THE LENDING, CREDIT AND FINANCE RULES and GUIDANCE, 2023

CONSOLIDATED VERSION

The Lending, Credit and Finance Rules, made in accordance with the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 ("the Law"), are set out in this document[1].

Further guidance, provided by the Guernsey Financial Services Commission ("the Commission"), is set out in shaded boxes.

This consolidated version of the Rules incorporates amendments listed in the footnote below. It is prepared for the Guernsey Law website and is believed to be up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use.

[1] As amended by The Lending, Credit and Finance (Amendment) Rules, 2023, G.S.I. No. 39.

Contents

PART 1 **INTRODUCTION**

1.1 Application

(1) Unless otherwise stated, these Rules apply to all holders of licences issued under the Law.

(2) The Commission may, in its absolute discretion and by written notice, exclude or modify the application of any provision of these Rules.

(3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

Guidance

This document takes a two-level approach –

- the Rules set out the standards to be met; and
- guidance notes set out the Commission's approach to regulation and present suggested ways of showing compliance with the Rules.

Alternative measures to those set out in the guidance may be adopted so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes is Commission guidance and does not form part of the Rules.

PART 2 CORPORATE GOVERNANCE AND EFFECTIVE MANAGEMENT

2.1 Application

(1) This section applies to all licensees.

2.2 Governance responsibilities

(1) The licensee must ensure that at least two individuals with the responsibility of directing the business are resident in the Bailiwick.

(2) The board and senior management, of a licensee, must take all reasonable steps to ensure that all employees of the licensee act so as to avoid material damage either to -

(a) potential and current customers;

(b) the licensee's reputation;

(c) the licensee's financial position; and

(d) the reputation of the Bailiwick as an international finance centre.

(3) The board of a licensee –

(a) must ensure that the licensee –

(i) has in place effective and appropriate policies, procedures, and controls to ensure compliance with all applicable legislation, rules, codes, and guidance;

(ii) recruits, trains, and supervises relevant personnel to ensure compliance with all applicable legislation, rules, codes, and guidance; and

(iii) operates robust arrangements for meeting the requirements of these Rules and all other relevant legislation;

(b) at all times, retains responsibility for any functions it outsources; and

(c) must evaluate its compliance with the Code of Corporate Governance[2] on a regular basis.

(4) In the case of a Part III VASP Licensee -

(a) the board must ensure that the licensee has sufficient resources, within the Bailiwick, to effectively oversee and control the activities and business of the licensee; and

(b) to maintain effective oversight, the board and senior management of the licensee must ensure that they have sufficient knowledge, understanding, and expertise with respect to the activities of the licensee and the services it provides.

Guidance

For the avoidance of doubt, the relevant legislation and rules include The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and the Handbook on Countering Financial Crime and Terrorist Financing.

Provision of Services Ancillary to the Provision of Credit is not included in the definition of financial service business at Schedule 1 of the Proceeds of Crime Law and is outside the scope of the Handbook.

General insurers who are licensed credit providers, in respect of providing credit for payment by instalments for general insurance products, will also fall outside the scope of the Handbook.

[2] Instrument made on 30 September 2011.

2.3 Supervised roles

(1) The following sections of the Law –

(a) section 43, Notification of and objection to holders of approved supervised roles;

(b) section 44, Notification of and objection to holders of vetted supervised roles;

(c) section 45, Notification of change of holder of supervised role,

apply to all licensees engaging persons in any of the roles designated as 'supervised roles', under section 41 of the Law.

2.4 Governance and effective management

(1) A licensee must comply with these Rules, and any other applicable legislation, codes, or guidance and must understand and comply with its contractual and other legal obligations arising under any relevant customer agreements.

(2) A licensee must –

(a) ensure that the responsibilities and authority of relevant personnel are clear and appropriate to their qualifications and experience;

(b) record and monitor compliance with these Rules and all other relevant legislation;

(c) keep a breaches register which logs all instances of non-compliance with these Rules; and

(d) fulfil the minimum criteria for licensing.

(3) A licensee is responsible for the behaviour of any appointed retailers and appointed motor traders that they appoint and must ensure that they are aware of, and comply with, these Rules.

2.5 Conflict of interest

(1) Subject to the applicable laws, a licensee must –

(a) act impartially;

(b) not unfairly place its interests above those of its customers; and

(c) ensure fair treatment between customers.

(2) A licensee must –

(a) establish, implement, and maintain an effective written conflicts of interest policy which is appropriate to the nature, scale, and complexity of the business;

(b) ensure that adequate procedures are implemented to either avoid any conflict of interest arising or, where conflicts do arise, manage or minimise them;

(c) keep records of any conflicts of interest and how they are managed;

(d) without prejudice to these Rules, the Handbook[3], the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003[4] and any other relevant legislation, not solicit, receive, or accept bribes, gifts, inducements, rewards, or advantage that are likely to conflict with the licensees' duty to any customer.

[3] Handbook on Countering Financial Crime and Terrorist Financing, Guernsey Financial Services Commission.
[4] Order in Council No.1 of 2004.

2.6 Account rules

2.6.1 Accounting records and accounting period of a licensee

(1) The accounting records must –

(a) show and explain transactions;

(b) enable financial statements to be prepared; and

(c) present, with reasonable accuracy at any time, all assets, liabilities, income, and expenditure.

(2) All licensees are required to prepare audited accounts unless they act solely as ancillary services providers under Part II of the Law.

(3) Audited accounts must –

(a) present a true and fair view of the financial position at the end of that accounting period;

(b) present a true and fair view of any profit and loss during that accounting period;

(c) be prepared in accordance with either –

(i) UK accounting standards[5];

(ii) US accounting standards[6]; or

[5] As issued by the Financial Reporting Council.

[6] As issued by the Financial Accounting Standards Board.

(iii) International Financial Reporting Standards[7]; and

(d) must be accompanied by an auditor's report prepared in accordance with the International Standards on Auditing as issued by either –

(i) the Financial Reporting Council; or

(ii) the International Auditing and Assurance Standards Board.

(4) The accounting period, of a licensee, must be set and –

(a) must not exceed 12 months, and

(b) must not be altered without prior written permission from the Commission,

apart from the first accounting period, of a newly formed licensee, which may be up to 18 months.

2.6.2 Availability of audited accounts

(1) All Part II, Part III VASP and Part IV licensees, required to produce audited accounts, must ensure that those accounts are also made available to the public on request.

[7] As issued by the International Accounting Standards Board.

2.7 Actions of auditors

(1) All licensees, required to produce audited accounts, must comply with section 57 of the Law. In particular, the Commission must be notified of the –

(a) appointment of an auditor;

(b) removal of an auditor;

(c) resignation of an auditor;

(d) signing-off of a qualified audit report.

2.8 Annual Review

(1) The Annual Review requirements, set out in section 67 of the Law –

(a) need only be undertaken by Part III VASP Licensees and such other licensees specifically directed to do so by the Commission; and

(b) must review all matters specified by the Commission.

2.9 Annual Return

(1) A licensee, at the end of the Annual Return Period, must make an Annual Return, to the Commission.

(2) The Annual Return Period must coincide with the licensee's financial year.

(3) An Annual Return must be made, to the Commission, within six calendar months of the end of the Annual Returns Period to which it relates.

(4) Annual Returns must include –

(a) either –

(i) audited accounts and an auditor's management letter and any report prepared by an internal or external auditor, an accountant, or a consultant which addresses any breakdown of, or any material weaknesses in, internal control procedures; or

(ii) where a licensee is not required to produce audited accounts, unaudited financial statements, including any notes;

(b) an up-to-date, narrative, business plan;

(c) complaints data, in a format determined by the Commission; and

(d) any other information which the Commission may, from time to time, specify.

2.10 Electronic filing

(1) Reviews and Returns filed with the Commission, under rule 2.8 and 2.9, must be submitted in such electronic format as the Commission makes available.

2.11 Record keeping

2.11.1 Records of the licensee's own business

(1) A licensee, in relation to its own business, must ensure that all appropriate records are kept up to date, complete, and accurate including but not limited to –

(a) records of all regulated agreements between the licensee and its customers;

(b) the complaints procedure and controls;

(c) records of customer communications and transactions; and

(d) records of any decisions as to the treatment of customers.

2.11.2 Data security

(1) A licensee must maintain adequate policies and procedures for the maintenance, security, privacy, and preservation of all documents and records belonging to the licensee and its customers so that they are reasonably safeguarded against loss, unauthorised access, alteration, or destruction.

(2) Any policies and procedures must conform with the Data Protection (Bailiwick of Guernsey) Law, 2017[8].

2.11.3 Retention of records

(1) A licensee must keep and preserve the following –

(a) records of its own business prepared in accordance with these Rules; and

(b) any documents relating to customers which were prepared in compliance with these Rules.

[8] No. VI of 2018.

(2) Where a licensee is aware of any matter which is subject to investigatory or disciplinary procedures, or appeals against such procedures, all documents which are, or may be, relevant to this matter must not be amended or destroyed without written consent from the Commission.

2.11.4 Outsourcing record maintenance

(1) Where the licensee outsources the maintenance of its own records, customer records, or both, the licensee must ensure it is satisfied that –

(a) the documents are kept secure and any operational risks are appropriately managed;

(b) the records are readily accessible;

(c) all regulatory and confidentiality laws and requirements are complied with; and

(d) the Commission can have access to the records at all reasonable times.

2.12 Outsourcing

2.12.1 Responsibility

(1) Subject to rule 2.12.6, a licensee may outsource functions but the board retains responsibility and accountability for the outsourced functions. Responsibilities include –

(a) the maintenance of effective oversight of the outsourced functions; and

(b) ensuring that the licensee continues to comply with these Rules and all other relevant legislation.

Guidance

For the avoidance of doubt, when a firm offers a product, activity, or service that requires a licence under the Law, outsourcing the carrying out of that activity does not remove the need for a licence.

2.12.2 Risk assessment

(1) The board of a licensee must be fully aware of and understand the risks arising from outsourcing its functions.

(2) Where outsourcing is proposed a licensee must carry out a risk assessment which includes, but is not limited to –

(a) risks associated with a breakdown in the provision of the outsourced services; and

(b) risks which could arise from the failure of the outsourced service provider.

