to introduce three categories of licence? |  |          |  |
|--|--|----------|--|
| Agree  |  | Disagree |  |
| Please comment on the reasoning for your reply.                          |  |          |  |
|  |  |          |  |

It is intended to carry out further analysis of the activities conducted in order to provide greater clarity. However a short explanation of each category of licence and the business types which would fit under each category is outlined below.

*The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008 (“NRFSB Law”)*

The proposal to repeal the NRFSB Law will impact existing registrations. The proposed LCF categories for each existing NRFSB category of business specified in the NRFSB Law<sup>8</sup> are listed under the description of each of the three proposed LCF categories.

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<sup>8</sup> Schedule 1, Part I of the NRFSB Law specifies the businesses that are financial service businesses for the purposes of any provision of, or made under the NRFSB Law. Schedule 1, Part II of the NRFSB Law specifies businesses that are regulated businesses for the purpose of the NRFSB Law.

## Category 1 LCF Licence



The categories of business envisaged that would be included as a Category 1 LCF Licence are:

- all firms that undertake any form of lending to retail clients (including Bailiwick of Guernsey individuals). This includes current NRFSB businesses and other financial service businesses;
- credit providers to retail clients (including Bailiwick of Guernsey individuals); and
- firms exercising rights or performing obligations of a credit provider or lessor.

### *Lending to Retail Clients (including Bailiwick of Guernsey Individuals)*

The reason for proposing lending as a Category 1 LCF Licence is that, as noted earlier in this Discussion Paper, there is an absence of legislative and regulatory consumer credit controls in place in the Bailiwick.

In 2015, a survey was conducted of the NRFSB population. The survey reported that the predominant activity undertaken by the NRFSB population was lending. The concentration of business activity exposes consumers to a risk of financial distress without legislative support thus heightening the need to introduce Bailiwick of Guernsey consumer credit financial legislation. It should be noted that the survey also included comments from various respondents that they welcomed and endorsed introducing consumer credit protection as it was recommended as a beneficial change to the current NRFSB regime.

Comparing the legislative and regulatory lending, credit and finance laws in place in the other Crown Dependencies and the UK reveals a number of areas where there is minimal or no equivalent measures.<sup>9</sup>

The lack of comparable regulatory controls and measures is not only potentially detrimental to the consumer but it places the Bailiwick at a competitive disadvantage to jurisdictions that have such controls and measures that provide consumer credit protection and regulatory certainty regarding new and innovative lending financial services businesses.

The new Law would seek to redress the current position and provide a suite of appropriate protection to the consumer of financial controls and measures that are comparable with international standards. LCF Category 1 Licence firms would be required to comply with the proposed new Law controls and measures and comply with the GFSC Principles of Conduct of Finance Business.<sup>10</sup>

An LCF Category 1 Licence will not be able to derogate from the requirements in the same manner as a Category 2 Limited Licence. For example, a lending firm would be obliged to comply with the proposal to complete an affordability assessment<sup>11</sup> as opposed to a Category 2 Limited Licence business that is peripheral to lending, credit and finance e.g. a credit reference agency. The lending firm determines approval of a facility whereas the credit reference agency provides information to assist in the decision.

It is not proposed to include any specific scalable or distinguishing lending criteria within the framework, for example, the differing types of lending, volume, size, or the amount of lending conducted. Including criteria that had a benchmark for the scale or size and volume of lending would require continued monitoring and reporting by lending firms, which would be cumbersome and counter-productive for firms that were bordering on a specific threshold.

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<sup>9</sup> [See Appendix D Examples of legislative and regulatory controls.](#)

<sup>10</sup> [See Appendix A, Principles of Conduct of Finance Business.](#)

<sup>11</sup> [See Regulatory Expectations for LCF Categories 1 & 2 \(controls & Measures\), Affordability Assessments.](#)

It is suggested that it would be more effective to concentrate upon designing a framework that includes proportionate controls and measures for consumer protection regardless of the level of activities.

*Credit Providers to Retail Clients (including Bailiwick of Guernsey Individuals)*

Example activities are hire purchase (including firms that arrange hire purchase for the purchase of consumer goods and/or hire purchase arrangements via another lending institution) leasing arrangements and firms engaged solely in credit activities.

*Existing NRFSBs Proposed as Category 1 LCF Licence.*

- Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions, including forfeiting and advancing loans against cheques).
- Exercising rights or performing obligations of a credit provider or lessor.

| Do you agree with the proposed Category 1 LCF Licence activities? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.                   |  |          |  |
|   |  |          |  |

| Do you agree with the suggestion that all Category 1 LCF Licence firms lending or providing credit to retail clients (including Bailiwick of Guernsey individuals) should be obliged to apply all the described consumer protection requirements? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

| Do you think that the new Law should be applicable to all firms providing lending, credit and finance which operate in or from within the Bailiwick of Guernsey? |  |          |  |
|--|--|----------|--|
| Agree  |  | Disagree |  |
| Please comment on the reasoning for your reply.  |  |          |  |
|  |  |          |  |

| Do you agree that the new Law should apply to non-Bailiwick of Guernsey incorporated companies which are not necessarily located in the Bailiwick but carry on business in the Bailiwick? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

## Category 2 LCF Limited Licence



The types of business that would be envisaged as requiring a Category 2 LCF Limited Licence include:

- i. innovative financial services businesses (“IFSBs”);
- ii. financial services businesses, not including persons licensed under the Protection of Investors (Bailiwick of Guernsey) Law 1987, as amended (“POI Law”) and collective investment schemes authorised or registered under the POI Law; and
- iii. firms that are not providing lending, credit and finance products and services but are peripheral to an agreement, for example credit-related activities involving Bailiwick of Guernsey firms.