2.12.3 Due diligence in selection of outsourced service providers and monitoring outsourced service provider's performance

(1) A licensee must –

(a) exercise due diligence, on the outsourced service provider, to ensure that it can be satisfied that the outsourced service provider has the ability and capacity to undertake the provision of the service effectively;

(b) document the capability and suitability of the proposed provider of the outsourced service; and

(c) establish clear internal responsibility for monitoring the conduct of the outsourced services and for reporting to the board.

2.12.4 Outsourcing agreements

(1) A licensee must ensure that there is a written outsourcing agreement in place for every outsourced activity.

(2) The outsourcing agreement must –

(a) have appropriate content reflecting the nature, scale, and complexity of the outsourcing arrangements; and

(b) for significant outsourcing arrangements, include a contractual requirement for the services provider to –

(i) give the Commission the right to direct access to material which it holds in relation to the business of the licensee;

(ii) maintain records as required under the relevant laws and other requirements; and

(iii) inform and obtain agreement, from the licensee, prior to sub-outsourcing any functions.

2.12.5 Contingency plan

(1) The licensee must ensure that there is, established and maintained, an appropriate contingency plan which enables alternative arrangements to be set up, with minimal disruption, in case of the failure of the outsourced service provider or any other breakdown in the provision of services.

2.12.6 Part III VASP Licensees

(1) A Part III VASP licensee must not, without the Commission's written agreement, outsource any function outside the Bailiwick.

2.13 Employee screening and training

(1) A licensee must maintain appropriate and effective procedures when hiring employees, or admitting any person as a partner, for the purpose of ensuring high standards of probity and competence. These procedures should be proportionate to the nature, risk profile, and size of the business.

(2) To ensure that individuals are of the required standard of competence and probity the licensee must, at the minimum, give consideration to the collection and confirmation of the following during the recruitment process –

(a) appropriate references;

(b) details of any regulatory action taken against the individual, in any jurisdiction;

(c) details of any action, taken against the individual, by any professional body;

(d) details of any criminal convictions, including the provision of a check of the individual's criminal record[9]; and

(e) details of employment history, qualifications, and professional memberships.

(3) A licensee must ensure that individuals receive any training which is necessary for their roles and -

(a) formulate plans for training and development; and

[9] In accordance with the Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002, Order in Council No. XIV of 2002.

(b) keep training and development plans current and relevant.

2.14 Qualifications

(1) Any person providing advice, to customers, must be suitably trained.

(2) Licensees must ensure that any individual providing advice in respect of home finance agreements or approving home finance agreements on behalf of the licensee, holds an Approved Qualification.

Guidance

Approved qualifications –
A list of appropriate qualifications can be found on the Commission's website.

Not all employees that deal directly with customers need to hold an approved qualification. This includes, for example, administrative staff.

Individuals who are currently training towards an approved qualification can provide advice provided they are properly supervised by someone who is fully qualified.

PART 3 **CONDUCT OF BUSINESS**

3.1 General conduct

(1) A licensee must observe the Principles, set out at Schedule 1, when carrying on its regulated business.

(2) A licensee must not attempt to avoid or contract out of its responsibilities set out in these Rules.

(3) All licensees must –

(a) establish and maintain policies, procedures, and controls to monitor and ensure there are always the requisite capacity and resources to provide the services agreed with its customers;

(b) ensure that all decisions taken, or transactions entered into, by or on behalf of the customers, are actioned in a timely manner and appropriately authorised and handled by persons with an appropriate level of knowledge, experience, and status. This includes the establishment, transfer, or closing of business relationships; and

(c) maintain confidentiality except where disclosure of information is –

(i) required or permitted by an applicable law; or

(ii) authorised by the person to whom the duty of confidentiality is owed.

(4) Subject to the terms of the agreement, and any applicable legislation, a licensee must promptly provide customers with information to which they are entitled or, if this is not possible, explain why such information cannot be provided.

3.2 Customer relations

3.2.1 Customer agreements

(1) A licensee must inform any person with whom it proposes to enter into an agreement in respect of the provision of regulated activities, in writing, of its terms of business and must retain a record of that person's agreement to those terms.

Guidance

Licensees are obliged to treat customers fairly. While the primary responsibility for ensuring that any credit arrangement is suitable for customers rests with the credit provider entering into the agreement, ancillary service providers (brokers) should be transparent in their advice.
Where they provide credit in addition to advising customers or acting as a broker, they are expected to disclose this information, to advise whether they are acting in their capacity as a broker or lender and where there is a potential conflict of interest. In treating customers fairly it is expected that advice should be impartial and should not, for example, favour "own brand" offerings over those from other providers which are more suitable or are cheaper overall for the customer concerned.

(2) The agreement shall include, but is not limited to –

(a) a clear description of the services to be provided;

(b) the fees, including exit fees, to be charged – setting out the nature and scale of the fees and the basis of the calculation of those fees;

(c) the means by which complaints can be made;

(d) details of the licensee's complaints resolution procedures including, where applicable, contact details for the Channel Islands Financial Ombudsman ("CIFO") and a statement that the CIFO may be available to consider complaints which are not resolved through the licensee's complaints resolution procedure;

(e) a record of any provision for the termination of the agreement and the consequences of the termination; and

(f) a statement that the licensee is licensed by the Commission.

(3) A licensee must not recommend a service to a customer, or encourage a customer to enter into an agreement, unless it has taken reasonable steps to make them aware of the risks involved and any conflicts of interest.

3.2.2 Commissions and disclosures

(1) The sub-rule only applies to Part II licensees.

(2) Licensees must disclose the existence and nature of any commission, fee, or other payment made by them, or received by them, in the process of effecting a regulated agreement.

(3) Disclosure must be prominent and clear and made prior to the customer entering into any regulated agreement.

(4) Arrangements facilitating commission payments, used by licensees, must not permit the payment of additional commission as a result of the increase of charges applied to the customer.

(5) Payments of commission based on the difference in charges ("DIC") methodology are not permitted.

(6) Ancillary service providers must disclose, to customers on request, all fees and commissions received for arranging the regulated agreement on behalf of a lender.

(7) Mortgage advisors, mortgage brokers, and ancillary service providers relating to home finance agreements must disclose all fees and commissions before the customer enters into the agreement.

3.2.3 Suitability

(1) This sub-rule only applies to Part II licensees.

(2) A licensee, at the outset of its provision of services to a customer, must ensure that it has obtained sufficient information, from that customer, to ensure that any service provided is suitable to the requirements, needs, position and circumstances of the customer.

(3) When recommending a product, or arranging or effecting an agreement, a licensee must consider –

(a) the information received, from the customer, with regard to their circumstances;

(b) the terms of any proposed agreement;

(c) whether the agreement is suitable to the requirements of the customer;

(d) the creditworthiness of the customer, including whether the agreement is affordable; and

(e) any other relevant facts, about the customer, of which the licensee is, or reasonably should be, aware.

(4) Licensees must take a proportional approach to assessing the creditworthiness of a customer, bearing in mind –

(a) the value of the credit;

(b) the nature of any security; and

(c) the circumstances of the customer.

(5) A licensee must have a written procedure in place detailing how a customer's creditworthiness is assessed, including –

(a) the customer's ability to meet the payments as they fall due;

(b) whether the payments are affordable for the customer;

(c) whether the customer will be able to meet the payments, and whether they will remain affordable, as a consequence of interest rate rises; and

(d) where appropriate, whether the customer will be able to meet the payments, and whether they will remain affordable, should the customer's circumstances change.

(6) A licensee must take reasonable steps not to recommend or effect an agreement if it is not suitable or affordable.

(7) Where a customer is a High Net Worth Individual, (1)-(5) do not apply.

Guidance
Affordability
Affordability is a well understood concern for retail lending but the precise understanding of the definition varies for different providers. In the Commission's view it is an essential part of the assessment of customer creditworthiness.
It is intended that considerations of affordability should be appropriate and proportionate to the circumstance of the credit being provided and the circumstances of the customer – it is not a prescriptive or "one size fits all" approach.
Credit providers should take steps to understand the circumstances of their customers. For customers in more secure longer-term employment, and for smaller value purchases, the consideration may be less onerous. Increased scrutiny of affordability may be needed for larger value purchases, where the customer has a imperfect credit record, or where they are employed on a casual basis. In such circumstances it may be appropriate to consider whether the customer would be able to afford repayments in the event of a change in circumstances.
Subrule 3.3.3 applies to credit providers even when the customer comes through a broker or other intermediary.

3.2.4 Vulnerable customers

(1) This sub-rule only applies to Part II licensees.

(2) Licensees must ensure that this rule is applied to any guarantors as well as borrowers.

(3) When recommending a product, or arranging or effecting an agreement, a licensee must consider whether the customer –

(a) presents any indications of vulnerability;

(b) is over 75 years of age; or

(c) requires any additional care or assistance.

(4) A licensee must have a written procedure in place detailing how vulnerability is assessed.

(5) Licensees must take extra care when dealing with vulnerable customers and those over the age of 75 and must consider –

(a) the availability and accessibility of products;

(b) whether they require additional assistance to understand the agreement; or

(c) whether forbearance may be appropriate.

Guidance

Vulnerability and vulnerable customers

The fact that a customer is vulnerable should not prevent them from accessing financial services or licensees dealing with them or providing them with services. Licensees should not automatically reject applications for services because a customer is vulnerable and should take steps to accommodate their needs.

Vulnerability includes many factors. Anything which results in difficulty in accessing and understanding information can be seen as vulnerability – e.g. frailty or mobility issues (whatever the cause), impaired vision, impaired hearing, difficulties understanding English, life events or mental health issues.

Firms should accommodate vulnerable customers by providing information in a form which is accessible to their customers and should consider, among other things –

- ensuring that more time is available for discussions;
- information is made available in large prints, or other formats;
- meeting in locations that are accessible; and
- allowing family and friends to assist.

Firms own guidance on vulnerability should consider the indicators of vulnerability and how they can provide suitable assistance to vulnerable customers.

3.2.5 Customers experiencing payment difficulties

(1) This sub-rule only applies to Part II licensees.

(2) Where appropriate, licensees must ensure that this rule is applied to guarantors as well as borrowers.

(3) A licensee must have a written procedure in place detailing their approach to dealing with customers experiencing payment difficulties. When dealing with vulnerable customers experiencing difficulties, additional consideration must be given to forbearance.

(4) When dealing with customers experiencing repayment difficulties, licensees must give due consideration to applying some form of forbearance, including, but not limited to –

(a) repayment holidays;

(b) temporarily halting charges;

(c) restructuring repayment schedules.

(5) Where a customer is a High Net Worth Individual, (1)-(4) do not apply.

3.2.6 Periodic information and closing statements

(1) This sub-rule only applies to Part II licensees.

(2) Licensees that are credit providers must provide customers who have a regulated agreement, at least annually, with a report showing –

(a) interest charged;

(b) payments made;

(c) the outstanding principal of loan remaining; and

when no further sums are due, send the customer a closing statement confirming the loan is fully repaid.

Guidance

Where appropriate, licensees should provide the report more frequently including, but not limited to, when the regulated agreement has a duration of 12 months or less.

3.3 Complaints

(1) A licensee must –

(a) have and comply with a written procedure for the effective consideration and fair, proper, and timely handling of complaints;

(b) maintain a log of all complaints and their current status;

(c) as appropriate, explain the complaints handling process to customers;

(d) keep the complainant informed about the progress of the complaint including details of any actions being taken to resolve the complaint, except where this conflicts with or is prohibited under another law;

(e) inform the complainant that, in cases of significant complaints or where a complaint remains unresolved for longer than three months, the licensee is under an obligation to inform the Commission of the complaint;

(f) on agreement with the complainant, ensure that the matter is settled as soon as possible;

(g) where the complaint is not upheld, clearly state the reason for rejecting the complaint and inform the complainant of their right to refer the complaint to the CIFO; and

(h) advise the complainant when the complaint is considered closed.

(2) Where the status of the complaint is closed, the licensee should ensure that the following information is retained -

(a) the nature of the complaint;

(b) the reason for the closure of the complaint; and

(c) where applicable, details of any agreed compensation.

3.4 Customer money

3.4.1 Application

(1) This rule applies to all licensees holding customer money.

3.4.2 Customer money

(1) Customer money must be held separately, from the licensee's own money, in one or more dedicated customer money bank accounts.

(2) Customer money may be held in a different currency to that in which it was received.

3.4.3 Customer money bank accounts

(1) All customer money, received by the licensee, and all money payable to the licensee which becomes customer money, must be held in a customer money bank account with an approved bank.

(2) When a licensee opens a customer money bank account it must give written notice, to the bank, requiring the bank's written acknowledgment that –

(a) all money standing to the credit of that account is held by the licensee as trustee and that the bank is not entitled to combine the account with that of any other account, or to exercise any right of set-off or counter-claim against money in that account, in respect to any sum owed to it on any other account of the licensee;

(b) interest earned on the account will be credited to the account or to an account of the same type; and

(c) the title of the account sufficiently distinguishes the account from any other account containing money that belongs to the licensee and is in the form requested by the licensee,

unless the bank provides this automatically.

(3) If, where a customer money bank account is held with an approved bank outside Guernsey, the bank declines to provide the acknowledgment in subsection (2), or if the licensee has any other ground for believing that customer money will not be protected as effectively as it would be if held in a customer money bank account in Guernsey, the licensee must not pay or transfer customer money into that account.

(4) Customer money held, or received, by a licensee must either be paid into a customer money bank account, or to the customer, as soon as possible and not later than the next business day.

(5) Money held, or received, by a licensee, in the form of a cheque, draft, or electronic transfer, drawn down in favour of the licensee, which includes customer money, must be paid into a customer money bank account unless it represents money payable to one customer only in which case it may be endorsed over, or paid to, the customer concerned or dealt with as the customer instructs.

(6) Money received, which is not customer money, must be paid out of the customer money bank account no later than one business day after the day on which the money has been cleared.

(7) Subsection (6) does not apply to amounts of less than £100.

3.4.4 Payments from customer money bank accounts

(1) Money ceases to be customer money if it is paid –

(a) to the customer;

(b) into a bank account in the name of the customer, not being an account which is also in the name of the licensee; or

(c) to the licensee itself, where it is due and payable to the licensee.

(2) The following items may be withdrawn from a customer money bank account –

(a) money, which is not customer money, paid into the account for the purposes of opening or maintaining the account;

(b) money paid into the account in contravention of these Rules;

(c) money properly required for payment to or on behalf of a customer;

(d) money properly required for, or towards, payment of fees or commissions payable to the licensee and specified in a statement delivered to the customer showing how those fees and commissions have been calculated;

(e) money drawn on a customer's authority or in conformity with any agreement between the licensee and the customer;

(f) money which may be properly transferred into another customer money bank account;

(g) if a cheque is paid into a customer money bank account and that cheque includes money which is not customer money, that money must be withdrawn from the account; and

(h) interest, provided the licensee has written consent from the customer to retain any interest accruing on customer money.

(3) Money must not be withdrawn from a customer money bank account for, or towards, payment of fees or commissions payable to the licensee unless the basis of calculation of those fees or commissions have been disclosed, in writing, and agreed by the customer.

(4) Where a licensee draws a cheque, or other payable order, the money does not cease to be customer money until the cheque, or order, is dispatched.

(5) Where a licensee makes a payment to a customer, from an account other than a customer money bank account, the sum of money in the customer money bank account, equivalent to the amount of that payment, will not become due and payable, to the licensee, until the customer, or other party, has received that payment in cleared funds.

(6) Where a licensee has contracted to rebate commission to a customer, the amount becomes customer money when it becomes payable and must be settled within the timeframe agreed.

(7) No money, other than money required to be paid under these Rules, must be paid into such an account unless the money is the licensee's own money and it is –

(a) required to be paid for the purpose of opening or maintaining the account and the amount is the minimum amount required for the purpose; or

(b) paid to restore, in whole or in part, any money paid out of the account in contravention of these Rules, or to restore the account out of an overdraft position.

3.4.5 Operation of customer money bank accounts

(1) A licensee must maintain records sufficient to demonstrate compliance with this section.

(2) A licensee must, at least once a month, reconcile the balance on each customer money bank account, as recorded by the licensee, with the balance on that account as set out in the statement issued by the bank.

(3) The customer money bank account must not become overdrawn and there must not be a shortfall in customer money upon reconciliation with the statement issued by the bank.

(4) In the event of a breach, the licensee must, immediately, restore the account and remedy any shortfall.

3.5 Annual Percentage Rate ("APR") and total charge for credit – Regulated credit agreements

3.5.1 Application

(1) This rule applies to regulated agreements.

3.5.2 Total charge in relation to consumer credit agreements

(1) The total charge for credit under an agreed, or prospective, consumer credit agreement is the total cost of the credit, to the customer, determined in accordance with the requirements of subsections (2) to (5).

(2) Subject to (3), the following costs must be included in the total cost of credit to the customer –

(a) any fee or charge payable, by the customer, to any intermediary, in connection with the agreement;

(b) the costs of maintaining an account recording both payment transactions and drawdowns;

(c) the costs of using a means of payment for both payment transactions and drawdowns;

(d) other costs relating to payment transactions.

(3) The costs at (2) must not be included in the total cost of credit to the customer where –

(a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the regulated credit agreement or in any other agreement made with the customer; and

(b) in the case of an overdraft facility, the costs do not relate to that facility.

(4) Costs, in respect of ancillary services, must be included in the total cost of credit to the customer if the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(5) The total cost of credit must not include –

(a) any charges payable by or on behalf of the customer for non-compliance with their commitments contained in the regulated agreement; or

(b) charges which, for the purchases of goods or services, the customer is obliged to pay whether the transaction is effected in cash or credit.

(6) The total cost of credit must not take account of any discount, reward (including cash-back), or other benefit to which the customer might be entitled, whether such an entitlement is subject to conditions or otherwise.

(7) All intermediaries and ancillary service providers must disclose their fee to the credit provider.

(8) Credit providers must take reasonable steps to ascertain whether a fee is payable to the ancillary service provider and intermediary and, if so, the amount of the fee.

Guidance

In this rule 'intermediary' includes, but is not limited to, credit brokers and introducers.

An ancillary service is a service that relates to the provision of credit and includes, in particular, an insurance or payment protection policy.

The total cost of credit includes all fees or charges payable, by the customer, to any intermediary, if the fee or charge is known to the credit provider. Credit providers should ensure that intermediaries inform them of any charges made, to customers, in connection with the provision of a credit agreement.

The Commission would expect that any fees payable, to the credit broker, are clearly set out in any contractual agreement between the credit provider and the credit broker.

3.5.3 Total charge for home finance agreements

(1) The total charge for credit under an agreed, or prospective, home finance agreement must be calculated following the method set out at Schedule 2.

3.5.4 Calculation of the APR

(1) The APR must be calculated in accordance with the formula set out at Schedule 2.

3.6 Business transfer

(1) A licensee must obtain the prior written consent, of the Commission, in respect of any transfer of a block of business, for which they require a licence under the Law, to or from the licensee where such transfer will occur at the licensee's instigation or with their agreement.

Guidance

For the avoidance of doubt, a person acquiring a block of business for which a licence is required will require a licence or exemption under the Law.

3.7 Promotion and Advertising

3.7.1 Application and responsibility

(1) Rule 3.7 applies to all promotional material and advertising regardless of how it is published and includes information published online, via electronic media and on social media.

(2) Rule 3.7 applies to any promotion of, or on behalf of, the licensee by social media influencers, paid or otherwise.

(3) The licensee is, at all times, responsible for all financial promotions and advertisements, that relate to their products and services, whether published or issued directly by the licensee or by others.

3.7.2 Issue of materials

(1) The licensee must ensure that any materials issued –

(a) are clearly identifiable as advertisements;

(b) are clear, fair, and not misleading;

(c) do not contain any statement, promise, or forecast which is untrue;

(d) are not designed in such a way as to distort or conceal any relevant subject material;

(e) do not employ phrases such as "tax-free" or "tax-paid" without making it clear which taxes are being referred to;

(f) not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance; and

(g) are not likely to be misunderstood.

(2) A licensee must take all reasonable steps to ensure that advertisements and communications do not violate the laws of the Bailiwick of Guernsey and, if advertising outside the Bailiwick, the legislation in force in that jurisdiction.

(3) The regulatory status of the licensee is to be included in all communications, in relation to regulated activities, and it is not to be used in a way which is misleading.