### *i. Innovative Financial Services Businesses (“IFSB”)*

There are a wide range of specified categories, which include new technology driven services in the finance sector (FinTech), several of which are in the lending, credit and finance arena. The Commission recognises that stimulating and supporting innovation is essential in cultivating economic growth. The Commission continues to embrace and encourage innovation in the financial services business market. The Commission already has communication channels for innovative FSBs, which includes a policy of meeting and discussing regulatory matters with new and existing business at the earliest opportunity.



The Commission has introduced the Innovation Soundbox<sup>12</sup> to serve as a cross-divisional contact point for enquiries regarding innovative financial products and services. It is proposed to continue to augment this framework by raising awareness and conveying the available levels of support that are available.

The report entitled, “A Strategic Vision for FinTech”,<sup>13</sup> commissioned by the former Commerce & Employment Department contains a number of recommendations including a general objective to create a platform for development, growth and expansion of FinTech in the Bailiwick. The proposals in this Discussion Paper support those recommendations through providing regulatory certainty for innovative financial services firms, thus encouraging investment in the economy for those businesses, which are commercially viable and beneficial to the financial services market.

IFSBs are proposed to fall within the scope of Category 2 LCF Limited Licence in order to provide a category that aligns an emerging array of new products and services with appropriate controls. Technology is transforming the lending, credit and finance landscape and the momentum of change is challenging legacy retail and commercial financial market regulatory controls.

It is envisaged that the Category 2 LCF Licence will provide a suitable degree of latitude for the innovative and embryonic businesses to flourish and grow without unnecessary barriers while at the same time retaining a suitable and proportionate level of consumer protection and financial crime prevention. Equally sometimes regulation is not required and therefore the new Law seeks to clarify an understanding of the regulatory/non-regulatory divide.

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<sup>12</sup> [Innovation Soundbox](#)

<sup>13</sup> PWC Report, *A Strategic Vision for FinTech*, July 2015.

Despite technology offering new and alternative financial products and services there is a need to be cautious and closely monitor the approach adopted internationally. A number of the new and alternative options are in the prototype or formative stage and innovators require a period of time to progress. One example is block chain technology; Christopher Woolard, FCA Director of Strategy and Competition commented on block chain technology in his speech at the FCA's event on UK FinTech, February 2016,<sup>14</sup> that:

*“One example could be distributed ledger technology, sometimes more popularly known as ‘block chain’. There have been countless column inches devoted to this subject. The current development of distributed ledger technology has the potential to revolutionise financial services; whether it is the panacea of all ills in the financial world is yet to be seen. However it’s clear that there are a lot of regulatory and consumer issues that will need to be discussed as the technology evolves. For example, how individuals gain access to a distributed network and who controls this process, along with what data security exists for users are vital considerations for us as a regulator”.*

The FCA's view is echoed by the Commission, other countries, jurisdictions and international supervisory bodies. The response of regulators across the Globe to crypto-currencies evidences the cautious ‘watch and see’ regulatory approach.

The European Commission and the voting body of the EU, the European Parliament, has discussed crypto-currencies and block chain innovation several times, most recently in a proposal to amend Directive (EU) 2015/849<sup>15</sup>

In 2014, the Commission published a notice about virtual currencies, noting that it intended to adopt a cautious approach to virtual currencies due to the risks associated with them.<sup>16</sup>

It is acknowledged that as advances in technology continue to evolve consideration of regulatory concerns are featuring. In January 2016, the UK Government published a document following a review exploring how distributed ledger technology can revolutionise services, both in government and the private sector. The published document, Distributed Ledger Technology: Beyond Block Chain<sup>17</sup> includes comment that:

*“Effective governance and regulation are key to the successful implementation of distributed ledgers. Governance comprises the rules set out by the owners and participants of the ledger that safeguard their private interest. This needs to be supplemented by regulation and / or legislation, which comprises the framework of rules that are set by an outside authority to protect the broader interest of society”.*

The flexibility afforded through the proposed Category 2 LCF Limited Licence enables a framework that can nurture innovative expansion and cater for adequate consumer protection.

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<sup>14</sup> <https://www.fca.org.uk/news/uk-fintech-regulating-for-innovation>

<sup>15</sup> The European Commission adopted proposals for Legislation to amend the 4<sup>th</sup> Anti-money Laundering Directive that will bring virtual currency exchangers and wallet providers into the EU's anti-money laundering framework. July 2016

The European Parliament's Committee on Economic & Monetary Affairs April 2016.

The European Parliament's Committee on Economic & Monetary Affairs, January 2016.

The European Court of Justice, October 2015.

<sup>16</sup> <http://www.gfsc.gg/The-Commission/News/Pages/Virtual-Currencies.aspx>

<sup>17</sup> <https://www.gov.uk/government/publications/distributed-ledger-technology-blackett-review>

How could the new Law improve & support the growth and expansion of innovative financial service business?

Comment.

Are there any other types of innovative financial services businesses that should be considered for inclusion as a Category 2 LCF Limited Licence entity?

Yes

No

Comment.