(4) A licensee should not signify in any way that an advertisement or promotional material is approved by the Commission.

Guidance

Licensee should have regard to the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (the "CAP Code"), as issued by the Advertising Standards Authority.

3.7.3 Specific requirements of Part II Licensees

(1) If an advertisement or promotion includes the cost of credit, or indicative repayment values, it must include total cost of credit and the structure and value of all repayments.

(2) If a licensee includes indicative interest rates in an advertisement or promotion it must be an APR calculated in accordance with Schedule 3.

(3) Where an indicative or example APR is used, there must be an accompanying example and explanation showing that the actual rate may be different.

(4) Any indicative rates used must be available to customers and fairly represent an APR that is readily obtainable.

3.7.4 Virtual asset advertisements

(1) A person intending to advertise virtual assets or virtual asset services in the Bailiwick, who does not hold a Part III VASP licence, must obtain prior written approval from the Commission, and must abide by any conditions set out in that approval.

Guidance

Guidance for Part II Licensees

In order to ensure that they treat customers fairly, licensees should follow the principle that promotions and advertising should be fair, transparent, and honest. They should include sufficient information for customers to understand the cost of credit provided, and to make clear the likely total cost of credit for a customer who takes up the credit arrangements on offer.

PART 4 **PRUDENTIAL**

4.1 Insurance

4.1.1 Application and general requirements

(1) This rule only applies to home finance brokers and lenders.

(2) In addition to requirements under the minimum criteria for licensing, a licensee must always maintain insurance cover which is commensurate with the size and nature of its business activities. Cover must include professional indemnity insurance ("PII") and insurance against employee dishonesty or fraud.

4.1.2 Minimum requirement

(1) A licensee must maintain the minimum cover as set out in (2). The board is responsible for ensuring that the insurance arrangements for the licensee are adequate. Where the licensee concludes that the amount of insurance required, for the size and nature of the business, is greater than the maximum amount set out in (2)(b) then the amount of cover the licensee is required to maintain is the higher amount.

(2) Subject to (3), every licensee must maintain professional indemnity insurance, and employee dishonesty or fraud insurance, with the following minimum limits –

(a) on the basis of each and every loss, cover of at least £1,000,000; and

(b) on an annual basis, £1,000,000, or three times income from regulated activities, whichever is greater.

(3) Where the licensee also carries out unregulated activities, the licensee must consider whether the minimum indemnity limit of its insurance policies, and the scope of the insurance cover, are appropriate and sufficient for its business as a whole, taking into account possible claims that may also arise from the unregulated business.

(4) Notwithstanding (3), a licensee is not required to have aggregate insurance cover exceeding £10,000,000, provided that the board of the licensee has considered and decided that such level of cover is appropriate and sufficient for its business. The licensee must be able to evidence the board's assessment if requested by the Commission.

(5) A licensee must always maintain cover for –

(a) negligence, errors, or omissions by the licensee or its employees;

(b) any liability for the dishonest or fraudulent acts of employees which may fall on licensees;

(c) liabilities of its employees who, in the course of their duties to the licensee, perform functions in their own names;

(d) liabilities which the licensee might incur, in any jurisdiction, in which it should reasonably foresee that it may be held liable for damages and costs;

(e) where relevant, ombudsman awards; and

(f) legal defence costs.

(6) This rule applies to all licensees from the date on which the licence was issued by the Commission.

4.2 Financial resources

4.2.1 Application

(1) This Rule does not apply to licensees who hold a licence issued under –

(a) The Banking Supervision (Bailiwick of Guernsey) Law, 2020; or

(b) The Insurance Business (Bailiwick of Guernsey) Law, 2002

unless those licensees also hold a Part III VASP licence under the Law.

4.2.2 Requirements

(1) Subject to (2), licensees must ensure that –

(a) sufficient liquid assets are always held in reserve in order to allow for an orderly wind-down over a three-month period;

(b) the level of these assets is monitored and checked on a quarterly basis, at least; and

(c) the Commission is notified, immediately, where it is found that there are no longer sufficient assets to comply with this rule and the steps which are being taken to rectify this.

(2) Liquid assets of a licensee are calculated as the sum of –

(a) current assets after the deduction of any illiquid assets;

(b) deduction of current liabilities; and

(c) adjustments to allow for qualifying items.

Guidance Note:

Illiquid Assets

Examples of current assets which are considered illiquid are included in the list below. The list is not exhaustive and therefore a licensee must exercise appropriate judgement when making the adjustment to ensure that assets which could be considered illiquid within a 90-day period are excluded in order to achieve the objective of the liquidity requirements.

1. Debtors which exceed 90 days from the invoice date.
2. Work In Progress which is not receivable within 90 days of the date of the calculation.
3. Any prepayments which relate to goods or services to be received or performed after 90 days of the date of the calculation.
4. Restricted cash and restricted cash equivalents.
5. Amounts due from related parties.

    5.1 All amounts due from related parties are considered illiquid unless they are in the normal course of business and the outstanding balances are settled within 90 days. A loan to a related party is not typically considered liquid, even if it could be recovered within 90 days, as this would not be in the normal course of business; and

    5.2 Amounts due from related parties cannot be netted-off against amounts due to related parties unless there is a legally enforceable netting agreement in place.

6. Any other items permitted by the Commission.

Qualifying Items

The following list contains items which may be used to adjust the liquid assets when calculating the liquidity requirement.

1. Deferred income – Where a licensee has received income which is billed in advance of it providing the services.
2. Any other items permitted by the Commission.

(3) VASPs must meet the individual requirements set by the Commission.

PART 5 **COOPERATION WITH THE COMMISSION**

5.1 General provision

(1) A licensee must deal openly and honestly with, and cooperate with, the Commission and any other regulatory authorities to whose supervision they are subject.

5.2 Notification by a licensee

(1) A licensee must notify the Commission in writing as soon as is practicable but, in any case, within 14 days of becoming aware of any of the following –

(a) any significant changes to the information submitted as part of an application for a licence;

(b) any matter that might reasonably be expected to affect its ability to –

(i) fulfil the minimum criteria for licensing;

(ii) undertake its regulated activities; or

(iii) comply with the Rules;

(c) the refusal to grant any application made, either by the licensee, or any holding company, or subsidiary, for authorisation to carry on any financial services business in any jurisdiction;

(d) the revocation, or the attachment of any condition, restriction, or variation to an authorisation for the licensee, its holding company, or subsidiary, to carry on any financial services business in any jurisdiction;

(e) the commencement of proceedings against a licensee, its holding company, or subsidiary, in any jurisdiction;

(f) the appointment of anyone acting under any regulatory authority to investigate the affairs of the licensee, its holding company, or subsidiary;

(g) the imposition of disciplinary measures, or sanctions, against the licensee, its holding company, or subsidiary, by any regulatory authority;

(h) the conviction of the licensee, its holding company, or subsidiary, or any personnel, of any offence, under any jurisdiction, relating to financial services, companies, or insolvency laws where such offences involve fraud, dishonesty, money laundering, or tax evasion;

(i) with regard to outsourcing –

(i) any significant outsourcing arrangements entered into;

(ii) any material changes to significant outsourcing arrangements; and

(iii) where there is a failure of an outsourced service provider, or other breakdown in the provision of outsourced services, which causes significant disruption to the licensee's business;

(j) with regard to PII –

(i) when a notification under a PII policy is made to its insurer; or

(ii) if there is any payment made, by the insurers, under the PII cover;

(k) with regard to complaints –

(i) of any significant complaint made against the licensee;

(ii) when the licensee has been unable to resolve a complaint within three months of the date of the initial receipt of the complaint; or

(iii) when a complaint is upheld by the CIFO;

(l) the imposition of a sanction against the licensee following a breach determination by the Data Protection Authority; and

(m) a winding up event, as defined in the Enforcement Powers Law, in respect of licensees, their holding companies, or their subsidiaries.

(2) Notifications made under subrules 5.2(1)(m), relating directly to the licensee, must be followed by a cessation of business plan setting out arrangements that the licensee proposes to put in place in relation to its customers.

PART 6 CONSUMER PROTECTION AND UNFAIR AGREEMENT TERMS

6.1 Application

(1) Part 6 applies to all regulated agreements between customers and credit providers and all agreements to provide ancillary services in connection with regulated agreements.

6.2 Unfair agreement terms

(1) A term, within an agreement covered by this Part, will be unfair if, contrary to the requirements of good faith, it causes significant imbalance in the parties' rights and obligations, to the detriment of the customer.

(2) The following terms will be considered unfair and must not be used in agreements covered by this Part: –

(a) terms which exclude or restrict a business' liability arising from a breach of customer rights provided by law;

(b) terms which relieve a business from providing services with reasonable skill and care; and

(c) terms that the Commission deems to be unfair.

(3) Where an agreement, covered by this Part, includes any terms which would be considered to be unfair under subsection 2, then those clauses, containing the unfair terms, will be unenforceable.

(4) Licensees must not enforce unfair terms.

(5) Customers must be provided with redress in cases where unfair terms have been enforced and must be returned to the position they would have been in had the unfair terms been voided.

(6) The Commission retains discretion as to which terms it deems to be unfair. Terms which, in most circumstances, would be considered unfair are set out at Schedule 4.

Guidance

In considering unfair contract terms, the Commission will apply tests of fairness and transparency.

Fairness Test

This takes account of the subject matter of the agreement, all the circumstances existing when the term was agreed, and all the other terms of the agreement or any other relevant agreement. The test is concerned with the effect that the terms can have and not just the intentions behind them.

There are three elements to the Fairness Test: Significant Imbalance, Customer Detriment, and Good Faith.

- Significant Imbalance – is concerned with the parties' rights and obligations under the agreement. A term is unfair if it is so weighted in favour of the business that it tilts the rights and obligations significantly in its favour (for instance, by imposing a disadvantageous burden on the customer).

  This is not restricted to cases in which a purely financial burden, or cost, is imposed on the customer; the focus should be upon the customer's legal rights and obligations generally.

  A contract may be considered balanced if both parties enjoy rights of equal extent and value, taking into account the nature of the agreement.
- Customer Detriment – A finding of unfairness does not require proof that a term has already caused actual harm. The fairness assessment is concerned with rights and duties and its focus is on potential, not actual, outcomes.
- Good Faith – relates to the substance of terms as well as the way they are expressed. It is based on the general principle of 'fair and open dealing', where terms are expressed fully, clearly, and legibly, and with due respect for the customer's interests.

Transparency

This assessment relates to how an agreement is expressed. Agreements, made with customers, should be expressed in plain, understandable language, and be legible. Licensees should aim to put customers into a position where they can make a balanced and informed decision whether or not to enter into an agreement.

PART 7 **PART II LICENCES**

7.1 Requirement for multiple licences

(1) Subject to the provisions in subsection (2), holders of licences under any of the regulatory Laws who also carry on activities regulated under Part II of the Law must hold a Part II Licence.

(2) Holders of licences, under Part II of the Law, are not required to hold Part III FFB licences.

7.2 General Obligations

(1) All Part II Licence holders must fulfil the minimum criteria for licensing as set out at Schedule 4 to the Law.

(2) All Part II Licence holders must treat their customers fairly and follow the Principles of Conduct of Finance Business, as set out at Schedule 1.

7.3 Equivalence

(1) Any business regulated in another jurisdiction, to undertake activities which would, if they were undertaken in the Bailiwick, require a Part II Licence to be held, will be exempt from the requirement to hold a Part II Licence where the business –

(a) is regulated in a jurisdiction set out in The Lending, Credit and Finance (Designated Jurisdiction and Fees) Regulations, 2023, for those relevant activities; and

(b) has notified the Commission that it intends to carry out regulated activities within the Bailiwick.

7.4 Applications and regulated activities

(1) Applications for licences must specify the regulated activities which the applicant intends to engage in.

(2) Licensees must not engage in any regulated activities outside of those declared on the original licence application without the prior, written, approval of the Commission.

7.5 Appointed retailers and appointed motor traders

(1) Appointed retailers and appointed motor traders must be subject to a formal, written, contract of engagement between the licensee and the appointed retailer or appointed motor trader.

(2) The conduct of the appointed retailer or appointed motor trader is the responsibility of the licensee, and the licensee must –

(a) ensure the appointed retailer or appointed motor trader is aware of and acts in compliance with these Rules;

(b) provide appropriate training, with respect to the provision of its services, to the appointed retailer or appointed motor trader and relevant employees, including, but not limited to –

(i) dealing with credit applications; and

(ii) recognising vulnerable customers.

Guidance

Appointed retailers and appointed motor traders
Appointed retailers and motor traders may offer and promote third party credit from a provider. Firms carrying out these activities, but not meeting the requirements for being appointed retailers or motor traders (e.g. they do not have a written agreement with a third party lender) may be considered to be credit providers, in their own right, or providers of services ancillary to the provision of credit, and will require their own licence under Part II of the Law.
While appointed retailers and motor traders are not licensed and are not directly accountable for compliance with the Rules, in respect of any regulated activity carried on by a third-party lender, the Commission may wish to visit them to understand how responsibilities are managed by the licensed credit provider.

7.6 Early repayment

(1) Licensees must allow customers to make full early repayment of the principal of the credit provided under a regulated agreement.

(2) The maximum early repayment fee, that licensees can charge, must be calculated in accordance with the requirements set out in Schedule 3.

(3) The same limits apply where the licensee accepts a partial early repayment.

7.7 Information to customers

(1) In addition to the requirements set out at rule 3.2.1, licensees must ensure that the following information is provided to customers, in writing, before entering into a regulated agreement –

(a) the interest payable, including the APR;

(b) the total cost of the credit;

(c) the repayment schedule, including the value and timing of all repayments;

(d) details of the cooling-off period, or period of reflection; and

(e) the arrangements for early repayment, including any fees or charges for early repayment.

7.8 Cooling-off period

7.8.1 Application

(1) This Rule does not apply to customers who are classified as High Net Worth Individuals.

7.8.2 Regulated agreements, excluding home finance agreements

(1) For regulated agreements which are not home finance agreements, licensees must allow customers a cooling-off period of no less than two weeks from the date on which the agreement is entered into.

(2) During the cooling-off period licensees must allow customers to cancel the regulated agreement, subject to the customer returning any credit provided, or, if the customer has already received goods or services as part of the regulated agreement, repaying the outstanding principle.

(3) Licensees must allow customers a reasonable amount of time to return any credit provided or to repay any outstanding principle.

(4) Licensees must not impose additional charges or fees when the customer decides to cancel the regulated agreement before the loan is drawn down or any goods, or services, are provided.

(5) Any fee charged in relation to the cancellation of a regulated agreement, during the cooling-off period, must be based on the costs to the licensee and not a percentage of the value of credit.

7.8.3 Home finance agreements

(1) For home finance agreements, licensees must allow customers a period of reflection of not less than seven days from the date the licensee makes a final and unconditional offer of credit.

(2) During the period of reflection licensees must not withdraw or amend the offer.

(3) During the period of reflection licensees must not actively pursue or pressure the customer into accepting the offer of credit.

(4) When a property transaction, associated with a home finance agreement, does not proceed, licensees must allow the customer to return any drawn down funds and cancel the agreement. In these circumstances, the licensee must not charge any additional fees.

7.9 Maximum cost of credit

(1) For regulated agreements that are not home finance agreements, the total cost of credit must not exceed 100% of the principal value of the credit provided.

7.10 Treatment of surplus following default

(1) When a licensee takes possession of assets provided as security, as a result of a borrower defaulting on their obligations under a regulated agreement, whether via *saisie* proceedings or otherwise, any surplus realised from the sale of those assets must be returned to the borrower.

(2) When a licensee sells assets, as a result of a default on a regulated agreement, they must do so on an arms-length basis and take reasonable steps to realise a market value for those assets.

(3) In this rule, "surplus" refers to the amount left over, from the sale of the assets, following the settlement of the amount outstanding on the regulated agreement and the licensee's reasonable expenses generated in the course of realising the security assets and any other amount payable by the licensee to other creditors of the borrower in accordance with the *saisie* process.

7.11 Appointed Service Providers

(1) When a licensee is an Appointed Service Provider ("ASP"), to an exempt private lender, they must –

(a) have a written agreement in place for each private lender they represent;

(b) ensure that each private lender complies with –

(i) all rules relating to regulated agreements;

(ii) the Handbook; and

(iii) any conditions, on the exemption, issued by the Commission;

(c) report, to the Commission on an annual basis, on the activities of the private lenders they represent; and

(d) notify the Commission of any significant changes in circumstances of the private lenders they represent.

7.12 Restrictions on further credit

(1) Licensees must not restrict customers from taking further loans with other credit providers.

PART 8 PROVISION OF ANCILLARY SERVICES UNDER PART II LICENCES

8.1 General obligations

(1) All ancillary service providers must fulfil the minimum criteria for licensing set out at Schedule 4 of the Law.

(2) All ancillary services providers must treat their customers fairly and follow the Principles of Conduct of Finance Business set out at Schedule 1.

(3) Ancillary service providers must disclose any links they have with specific lenders to the customer.

(4) Where a licensee is both a provider of ancillary services and a credit provider it must make clear, to each customer, the capacity in which it is acting with respect to that customers credit arrangements.

Guidance

These general obligations apply irrespective of whether firms charge customers for their services directly or are remunerated by the lender through commission or any other arrangement.

Links which must be disclosed to the customer include, for example, where the service provider is part of the same group as the credit provider or has exclusive or preferential arrangements in place with the credit provider.

8.2 Provision of advice

(1) Ancillary service providers must have due regard for the circumstances of the customer when providing information or offering advice on credit agreements, re-negotiations on such agreements, and debt administration.

(2) Where an ancillary service provider searches the market for suitable credit services, on behalf of a customer, it must disclose the extent of this search to the customer.

(3) An ancillary service provider which arranges credit with a limited number of credit providers must disclose the extent of this limitation to the customer and provide a list of the firms which it utilises.

Guidance

Having due regard to the customers circumstances includes, but is not limited to, whether the product is affordable for the customer and whether there are any factors which the licensee knows, or reasonably ought to know, would make the product unsuitable for the customer.

Where an ancillary services provider uses a preferred list of credit providers, this list should be disclosed to the customer.

Providers should not purport to offer the best available products, or to search the market, when they do not do so. This may deter the customer from shopping around themselves and, potentially, identifying more suitable or better value products.

8.3 Debt administration

(1) A Part II Licence must be held where debt administration activities have an effect on the terms and conditions of credit provision.

(2) Debt administrators, requiring a Part II Licence, must follow the rules which apply to the provision of regulated agreements.

(3) Debt administrators, providing the restructuring of home finance, must hold relevant qualifications in accordance with rule 2.14.

Guidance

Debt administration is a broad term and debt administration activities may be carried out by various ancillary service providers, as well as specialist debt counselling and debt administration service providers.

As a guide, it often involves the renegotiation, or replacement, of existing credit agreements with new, or consolidated, arrangements.

Examples of relevant effects on the terms and conditions of credit provision include, but are not limited to, restructuring, or extending debt payments.

Charities providing debt advice and counselling services do not require a Part II licence.

PART 9 **PART III FINANCIAL FIRM BUSINESS LICENCES**

9.1 Requirement for multiple licences

(1) Holders of licences, under any of the regulatory Laws, are not required to hold Part III Financial Firm Business ("FFB") Licences.

Guidance

Where a regulated business is exempt from the requirement for licensing but carries out an activity listed under Part A of Schedule 1 to the Law, they will be expected to follow the relevant rules made as amendments across the Commission's regulatory rules.
Currently, there are no additional Rules made under this Part.

PART 10 **PART III VASP LICENCES**

10.1 Requirements for multiple licences

(1) Holders of licences, issued under any of the regulatory Laws, who carry on activities regulated under Part III VASPs, must hold a Part III VASP Licence.

10.2 Applications and regulated activities

(1) Part III VASP licensees are only permitted to provide VASP services to institutional and wholesale counterparties.

Guidance

While Part III VASP licensees may not deal directly with individuals, they may provide products and services that are intended for use by individuals, on the condition that such products and services are provided through a properly regulated intermediary.

Part III VASP licensees will be required to seek the Commission's written 'no objection' before appointing an intermediary to distribute their products or services.

Part III VASPs must not offer products or services that are targeted at retail customers, even through an intermediary.