*ii. Lending, Credit and Finance Financial Services Businesses, Not Included Under the Protection of Investors Law (Crowdfunding, Peer to Peer Lending & Robo-Advisors)*

Crowdfunding has increased in popularity due to its ability to provide an alternative source of finance particularly for small and medium sized enterprises via online platforms. Crowdfunding is also attractive to investors as the crowdfund can allow smaller investors to participate and may potentially offer higher returns than current market interest rates.

Four categories of crowdfunding can be identified; loan (or debt-based), equity (or investment based), donation and pre-payment.<sup>18</sup> Donation and pre-payment have no financial incentive, other than a possible form of reward e.g. ‘JustGiving’ is an example of a charitable donation crowdfund platform. It is not intended, and therefore the Discussion Paper does not include, introducing proposals for legislative and regulatory controls in respect of donation based or pre-payment, reward based crowdfund activities.

Loan-based crowdfunding is a term that can apply to peer to peer (“P2P”) lending, peer to business lending (“P2B”) and business-to-business lending (“B2B”), although the most frequent term used is P2P lending.<sup>19</sup> For the purposes of consistency, this document refers to loan-based crowdfunding agreements or lending as that is the overarching facility provided by the provider’s platform.

Loan-based crowdfunding as a “matchmaking service” has seen a rapid rise in use, notably as the returns offered to lenders are attractive in a low interest rate environment. Since the loan-based crowdfund lending companies offering these services often operate entirely online, they can run with lower overheads and provide the service more cheaply than traditional financial institutions. As a result, lenders often earn higher returns compared to savings and investment products offered by banks, while borrowers can borrow money at lower interest rates, even after the loan-based crowdfunding lending company has taken a fee for providing the matchmaking platform and credit checking the borrower.

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<sup>18</sup> See [Appendix D Types of Crowdfunding](#).

<sup>19</sup> P2P can be termed differently depending on the parties involved, hence references are often made to B2B (Business-to-Business), B2C (Business-to-Consumer), P2B (Peer-to-Business), etc.

The accessibility that the internet offers has resulted in platforms having a wider potential ‘client base’, where they are able to pool lenders money, effectively allowing individuals with smaller levels of capital than traditionally expected to enter the loan market.

The entry of ‘retail lenders’ into this field gives rise to concern as the majority of loans arranged, certainly via electronic platforms, are unsecured which heightens the impact of borrowers defaulting on loans. Generally speaking trust is placed in the platform operator to have credit checked and risk rated borrowers adequately, often via an automated system. The current standard model of an electronic crowdfunding platform does not have the same benefit of asset backed lending by traditional financial service providers.

The proposals included in this Discussion Paper are directed towards making loan-based crowd funding a regulated activity. This recommendation is consistent with that of other jurisdictions that either already have in place or, are considering introducing regulatory controls to crowdfunding, as loan-based crowdfunding poses a high risk both to consumers and those that fund the loan.

The UK Financial Conduct Authority<sup>20</sup> concluded that:

*“In terms of harm, we consider loan-based crowdfunding firms to pose a high risk to consumers because they may hold and/or control client money before lending this money to the borrowers”.*

The Isle of Man Financial Services Authority, (formerly the Financial Supervision Commission), assessment of the risk relating to loan-based crowdfunding resulted in their proposing in their crowdfund consultation documents that the arrangement of loan crowdfunding should be regulated.<sup>21</sup>

It is proposed that loan-based crowdfunding advisors and other lending platform providers based in the Bailiwick will be included within the scope of a Category 2 LCF Limited Licence with specific controls relating to the protection of customer assets and AML/CFT.

There are existing obligations for an entity arranging “pure” equity crowdfunding. Where a platform is domiciled in the Bailiwick the provider would require a licence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as it would be considered that it is carrying out restricted activities within the Bailiwick of Guernsey.<sup>22</sup> Certain types of crowdfunding may also fall within the definition of a collective investment scheme, i.e. where the contributions of funders and profits out of which payments are to be made are pooled and there is evidence of management of the portfolio. The domicile of the website and the activities being carried out in connection with the website would all need to be taken into consideration when determining whether such an offering met the definition of a collective investment scheme.

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<sup>20</sup> The Financial Conduct Authority. *The FCA’s regulatory approach to crowdfunding (and similar activities)*.

<sup>21</sup> The Isle of Man Financial Supervision Commission’s *Crowdfunding – a potential new regulated activity encompassing both equity and loan crowdfunding*. April 2015

<sup>22</sup> *The prospectus for an offer to the public for a Protection of Investors, Category 2 controlled investment in the Bailiwick must be registered with the Commission. Category 2 investments include, but are not restricted to, shares and stocks in the share capital of a company, other than an investment company, therefore certain types of offerings listed on a Bailiwick of Guernsey domiciled platform may currently need to be registered with the Commission under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.*



The proposal of this Discussion Paper is to focus upon loan-based crowdfunding and equity-based crowdfunding. The suggestion is to introduce measures designed to protect consumers investing, lending and borrowing through a crowdfund platform by ensuring that the crowdfunding platform includes advice and guidance to enable potential users to make an informed decision about the service offered.

The purpose of proposing controls in respect of loan-based and equity-based crowdfunding is because of the potential pitfalls and risks to the investor investing in products and services that are not regulated or supervised and have minimal or no assurance of security.

| Do you agree with the proposal that loan-based crowdfunding (including P2P) should be a regulated activity? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

| Do you agree with the proposal that loan-based crowdfunding (including P2P) should be a Category 2 LCF Limited License? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

Similarly to an equity crowdfund, an online wealth management advisory service, (robo-advisor), would require a licence under the Protection of Investors (Bailiwick of Guernsey) Law. However, where the products and service offered are lending, credit and finance related and not captured under the requirements of the Protection of Investors Law, the proposal is that the robo-advisor provider would be viewed a Category 2, LCF Limited Licence IFSB.