(2) Part III VASP licensees are prohibited from dealing in, trading in, or offering –

(a) virtual assets, or virtual asset services, which aim to obscure the parties to the transaction; or

(b) virtual assets, or virtual asset services, which aim to obscure the flow of the assets.

(3) Applications for licences must specify the VASP activities which the applicant intends to engage in.

(4) Licensees must not engage in any VASP activities not specified on the original licence application, without the prior, written, approval of the Commission.

(5) Part III VASP Licensees must only undertake the regulated activities permitted in accordance with their licence.

Guidance

Definition of virtual assets and virtual asset service providers

The Law defines virtual assets and the activities that constitute being a virtual asset service provider when offered, or carried out, by way of business. These definitions should be interpreted broadly.

The definition of 'virtual assets' ("VAs") states that it does not include –

> "…digital representations of –
>
> (a) fiat currencies, or
>
> (b) general securities and derivatives within the meaning of category 2 in Schedule 1 to the Protection of Investors Law and other financial assets."

Digital representations of fiat currency and general securities or derivatives is intended to cover digital records of ownership, such as bank accounts in digital form and digital security registers. It would also include central bank digital currencies. It would not include stablecoins or virtual asset securitisations of real assets. If in doubt, please contact the Commission.

The Law defines VASP activities as follows –

> "(a) exchange between virtual assets and fiat currencies,
>
> (b) exchange between one or more forms of virtual asset,
>
> (c) transfer of virtual assets,
>
> (d) safe-keeping and/or administration of virtual assets or instruments enabling control over virtual assets,

Guidance – continued

(e) participation in and provision of financial services relating to an issuer's offer and/or sale of a virtual asset (including, without limitation and by way of example, an initial coin offering), whether by the issuer of the asset or a service provider affiliated or unaffiliated with the issuer in respect of the issue, offer, sale, distribution, ongoing market circulation and trading of the asset (including book-building, underwriting and market making),…"

These activities should also be interpreted broadly and generally in line with the definitions within the FATF Standards and Recommendations.

Activity (a) of the definition of a VASP refers to any activity in which VAs can be given in exchange for fiat currency or vice versa. If parties can pay for VAs using fiat currency, or can pay using VAs for fiat currency, carrying out this activity when acting by way of business is acting as a VASP. Similarly, in activity (b), if parties can use one kind of VA as means of exchange or form of payment for another VA, carrying out this activity, when acting by way of business, is acting as a VASP. It should be emphasised that activities (a) and (b) include the above activities regardless of the role the business plays vis-à-vis its users as a principal, as a central counterparty for clearing or settling transactions, as an executing facility, or as an intermediary facilitating the transaction. A person does not have to carry out every element of the exchange or transfer in order to qualify as a VASP, so long as it conducts the exchange activity by way of business.

Activity (c) of the definition of a VASP covers any activity that transfers ownership, or control, of a VA to another user, or transfers VAs between VA addresses or accounts held by the same user. "Transfer" includes moving a virtual asset from one virtual asset address or account to another. To help illustrate what this covers in practice, it is useful to consider the nature of the VA following a purported transfer. If a new party has custody or ownership of the VA, has the ability to pass control of the VA to others, or has the ability to benefit from its use, then transfer is likely to have occurred. This control does not necessarily have to be unilateral and multi-signature processes are not inherently excluded. Similarly, if a person maintains unilateral control of their assets at all times, this may indicate that "transfer" has not occurred. However, it could still fall under activity where it actively facilitates the transfer. This also includes transfers between and among users of the same VASP, including where a VASP uses an off-chain internal record-keeping system, and the VA remains in the same on-chain omnibus wallet or account.

Guidance – continued

As noted in the definition, activity (e) includes activities related to Initial Coin Offerings ("ICOs") in particular, participation in an issuer's offer, or sale of, VAs and the provision of financial services in relation to the same. For the avoidance of doubt, financial services include activity such as promoting the issue or sale of virtual assets.

For clarity, the sole act of issuing a VA, entirely on its own, is not a VASP activity. However, any person who carries out activities of transfer or exchange, by way of business, in relation to that VA would be a VASP. The discrete act of creating VA software to issue a VA does not make the creator a VASP, unless the creator also performs the VASP activities mentioned in the definition by way of business.

When considering whether a potential licensee is carrying out VASP activities, the Commission will take a functional approach by focussing on the real and economic effect of a potential licensee's business model and activities – and less on terminology or legal structure. For example, outsourcing the carrying out of an activity to a group company, or third party, would not remove the need for a licence.

However, providing services to a VASP, such as IT support services, cloud services, and administration services would not require a Part III VASP licence (if the service provider does not itself carry out any of the VASP activities).

In most cases a merchant that accepts payment for goods or services in VAs, or a charity that accepts donations in VAs, would not be carrying out a VASP activity, as this is generally done by using an intermediary that converts the virtual assets into fiat currency. However, the firm that facilitates the payment between the purchaser and the merchant is likely to be carrying out VASP activities. Businesses and charities that accept virtual assets should take care that they are not used as a means to exchange VAs into fiat currency by, for example, bad actors making multiple purchases or transactions, in VAs, then requesting refunds in fiat currency.

For the avoidance of doubt, VAs do not include –

- a transaction in which a person grants value as part of a store or gift card, affinity or rewards programme, where said value cannot be taken from or exchanged with the person for legal tender, bank credit, or any digital asset; or
- a digital representation of value issued by or on behalf a publisher of games and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

The above bullet points should be read as a general description and guide, not a strict definition as there may well be a number of "on the edge" cases. If in doubt, firms should contact the Commission.

Guidance – continued

Application and licensing process

The Commission intends to use its Soundbox approach when considering potential Part III VASP licensees. As part of this process, when the Commission initially grants a licence to a VASP applicant it will, in most cases, have a limited duration and may be subject to a number of conditions.

These conditions may include, without limitation –

- restrictions on the volume of business the firm can carry out;
- restrictions on the kinds of business the firm can carry out;
- more frequent reporting requirements; and
- additional capital and liquidity requirements.

Following completion of the initial period of licensing, the Commission will decide whether to renew or extend the licence, how long for, and whether to amend any of the restrictions.

Given the diverse nature of potential VASP business models and activities, as part of this process the Commission may set additional requirements based on the business model and risk profile of potential licensees. Capital and conduct requirements and Rules for a virtual asset exchange are likely to be very different to those for a virtual asset custodian, for example.

10.3 Environmental declaration

(1) Part III VASP Licensees must publish information, annually, about the environmental impact of the consensus mechanisms of each virtual asset ("VA") with which they deal; the environmental declaration.

(2) Where a consensus mechanism requires the material consumption of resources, such as electrical or computational power, the environmental declaration relating to that VA must include –

(a) the carbon emissions and energy consumption of all VA transactions carried out by, or on behalf of, the licensee;

(b) indirect carbon emissions generated by VA transactions carried out by, or on behalf of, the licensee; and

(c) information regarding the method of calculation and the source of data used in the calculation.

(3) The declaration must include gross emissions as well as mitigated emissions.

(4) The licensee must ensure that, where estimations are used, this is noted and that they are prudent.

(5) The period covered by the declaration must be the licensee's financial year.

(6) Annual environmental disclosures must remain readily accessible to the public and, where the licensee chooses to meet its disclosure requirements by publishing information on its website, the location must be clear and easily accessible to the public.

Guidance

All disclosures should remain published and accessible.

Licensees can make use of publicly available data and sources when calculating their emission and energy consumption but should consider the reliability of such sources and whether any assumptions are prudent and not overly optimistic. If data for part of the calculation is not available, licensees should work on a best efforts basis, while assuring any assumptions they make are prudent.

Indirect carbon emissions generated by VA transactions include, but are not limited to, emissions from the production of e-waste.

Examples of consensus mechanisms that consume resources include Proof of Work, which wastes computational power and electricity, and Proof of Space, which wastes storage space on electronic data storage systems (such as hard drives).

The environmental declaration includes Scope 1, 2 and 3 emissions, as set out by the Task Force on Climate-related Financial Disclosures.

10.4 Safekeeping of customer virtual assets

(1) A Part III VASP Licensee which has custody of a customer's virtual assets must –

(a) keep safe, or arrange for the safekeeping by an eligible custodian, of –

(i) any documents of title;

(ii) cryptographic keys; or

(iii) any other means of control,

either over the customer's virtual assets or relating to them;

(b) ensure that virtual assets, bought or held for a customer in the course of conducting its VASP business, are properly recorded in the customer's name or, with the customer's consent, in the name of an eligible custodian or nominee with the addition, where appropriate, of an account designation name, or number, which is unique to the customer;

(c) ensure that customer entitlements, to virtual assets, are identifiable from those in the beneficial ownership of the licensee, and any other customer of the licensee;

(d) not use a customer's virtual assets for its own account unless it has obtained that customer's explicit, prior, written consent;

(e) where the licensee holds customers virtual assets with a nominee of the licensee, accept responsibility for the acts or omissions of that nominee;

(f) not lend, or arrange the lending, of a customer's virtual assets to a third party, unless –

(i) the customer has consented, in writing, and the loan is subject to appropriate documented terms and conditions specific to the agreement with that customer;

(ii) where customers virtual assets belonging to more than one customer are registered in the same name, each customer whose virtual assets are so registered has consented, in writing, to the lending of customer virtual assets registered in that name and each customer's entitlement is clearly ascertained;

(iii) adequate collateral is obtained and maintained for the duration of the loan, in accordance with any written instructions given by the customer; and

(iv) the licensee arranges for all income, inclusive of dividends, fees, or commissions; other than any fees payable to the licensee for arranging the loan; either to be paid to the customer direct or to be received, by the licensee, on the customer's account and treated as customer money unless the customer instructs otherwise.

PART 11 **PART IV LICENCES**

11.1 Requirement for multiple licences

(1) Holders of licences, issued under any of the regulatory Laws, who carry on activities regulated under Part IV of the Law must also hold a Part IV Licence.

11.2 Applications and regulated activities

(1) Applications for licences must specify the regulated activities which the applicant intends to engage in.

(2) Licensees must not engage in any regulated activities, outside of those declared on the original licence application, without the prior, written, approval of the Commission.

Guidance

NOTE: Where a Part IV Licensee carries out any of the activities requiring a licence under Part II or Part III of the Law, they must hold a Part II or Part III licence as appropriate.

11.3 General Obligations

(1) Where a Part IV Licensee enters into a regulated agreement with a customer, via their platform, they must ensure that all the rules pertaining to regulated agreements are followed by the lender.

(2) Part IV Licensees must treat all users of the platform as customers.

11.4 Customer limits

(1) A licensee must not allow a customer to lend, invest, or otherwise provide more than 15% of the customer's net assets via transactions on the licensee's platform, whether as a single transaction or a combination of transactions.

(2) Net assets must not include –

(a) property which is the customer's primary residence;

(b) existing finance where the customer's primary residence has been put up as security against the loan;

(c) any customer rights held under a qualifying contract of insurance;

(d) any benefits, in the form of pensions or otherwise, which are payable on the termination of the customer's service, or on their death or retirement, and to which they, or their dependants are, or may be, entitled to;

(e) unless an investment is made jointly and severally by all parties, any funds the customer does not hold absolute title in;

(f) funds held, in security, by another financial institution; and

(g) funds, or assets, that have a charge, bond, or other form of security registered against them.

Guidance

A licensee would be expected, where necessary, to collect sufficient information from their customers to be able to calculate that customer's net assets.

Part IV Licensees may rely on self-certification, from customers, setting out their net assets.

11.5 Information for customers

(1) Part IV Licensees must ensure that all information provided to customers is clear, fair, and not misleading.

(2) At a minimum, licensees must provide the following information and documents to a customer before they enter into a transaction -

(a) who the parties to the transaction are;

(b) the terms of the transaction including, but not limited to, -

(i) its duration;

(ii) all amounts payable by the customer and the timing of these payments;

(iii) any return payments due to the customer and the timings of these return payments;

(iv) how any amounts set out are calculated;

(v) the obligations of the customer; and

(vi) any rights granted to the customer;

(c) all income and revenue to be received, by the licensee or any associated party of the licensee, along with the basis of their calculation;

(d) a clear explanation of the risks of the transaction, and

a customer agreement in accordance with rule 3.2.2.

(3) A licensee must, after a transaction has been carried out on behalf of a customer, provide the customer with a statement relating to that transaction. This statement must include -

(a) the name and address of the licensee;

(b) the customer's name and account number;

(c) the date of the transaction;

(d) the final terms of the transaction, including the information set out in (2)(b); and

(e) any other relevant matters in relation to the transaction.

Guidance

Information on any rights granted to the customer would include, for example, any equity or security granted over assets.
Obligations of the customer would include, for example, any rights granted to others or any security, or charge, granted over the assets.
A clear explanation of the risks could include, but is not limited to –

- The fact that some, or all, of the customer's capital is at risk;
- That any assets used as security could be lost;
- The extent and value of any protections or guarantees that the platform operator provides.

Documents which have been provided by electronic means will fulfil the requirements of this rule.

PART 12 **GENERAL PROVISION**

12.1 Interpretation

(1) Terms have their ordinary meaning unless specifically defined in the Law or in these Rules.

(2) The following definitions should be followed -

"ancillary service providers" refers to Part II licence holders specifically licensed to provide such services;

"appointed retailer" refers to a provider of services ancillary to the provision of credit who offers credit for the purchase of goods or services, via a third party licensed credit provider, whilst acting as an agent of that third party under a written agreement;

"appointed motor trader" refers to a provider of services ancillary to the provision of credit who offers credit for the purchase of motor vehicles, via a third party licensed credit provider, whilst acting as an agent of that third party under a written agreement;

"Appointed Service Provider" means a Part II licensee that is appointed, by an exempt private lender, and is responsible for ensuring that the relevant rules and Anti-Money Laundering/Countering the Financing of Terrorism requirements are met by the private lender;

"approved bank" means a person who is licensed under The Banking Supervision (Bailiwick of Guernsey) Law, 2020, or is registered under The Banking Business (Jersey) Law, 1991, or authorised under the Isle of Man Financial Services Act 2008, or is authorised to carry on a banking or deposit-taking business under the law of the UK, of any EU member state, or under the law of any country or territory which may be listed in notices issued by the Commission;

"Approved Qualification", in relation to those providing advice to customers relating to home finance and lending against an individual's home, are those agreed by the Commission and listed, as Approved Qualifications, on the Commission's website;

"board" has the meaning given to it in the Companies (Guernsey) Law, 2008 or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

"block of business" means business that increases the receiving licensee's, or reduces the transferring licensee's, income by 15% or more; such figure being calculated using the last audited accounts of that licensee;

"complaint" means any oral or written expression of dissatisfaction, whether justified or not, for or on behalf of a person about the provision of, or failure to provide, a financial service which alleges that the complainant has suffered (or may suffer) financial loss, material distress, or material inconvenience;

"consumer credit" refers to regulated agreements that meet the definition of subsection 6(1)(a) of the Law;

"customer money" is money, in any currency, which a licensee holds for, receives from, or owes to a customer, in the course of carrying out regulated activities;

Guidance

Customer money – A licensee holds or receives money where either that money is not immediately due and payable on demand to the licensee for its own account, or, although due and payable, is held or received in respect of any obligation of the licensee which has not yet been performed. A licensee owes money where it is due and payable to the customer.

"exempt private lender" means an individual, or firm, that holds a discretionary exemption, issued by the Commission, from requiring a licence under Part II of the Law, subject to meeting a number of conditions including, but not limited to –

(a) only making a limited number of loans per year,

(b) maintaining a loan portfolio below a specified value,

(c) complying with the Commission's rules regarding their lending, and

(d) appointing an ASP;

"High Net Worth Individual ("HNWI"), means an individual who agrees to be treated as a High Net Worth Individual, and -

(a) in relation to consumer credit agreements, an individual with net income greater than one hundred and fifty thousand pounds (£150,000) per annum, or net assets in excess of five hundred thousand pounds (£500,000), and

(b) in relation to home finance agreements, an individual with net income greater than three hundred thousand pounds (£300,000) per annum, or net assets in excess of three million pounds (£3,000,000),

where net assets must not include the individual's primary residence, or any loan secured on it, or the benefits of a pension, or lump sum payable, on retirement or the termination of service of the individual concerned;

"home finance agreement" refers to regulated agreements that meet the definition of subsection 6(1)(b) of the Law;

"interest rate" refers to an interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit which has been drawn down;

"open-ended credit agreement" is a credit agreement of no fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again;

"principal" the principal value of credit, advanced to a customer, is the amount loaned excluding any interest, fees or other charges;

"regulated activities" are those activities, requiring a licence, as set out in sections 2, 16, 17 and 26 of the Law;

"significant complaint" means a complaint alleging a breach of the Law, bad faith, malpractice, impropriety, or repetition or recurrence of a matter previously complained of, whether significant or otherwise; and

"**Virtual asset exchange**" means a market for the buying and selling of any of the following –

(a) virtual assets,

(b) instruments entitling their holders to subscribe for, or certificates representing property rights in, virtual assets,

(c) contracts for virtual assets futures or contracts for differences referencing virtual assets, or

(d) options to acquire or dispose of, or other rights or interest in, (a), (b) or (c) in this definition,

or the carrying on of other activities in respect of virtual assets that, in the opinion of the Commission, are those of an exchange.

PART 13 **CITATION AND COMMENCEMENT**

13.1 Citation and commencement

(1) These Rules may be cited as the Lending, Credit and Finance Rules 2023.

(2) These Rules come into force on 1st February 2023.

Guidance

The Rules come into force on the 1st of February 2023 to allow the Commission to establish the framework for the regime.
The requirement to hold a licence, and subsequently be subject to the requirements set out in these Rules, will come into effect on 1st July 2023.

SCHEDULE 1

The Principles of Conduct of Finance Business

1. **Integrity**

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

2. **Skill, Care, and Diligence**

A licensee should act with due skill, care, and diligence towards its customers and counterparties.

3. **Conflicts of Interest**

A licensee 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 licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the business would place their interests above its own, the business should live up to that expectation.

4. **Information about Customers**

A licensee 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 fulfil its responsibilities to them.

5. **Information for Customers**

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable them to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to them.

6. **Customer assets**

Where a licensee 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 responsibility it has accepted.

7. **Market Practice**

A licensee should observe high standards of market conduct and should also comply with any code of standard as in force and issued, or approved, by the Commission.

8. **Financial Resources**

A licensee should ensure that it maintains adequate financial resources to meet its regulated business commitments and to withstand the risks to which its business is subject.

9. **Internal Organisation**

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff, or is responsible for the conduct of regulated 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.

10. **Relations with Guernsey Financial Services Commission**

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the business which it might reasonably be expected to disclose.

SCHEDULE 2

Calculation of the Annual Percentage Rates ("APR")

Assumption for calculation

> **Guidance**
>
> These assumptions are intended to ensure that the total charge for credit and APR are calculated in a consistent way to enable customers to make fair comparison between different offers.
> The assumptions are intended to apply where they are necessary in relation to the type of agreement under consideration, for example, assumptions concerning amounts drawn down or the duration of the credit agreements where they are otherwise uncertain.
> In general, the total charge for credit and APR will depend on the terms specific to the regulated agreement.