*iii. Firms that are not providing lending, credit and finance products and services but are peripheral to an agreement.*

Example activities are firms that are:

- Credit brokers;
- Credit information services (e.g. providers of information on a person's creditworthiness, debt position or other reference information, which is used for the purpose of assessing a lending or credit facility);
- Providing an introduction or facilitating a lending or credit facility with another firm (including lending, credit & finance firms that act as agents for another institution);
- Payroll providers;<sup>23</sup> and
- Acting as an intermediary broker or agent between the credit provider and the consumer.

The Category 2 LCF Limited Licence also includes those firms who are not the actual lender but are involved or associated with the arrangements made by lending, credit and finance firms. Examples are brokers or agents that can arrange lending, borrowing or credit facilities for consumers.

The rationale for including a broker, agent or introducer of business as a Category 2, LCF Limited Licence, rather than a Category 1, is that the lender would be subject to scrutiny and review as the ultimate provider. The consumer credit obligations of the broker or agent arise during negotiation and arrangement, albeit by virtue of an informal arrangement or formal contract agreeing the facility. The onus is upon the ultimate loan provider to ensure their agent or broker acts with integrity and in accordance with the consumer credit requirements.

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<sup>23</sup> *Payroll services are, writing and/or arranging employment management agreements, issuing contracts of employment, processing salary payments, production of payroll documentation, payslips and the production of customer accounts*

*Existing NRFSBs Proposed as Category 2 LCF Limited Licence.*

The following existing NRFSB activities are proposed as Category 2, LCF Limited Licence, under the new Law:

- Financial Leasing.
- Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).
- Transmitting Money / Value.
- Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps.
- Facilitating or transmitting money or value through an informal money or value transfer system or network.
- Issuing, redeeming, managing or administering means of payment. Means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers drafts (and electronic money).
- Providing financial guarantees or commitments.
- Trading (by way of spot, forward, swaps, futures, options, etc.) in -
  - money market instruments (including, without limitation, cheques, bills and certificates of deposit);
  - foreign exchange, exchange, interest rate or index instruments; and
  - commodity futures, transferable securities or other negotiable instruments or financial assets.
- Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).
- Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.
- Money Broking.
- Money Changing.
- Providing individual or collective portfolio management services or advice.
- Carrying on the business of a credit union.
- Accepting repayable funds other than deposits.
- Otherwise investing, administering or managing funds or money on behalf of other persons.

**Do you agree that the proposed NRFSB activities, listed above, should be included as Category 2 LCF Limited Licence?**

Agree

Disagree

Please comment on the reasoning for your reply.

## Category 3 LCF Registration



It is proposed that the Category 3 LCF Registration will extend to NRFSB categories that are not undertaking any form of lending, credit and finance related activities or services. The potential categories of business, which would be classified Category 3 LCF Registration are businesses:

- Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings, except where the advice is provided in the course of carrying on the business of a lawyer or accountant.
- Providing safe custody services, not including persons licensed under the POI Law and collective investment schemes authorised or registered under the POI Law.

Do you agree or disagree with the proposed NRFSB activities suggested as Category 3 LCF Registration?

Agree

Disagree

Please comment on the reasoning for your reply.

Do you consider that a more viable option is to integrate non-lending activity categories into the Prescribed Business regime?<sup>24</sup>

Agree

Disagree

Please comment on the reasoning for your reply.

<sup>24</sup> *The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 created a public register of prescribed businesses.*  
<http://www.gfsc.gg/Registered/Registered-Entities/Pages/Prescribed-Businesses.aspx>

## Risk Based Exemptions



It is proposed to include within the framework, criteria that cater for certain low risk activities, products or services, which may merit discretionary exemption from the proposed regulatory regime because of their regulatory low risk nature and purpose.

Examples of the types of potential exempted activities are:

- An intercompany loan or financing facility; and
- Closed loop cards<sup>25</sup> (Stored value, customer service cards that hold a low value for a specific purpose, e.g. a bus travel card).

It is acknowledged that there is a need to be cautious in the manner in which any potential risk-based exemption is described and considered. Comments are invited on what areas could be exempted on the basis that the prudential, conduct and money laundering and terrorist financing risks are low.

Are there any low risk activities, products or services which you consider should be a risk-based exemption?

Please comment on the reasoning for your reply.

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*25 Closed loop cards are prepaid cards which can be used to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer, or which can be used only to acquire a very limited range of goods or services. Taking into account the very limited money laundering and terrorist financing risks linked to closed loop cards, they are out of the scope of the definition of e-money for the purposes of the 4AMLD, which is consistent with the approach in Directive 2009/110/EC21*

## *Not Required to Register*

The NRFSB Law currently provides an exemption for an FSB to register with the Commission or to meet the AML/CFT regulations and rules in the Handbook if they meet all of the criteria stated in Part 1 Point 3, Exemptions from Requirement to Register.<sup>26</sup>

It is proposed to withdraw the current criteria as it only provides exclusion in limited instances. It is envisaged that the proposed new Law's framework will distinguish instances where it is not necessary to register.

What do you consider the new Law should exclude?

Comment.

Do you agree that the new Law should include risk-based exemptions and instances that are not requiring registration?

Agree

Disagree

Please comment on the reasoning for your reply.

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<sup>26</sup> [Appendix C](#). *The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008. Part 1, Point 3, Exemptions from Requirement to Register.*

# Regulatory Expectations for LCF Categories 1 & 2 (Controls & Measures)

The proposals are a formal adoption of many existing best practice measures. One of the reasons for introducing the suggested measures is feedback received from firms participating in this paper’s development who advised that they wanted to be viewed on an equal footing with their international peers. Implementation of a lending, credit and finance infrastructure is considered essential to adding credibility to a provider’s reputation. Discussion with current providers confirmed that Bailiwick firms welcome the ability to promote and advertise the fact that they operate in an environment, which is competitive, treats customers fairly and where they are subject to regulatory supervision. A strong lending, credit and finance regime, possessing robust rules and guidance, promotes a market of integrity and security. The proposed recommendations in respect of each control are described below.

| Do you agree with the proposal that the Bailiwick of Guernsey requires the introduction of legislative regulatory consumer rights & protection in respect of lending, credit and finance? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

### *Affordability Assessments*

A critical component of a lending or credit arrangement is checking the creditworthiness of an applicant. In order to ensure a consistent assessment is conducted prior to approval it is proposed to make it mandatory for all lending and/or credit facilities to be subject to an affordability assessment. The assessment will serve to ensure that the firm assessed the suitability of any loan or credit prior to approval. Completing an affordability assessment will also provide evidence and justification of the resulting decision.

The introduction of a common affordability standard should not be burdensome or a hindrance to businesses and consumers and indeed it is acknowledged that many firms already have procedures in place that include conducting an effective affordability assessment. Our rationale for recommending formalising the methods undertaken for assessing a consumer’s creditworthiness is to implement controls that incorporate accountability, raise financial awareness to the consumer and prevent unaffordable debt.

An affordability assessment should be based upon information provided by a consumer, information currently held and information obtainable from a credit reference agency. The proposal is to introduce criteria that consists of general and sensitive personal information necessary to make an informed decision on a person’s suitability for a product.

Although the basis for conducting an affordability assessment is to enhance consumer credit controls there may be certain types of borrowing that should be excluded so as not to introduce controls that are administratively counterproductive. Examples of excluded arrangements could include short term in case of need facilities or a short term overdraft.

Do you agree that an affordability assessment should be conducted for all lending, credit & finance facilities?

Agree

Disagree

Please comment on the reasoning for your reply.

If you agree that an affordability assessment should be conducted, what information and/or requirements do you consider should be included to assess a borrower's creditworthiness?

Please comment

*Right to Withdraw, "Cooling Off Period"*

Consideration is being given to introducing rules and guidance pertaining to consumers having the right to change their mind. It is suggested that the consumer could cancel a financing arrangement either verbally or by written notice (including email) within a specified time; often referred to as a "cooling off period". A cooling off period is particularly important in an era of mobile and online products where speed of access can negate full consideration of a product's terms. The generally accepted time period for a cooling off period is 14 days.<sup>27</sup> Views are sought on whether it is appropriate to implement a cancellation right for a lending or credit arrangement in the Bailiwick.

Do you agree there should be a mandatory requirement for lending, credit & finance providers to provide a right to withdraw?

Agree

Disagree

If yes, what should be the length of time?

Please comment on the reasoning for your reply.

<sup>27</sup> EU Directive 2011/83/EU on consumer rights. 25 October 2011. FCA, Consumer Credit Sourcebook, Section 11.1, Right to Cancel.



*Rollover of loans and/or extending credit facilities*

Discussion took place within the focus groups as to whether to introduce a maximum number of occasions a borrower can rollover a loan or extend a credit facility. The current proposal is not to introduce such a control.

The proposed controls relating to completing an affordability assessment will ensure that a firm includes in their credit and lending decision process an assessment of whether it is sensible to approve continuation of a facility. It is not uncommon for loans and credit facilities to include an option for continuation, however this should be on an understanding that any facility is first subject to review and a borrower should not consider renewal an absolute right.

| Do you agree that it is not necessary to introduce a maximum number of times a loan can be rolled over? |  |          |  |
|---|--|----------|--|
| Agree   |  | Disagree |  |
| Please comment on the reasoning for your reply.   |  |          |  |
|   |  |          |  |

*Transparency*

It is proposed to implement proportionate controls and measures that prevent a consumer from being given misleading information about a product or service. It is envisaged that there will be specific controls and measures relating to the marketing, advertising and promotion of products and services. Providing communication and/or information relates to the manner in which a consumer interprets and understands any arrangement.

It is proposed to introduce measures that ensure a firm demonstrates that a customer is made aware of relevant facts, that there is no omission of any relevant information and that the information provided either in written or verbal form is sufficient, clear and not misleading.

The following are examples of suggested recommendations for consideration and comment:

| Communications & Information will:   | Communications & Information will not:  |
|--|---|
| <ul style="list-style-type: none"> <li>• Consist of plain and intelligible language.</li> <li>• Provide full details of any arrangement, including fees, commissions and retrocessions.</li> <li>• Provide details of any association or connection and include a statement of any conflict of interest.</li> <li>• Include, where comparisons are made, that the comparison is factual, meaningful, balanced, qualified, justified and fair.</li> <li>• Consist of clear and transparent terms, including information regarding interest and the annual percentage rate (“APR”).</li> <li>• Contain sufficient information to allow users to make an informed decision.</li> <li>• Detail all penalties and early repayment terms.</li> <li>• Include a clear and transparent statement of return, costs, charges, penalties and interest.</li> <li>• Provide information and guidance on complaints and disputes.</li> </ul> | <ul style="list-style-type: none"> <li>• Use false testimonials or make unsubstantiated claims.</li> <li>• Disguise or obscure important information, statements or warnings.</li> <li>• Imply that a customer is free of debt through a revised debt arrangement.</li> <li>• Use inducements or incentives in a manner to purposefully disguise or obscure a debt arrangement.</li> <li>• Contain any representation, which might damage the reputation of the Bailiwick of Guernsey.</li> <li>• Disguise or obscure details regarding early repayment penalties.</li> </ul> |

|   |  |    |  |
|---|--|----|--|
| Are there any other requirements not included in the table that should be considered? |  |    |  |
| Yes   |  | No |  |
| Comment.  |  |    |  |

|  |  |          |  |
|--|--|----------|--|
| Do you agree lending, credit & finance firms should provide a full explanation of all the features of a loan, credit arrangement or any other funding mechanism, including fees, commission and key risks, prior to agreement? |  |          |  |
| Agree  |  | Disagree |  |
| What do you consider would constitute suitable evidence and should the provision of an explanation be evidenced by the consumer?   |  |          |  |

### *Financial Promotions Advertising & Marketing*

Currently, there are no mandatory controls or best practice standards relating to financial promotions, advertising and marketing for lending, credit and finance firms in the Bailiwick. Advertising and marketing controls do exist for specific industry sectors.<sup>28</sup> However, they are not applicable to the NRFSB registered population.

The NRFSB Law does provide for the Commission to apply conditions upon registered financial services businesses for any time after registration, including the ability to require a financial service business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way.<sup>29</sup> This power is a supervisory control designed to prevent and respond to inappropriate activities.

The proposal is to implement specific rules and guidance to lending, credit and finance in respect of financial promotions, advertising and marketing. The proposed rules and guidance are similar to the measures described in the AGB Code and the Conduct of Business Rules (“COB”) Rules.<sup>30</sup> However, they are not a substitute or replacement for existing obligations.

The new rules and guidance will focus upon the breadth of promotional activities not just advertisements. Section 21 of the U.K. Financial Services & Markets Act 2000 defines a financial promotion as:

*“An invitation or inducement to engage in investment activity,  
communicated by a person in the course of business.”*

To deliver financial awareness of a product or service it is considered sensible to include features relating to, not only the format of an advertisement, but also engagement and communication with consumers.

Do you agree there should be advertising, marketing and promotion standards for lending, credit & finance products and services?

Agree

Disagree

Please comment on the reasoning for your reply.

<sup>28</sup> *The Association of Guernsey Banks (“AGB”) has published a non-statutory code outlining the requirements for Association members in respect of deposit advertisements.*

<sup>29</sup> *The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008, section 6, Conditions of Registration.*

<sup>30</sup> *The Protection of Investors (Bailiwick of Guernsey) Law, 1987 or the Licensees (Conduct of Business) Rules 2014, (“the COB Rules”) and included within the COB Rules are the requirements expected of a licensee regarding promotions and advertising.*

The following are examples of the proposed requirements we are considering:

| Marketing, Promotion and Advertisement will:  | Marketing, Promotion and Advertisement will not:  |
|---|---|
| <ul style="list-style-type: none"> <li>• Use plain and intelligible language.</li> <li>• Specify the name of the firm making the promotion or on whose behalf the promotion is made.</li> <li>• Contain all material account terms that are clear, fair, reasonable and not misleading or misunderstood.</li> <li>• Contain sufficient information to enable an informed assessment of the financial product(s) or service(s) to which it relates to be made. It should also state that terms and conditions apply if relevant; and include the regulatory status.</li> </ul> | <ul style="list-style-type: none"> <li>• Use false testimonials or make unsubstantiated claims.</li> <li>• Disguise or obscure important information, statements or warnings.</li> <li>• Contain any representation, which might damage the reputation of the Bailiwick of Guernsey.</li> </ul> |

Are there any other requirements not included above that should be considered?

Please comment on the reasoning for your reply.

## *Proposed Changes, General Comments*

Responses are invited on any other areas relating to the matters described in the Discussion Paper.

Are there any areas that you consider have been omitted from the Discussion Paper?

Yes

No

If yes, please provide a brief description of what you consider has been omitted?

Comment.

Do you have any comment on any of the proposals in the Discussion Paper that you would like to add?

Comment.

*(Please include reference to the section or topic).*

Do you have any views on the benefits that could result from implementation of the proposals?

Comment.

Do you consider that there would be any disadvantages resulting from implementation of the proposals?

Comment.

## *Appendix A. Principles of Conduct of Finance Business*

The Principles are a general statement of fundamental obligations that firms should comply with under their regulatory responsibilities. The Principles include a brief description of their intended purpose, however the Principles are only applicable to businesses licensed or registered with the Commission and they do not include any underlying description of the Commission's expectations of how a firm applies each Principle. The proposal is to develop the provisions contained in the Principles as the basic fundamental criteria for lending, credit and finance rules and guidance. It is proposed to expand the current descriptions with clear statements of what is expected by all consumer lending, credit and finance providers. It is envisaged that this will provide clarity on the standards and behaviour expected and promote consistent application by the firms.

| <b>The GFSC Principles of Conduct of Finance Business</b>  |
|--|
| <b>Integrity</b>   |
| A financial institution should observe high standards of integrity and fair dealing in the conducts of its business  |
| <b>Skill, Care &amp; Diligence</b>   |
| A financial institution should act with due skill, care and diligence towards its customers and counterparties   |
| <b>Conflicts of Interest</b>   |
| A financial institution should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A financial institution should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the financial institution would place his interests above its own, the financial institution should live up to that expectation. |
| <b>Information about Customers</b>   |
| A financial institution should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives, which might reasonably be expected to be relevant in enabling it to fulfill its responsibilities to them.   |
| <b>Information for Customers</b>   |
| A financial institution should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A financial institution should similarly be ready to provide a customer with a full and fair account of the fulfillment of its responsibilities to him.   |
| <b>Customer Assets</b>   |
| Where a financial institution has control of, or is otherwise responsible for, assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibilities it has accepted.   |

|   |
|---|
| <b>Market Practice</b>  |
| A financial institution should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.   |
| <b>Financial Resources</b>  |
| A financial institution should ensure that it maintains adequate financial resources to meet its finance business commitments and to withstand the risks to which its business is subject.  |
| <b>Internal Organisation</b>  |
| A financial institution should organise and control its internal affairs in a responsible manner, keeping proper records, and where the financial institution employs staff or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures. |
| <b>Relations with GFSC</b>  |
| A financial institution should deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning the financial institution, which might reasonably be expected to be disclosed to it.  |

## *Appendix B. Types of Crowdfunding*

The following are the universally acknowledged categories of crowdfunding:

1. Loan or Debt-based crowdfunding.

Loan-based crowdfunding, also referred to as debt-based crowdfunding, market place lending or crowd-lending, can be a form of peer to peer lending, almost exclusively online, offering the ability for large numbers of individuals and businesses to either borrow or loan, either individually or collectively. Activities relating to these forms of lending are envisioned to be covered by the proposed revision of the Bailiwick's Financial Regulatory Infrastructure for Lending, Credit and Finance.

Loan-based (aka debt-based) crowdfunding and peer-to-peer lending is where an investment is made in the expectation of interest or return on the investors capital.

2. Equity crowdfunding also known as Instrument based crowdfunding or crowd sourced equity funding.

Enables individuals to invest directly or indirectly in a company.

Equity-based crowdfunding, (aka instrument based and crowd sourced equity funding), is where a firm issues share capital, debt securities or mini-bonds as a means of financing via a P2P platform and is typically considered to be acting by way of business in respect of the Protection of Investors Law, Category 2 controlled investments, and accordingly such activities are subject to the provisions of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, and the rules made thereunder.

3. Donation-based crowdfunding.

Funds are given in support of charitable causes or enterprises that a person wants to support financially.

4. Reward-based or pre-payment crowdfunding.

Funds are given in the expectation of receiving a benefit, service or product.



*Appendix C. The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008. Part 1, Point 3, Exemptions from Requirement to Register.*

- (a) the total turnover of the person carrying on the financial services business in respect of financial services business does not exceed £50,000 per annum,
- (b) the financial services business does not carry out occasional transactions, this is to say, any transaction involving more than £10,000, carried out by the financial services business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,
- (c) the financial services business does not exceed 5% of the total turnover of the person carrying on the business,
- (d) the financial services business is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) the financial service business does not facilitate or transmit money or value by any means,
- (f) the main activity of the person carrying on the financial service business is not that of a financial services business, and
- (g) the financial service business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public.

## Appendix D. Examples of Legislative and Regulatory Controls.

The following are examples of the various legislative and regulatory controls in place in the UK and the Crown Dependencies in respect of lending, credit and finance.

Please note that the examples are purely indicative of the types of controls and measures in place and not intended as a complete record of all consumer credit legislative and regulatory controls in each jurisdiction.

### Bailiwick of Guernsey

- The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009.
- Billet D'Etat of the States of Guernsey, February 2016, included a policy letter detailing proposals for the introduction of consumer rights legislation in Guernsey, Herm and Jethou.<sup>31</sup>
- Guernsey Trading Standards publish advice and guidance on the States of Guernsey website.<sup>32</sup> The webpage includes a section titled "Safety of Consumer Products."

### Jersey

- The Distance Selling (Jersey) Law 2007, revised in 2016.
- The Supply of Goods & Services Law 2009.<sup>33</sup>
- The Jersey Trading Standards Service publish on the Jersey government website a page that details the obligations of companies that are signed up to the Code of Practice for Consumer Lending.<sup>34</sup>
- Jersey Government website also has a webpage on consumer protection.<sup>35</sup>

### The Isle of Man

- The Isle of Man Moneylenders Act 1991<sup>36</sup> requires any person other than a bank or other exempt organisation who carries on in the Island a business, which makes loans of money to consumers and/or sole traders to be registered with the Isle of Man, Office of Fair Trading.
- In 2013 the Isle of Man Office of Fair Trading issued a review of payday lending titled, Review of Payday Lending as it Affects Isle of Man Consumers.<sup>37</sup> The report includes under section 9, Consumer Protection;

*"In concluding its review of payday lending as it affects IOM consumers it is necessary for the OFT to consider whether there is a need to enhance consumer protection in the area."*

### United Kingdom

- UK Financial Services Act 2012.
- UK Consumer Protection Act 1987.
- UK Consumer Protection from Unfair Trading Regulations 2008.
- UK Mortgage Conduct of Business Rules.

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<sup>31</sup> <https://gov.gg/CHttpHandler.ashx?id=99842&p=0>

<sup>32</sup> <https://www.gov.gg/article/151913/Trading-standards-advice>

<sup>33</sup> <https://www.jerseylaw.je/laws/revised/pages/05.800.aspx>

<sup>34</sup> <http://www.gov.je/stayingsafe/consumerprotection/borrowmoney/pages/companyresponsibilitieslendmoney.aspx>

<sup>35</sup> <https://www.gov.je/Government/Consultations/Pages/ConsumerProtection.aspx>

<sup>36</sup> [http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0006/MoneylendersAct1991\\_2.pdf](http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0006/MoneylendersAct1991_2.pdf)

<sup>37</sup> <https://www.gov.im/lib/news/oft/oftpublishespayd.xml>

## Definitions

### *Block Chain*<sup>38</sup>

A block chain is a type of database that takes a number of records and puts them in a block. Each block is then ‘chained’ to the next block, using a cryptographic signature. This allows block chains to be used like a ledger, which can be shared and corroborated by anyone with the appropriate permissions.

### *Distributed Ledger*<sup>38</sup>

A distributed ledger is essentially an asset database that can be shared across a network of multiple sites, geographies or institutions. All participants within a network can have their own identical copy of the ledger. Any changes to the ledger are reflected in all copies in minutes, or in some cases, seconds. The assets can be financial, legal, physical or electronic. The security and accuracy of the assets stored in the ledger are maintained cryptographically through the use of ‘keys’ and signatures to control who can do what within the shared ledger. Entries can also be updated by one, some or all of the participants, according to rules agreed by the network.

### *High-Cost Short-Term Credit*<sup>39</sup>

A regulated credit agreement :

- (a) which is a borrower-lender agreement or a P2P agreement;
- (b) in relation to which the APR is equal to or exceeds 100%;
- (c) either:
  - (i) in relation to which a financial promotion indicates (by express words or otherwise) that the credit is to be provided for any period up to a maximum of 12 months or otherwise indicates (by express words or otherwise) that the credit is to be provided for a short term; or
  - (ii) under which the credit is due to be repaid or substantially repaid within a maximum of 12 months of the date on which the credit is advanced;
- (d) which is not secured by a mortgage, charge or pledge; and
- (e) which is not:
  - (i) a credit agreement in relation to which the lender is a community finance organisation; or
  - (ii) a home credit loan agreement, a bill of sale loan agreement or a borrower-lender agreement enabling a borrower to overdraw on a current account or arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.

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<sup>38</sup> <https://www.gov.uk/government/publications/distributed-ledger-technology-blackett-review>

<sup>39</sup> <https://www.handbook.fca.org.uk/handbook/glossary>

### *Innovative Financial Service Business (“IFSB”)*

Innovative financial services business has been used in the document as a collective descriptive term. IFSBs relate to prospective innovative or start up financial service businesses whose business model comprises of FinTech related products and services.

### *Robo-Adviser<sup>40</sup>*

A robo-advisor is an online wealth management service that provides automated, algorithm-based portfolio management advice without the use of human financial planners. Robo-Advisors use the same software as traditional advisors, but usually only offer portfolio management and do not get involved in more personal aspects of wealth management, such as taxes and retirement or estate planning.

### *Smart Contracts<sup>41</sup>*

Smart contracts are computer protocols that facilitate, verify, or enforce the negotiation or performance of a contract, or that obviate the need for a contractual clause. Smart contracts usually also have a user interface and often emulate the logic of contractual clauses. Proponents of smart contracts claim that many kinds of contractual clauses may thus be made partially or fully self-executing, self-enforcing, or both. Smart contracts aim to provide security superior to traditional contract law and to reduce other transaction costs associated with contracting.

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<sup>40</sup> [www.investopedia.com](http://www.investopedia.com)

<sup>41</sup> [https://en.wikipedia.org/wiki/Smart\\_contract](https://en.wikipedia.org/wiki/Smart_contract)

## Abbreviations

|            |   |
|------------|---|
| AGB        | Association of Guernsey Banks   |
| AML/CFT    | Anti-money laundering and countering the financing of terrorism   |
| APR        | Annual Percentage Rate  |
| B2B        | Business to Business  |
| B2C        | Business to Consumer  |
| COB        | The Licensees (Conduct of Business) Rules 2014  |
| Commission | GFSC  |
| CS         | Citizen Space – online portal for consultations and discussion papers.                                  |
| DP         | Discussion Paper  |
| EU         | European Union  |
| FCA        | Financial Conduct Authority   |
| FSBs       | Financial Service Businesses  |
| GFSC       | Guernsey Financial Services Commission  |
| IFSB       | Innovative Financial Services Business  |
| LCF        | Lending, Credit & Finance   |
| Licensee   | Any person who holds a licence, consent, authorisation, registration or permission from the Commission; |
| New Law    | Proposed Lending, Credit & Finance Law  |
| NRFSB      | Non-Regulated Financial Services Businesses   |
| NRFSB Law  | Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (as amended)              |
| OFT        | UK Office of Fair Trading   |
| POI Law    | The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended)                              |
| P2P        | Peer to Peer  |