1. For the purposes of calculating the total charge for credit and the APR for customer finance agreements –

    a. it is assumed that the regulated agreement is to remain valid for the period agreed and that the credit provider and the customer will fulfil their obligations under the terms and by the dates specified in that agreement;

    b. in the case of a regulated agreement that allows variations in –

        i. the rate of interest; or

        ii. where applicable, charges contained in the APR,

    where these cannot be quantified at the time of the calculation, it must be assumed that they will remain at the initial level and will be applicable for the duration of the agreement;

c. where not all rates of interest are determined in the regulated agreement, a rate of interest must be assumed to be fixed only for the partial periods for which the rate of interest is determined exclusively by a fixed percentage agreed when the agreement is made;

d. where different rates of interest and charges are to be offered for limited periods or amounts during the regulated agreement, the rate of interest and the charge must be assumed to be at the highest level for the duration of the agreement;

e. where there is a fixed rate of interest agreed in relation to an initial period, at the end which a new rate of interest is determined and subsequently, periodically, adjusted according to an agreed indicator, it must be assumed that, at the end of the period of the fixed rate of interest, the rate of interest is the same as at the time of making the calculation, based on the value of the agreed indicator at the time;

f. where the regulated agreement gives the customer freedom of drawdown, the total amount of credit must be assumed to be drawn down immediately and in full;

g. where the regulated agreement imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit must be assumed to be the maximum amount provided for in the agreement and be drawn down on the earliest date provided for in the agreement;

h. where the regulated agreement provides different ways of drawdown with different charges or rates of interest, the total amount of credit must be assumed to be drawn down at the highest charge and rate of interest applied to the most common drawdown mechanism for the credit product to which the agreement relates. The most common drawdown mechanism for a particular credit product must be assessed on the basis of the volume of transactions for that product in the preceding twelve months, or expected volumes in the case of a new credit product;

i. in the case of an overdraft facility, the total amount of credit must be assumed to be drawn down in full and for the entire duration of the regulated agreement and, if the duration of the overdraft facility is not known, it must be assumed that the duration of the facility is three months;

j. in the case of an open-ended regulated agreement, other than an overdraft facility, it must be assumed that the credit is provided for a period of one year starting from the date of the initial drawdown, and that the final payment made, by the customer, clears the balance of the capital, interest, and any other charges where –

    i. the capital is repaid, by the customer, in equal monthly payments commencing one month after the date of initial drawdown;

    ii. in cases where the capital must be repaid in full, in a single payment, within or after each payment period, successive drawdowns and repayments of the entire capital, by the customer, must be assumed to occur over the period of one year;

    iii. interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the regulated credit agreement;

k. in the case of a regulated agreement, other than an overdraft facility, or an open-ended regulated agreement –

    i. where the date or amount of a repayment of capital, to be made by the customer, cannot be ascertained it must be assumed that the repayment is made at the earliest date provided for, under the regulated agreement, and is for the lowest amount for which the regulated agreement provides;

    ii. where it is not known on which date the regulated agreement is made, the date of the initial drawdown must be assumed to be the date which results in the shortest interval between the date and the date of the first payment, to be made by the customer;

l. where the date or amount of a payment, to be made by a customer, cannot be ascertained on the basis of a regulated agreement, or the assumptions set out above, it must be assumed that the payment is made in accordance with the dates and conditions required, by the credit provider, and, when these are unknown –

    i. interest charges are paid together with repayments of capital; and

ii. any non-interest charge, expressed as a single sum, is paid on the date of the making of the regulated credit agreement;

m. non-interest charges, expressed as several payments, are paid at regular intervals commencing with the date of the first repayment of capital and, if the amount of such payments is not known, they must be assumed to be equal amounts;

n. the final payment clears the balance of capital, interest, and other charges;

o. in the case of an agreement for running-account credit, where the credit limit applicable to the credit is not yet known, that credit limit must be assumed to be £1,200.

2. The APR which equates, on an annual basis, to the total present value of drawdowns with the total present value of repayments and payments of charges, is calculated using the following equation.

$$\sum_{k=1}^{m} C_k(1+X)^{-{}^{t}k} = \sum_{l=1}^{m\prime} D_l(1+X)^{-S_l}$$

Where:

X	is the APR
m	is the number of the last drawdown
k	is the number of a drawdown, thus $l<k<m$
C_k	is the amount of drawdown k
${}^{t}k$	is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$
m'	is the number of the last repayment or payment of charges
l	is the number of a repayment or payment of charges
D_1	is the amount of a repayment or payment of charges
S_1	is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges

- The amounts paid, by both parties at different times, shall not necessarily be equal and shall not necessarily be paid at equal intervals.

- The starting date shall be that of the first drawdown.

- Intervals between dates used in the calculations shall be expressed in years or in fractions of years.

- A year is assumed to have 365 days (366 days for a leap year), 52 weeks, or 12 equal months.

- An equal month is assumed to have 30.41666 days (365/12) regardless of whether or not it is a leap year.

- The result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that decimal place is increased by one.

The equation can be rewritten, as set out below, using a single sum and the concept of flows (A_k), which will be positive or negative, either paid or received during periods l to k, expressed in years.

$$S = \sum_{k=1}^{n} A_k \, (1 + X)^{-t} k$$

S being the present balance of flows;
if the aim is to maintain the equivalence of flows, the value will be 0

Calculation of home finance APR

3. The underlying formula for the calculation of APR, in respect of home finance calculations, is the same as that set out at paragraph 2.

> **Guidance**
>
> These requirements are based on the UK Financial Conduct Authority's rules, set out in MCOB 10.3, as at the time of its initial publication in July 2022 (based on the version dated 07/07/2022).
> Where any reference is made to a "mortgage arrangement" or "mortgage" it should be read as "home finance agreement" or other lending which is a regulated agreement secured against residential property, for the purposes of the Law.
> A "secured lending contract" refers to an agreement which is a regulated agreement secured against residential property in the Bailiwick.

4. Underlying assumptions –

    a. APR must be calculated on the assumption that the customer does not –

        i. receive tax relief on their mortgage payment, other than any tax relief which may be applicable in respect of relevant life insurance premiums in accordance with the tax rules applicable in the relevant part of the Bailiwick at the time of the agreement; and

        ii. does not receive home purchase assistance or other support to buy the property under any States of Guernsey arrangement or other scheme which may apply in the relevant part of the Bailiwick;

    b. the mortgage lender and customer, at all times, perform their obligations under the contract and the mortgage lender will not exercise any right to repayment at other times;

    c. any variations in the interest rate, which are due to occur after a specific period of time or are triggered by a specific event –

        i. where the event is not certain to occur, and does not occur, the consequent change in rate does not occur;

ii. where the event is certain to occur, that the variation happens at the earliest possible time, in respect of an increase in interest or charges, and at the latest possible time in respect of a decrease in interest or charges.

5. Where an APR, calculated in accordance with these rules, has more than one decimal place then it must be rounded to one decimal place. If the second decimal place is five or more, it must be rounded up, if it is less than five then it must be rounded down.

6. The length of any period, used in calculating an APR in respect of home finance, must be calculated as follows –

    a. a period which is not a whole number of calendar months, or a whole number of weeks, must be counted in years and days;

    b. subject to c., a period which is a whole number of calendar months, or a whole number of weeks, must be counted in calendar months or in weeks, as the case may be;

    c. where a period is both a whole number of week, and –

        i. one repayment only is to be made, the period must be counted in calendar months;

        ii. more than one repayment is to be made –

            A. if all such repayments are to be made at intervals from the relevant date of one or more weeks, the period must be counted in weeks; and

            B. in any other case, the period must be counted in calendar months;

    d. a period which is to be counted –

        i. in calendar months, must be taken to be of a length equal to the relevant number of twelfth parts of a year;

        ii. in weeks, must be taken to be of a length equal to the relevant number of fifty-second parts of a year;

    e. a day may be taken to be either –

i. one three hundred and sixty-fifth part of a year, or, if it is a leap year, one three hundred and sixty-sixth and a quarter part of a year; and

ii. every day must be taken to be a business day.

7. Where information cannot be ascertained by a home finance lender, or broker, at the time of making an agreement then the following assumptions must be used in calculating the total cost of credit and the APR for that credit, in the following order (i.e. assumptions on the amount of credit must be applied before other assumptions and calculations are made) –

a. assumptions as to the amount of credit –

i. where the amount of credit, to be provided under the agreement, cannot be ascertained at the date of making the agreement –

A. in the case of an agreement for running-account credit under which there is a credit limit, that amount must be taken to be that credit limit; and

B. in any other case, that amount must be taken to be £100;

ii. where a mortgage lender makes a further advance, to the customer in addition to the amount originally borrowed under the home finance agreement, the APR for the further advance must be calculated in respect of the further advance alone (and any related charges) and not in respect of the total amount borrowed;

b. assumptions as to the period for which the credit is provided –

i. in relation to a lifetime home finance agreement, where the APR is calculated for the purpose of a financial promotion, it must be assumed that the credit is being provided for a period of 15 years beginning with the relevant date;

ii. in relation to a lifetime home finance agreement, where the APR is calculated for the purpose of an illustration, the period for which the credit is to be provided must be calculated in accordance with the appropriate rules and guidance;

iii. in relation to a retirement interest-only home finance agreement, where the APR is calculated for the purposes of an illustration, the period for which the credit is to be provided must be determined in accordance with the appropriate rules and guidance;

iv. where, in any other case, the period for which credit is to be provided is not ascertainable at the date of the making of the agreement, it must be assumed that credit is provided for beginning with the relevant date;

c. assumptions where the rate, or amount, is referenced to another factor – subject to the following paragraphs, where the rate or amount of any item included in the total charge for credit, or any amount of any repayment of credit under a transaction, is to be ascertained by reference to the level of any index, or other factor, in accordance with a specified formula, the rate, or amount, must be taken to be the rate, or amount, so ascertained. The formula must be applied as if the level of the index, or other factor, subsisting at the date of the making of the agreement were that subsisting at the date by reference to which the formula is to be applied;

d. assumptions where secured lending contracts provide for variation in the rate of interest and, under the paragraphs above, the variation will take place but the amount of the variation cannot be ascertained at the date of making the agreement –

i. where a secured lending contract provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the business, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the agreement because it is not known, on that date, what the standard variable rate will be, or (as the case may be), at what level the fluctuating rate will be fixed when the varied rate is due to be calculated, it must be assumed that the rate, or level, will be the same as the initial standard variable rate;

ii. where a secured lending contract provides for the possibility of any variation in the rate of interest (other than a variation referred to in the paragraph above), which it is to be assumed will take place, but does not enable the amount of that variation to be ascertained at the date of making the agreement, it must be assumed that the varied rate will be the same as the initial standard variable rate;

and in this paragraph –

"initial standard variable rate" means –

- the standard variable rate of interest which would be applied by the mortgage lender, or mortgage administrator, to the agreement on the date of the making of the agreement where the agreement provides for interest to be paid at the mortgage lender, or mortgage administrator's, standard variable rate with effect from that date; or

- if there is no such rate, the standard variable rate of interest applied by the mortgage lender, or mortgage administrator, on the day of the making of the agreement in question to other secured lending agreements, or, where there is more than one such rate, the highest such rate;

"varied rate" means any rate of interest charged when a variation of the rate of interest is to be assumed under the paragraphs above;

e. <u>further assumptions</u> –

i. where –

A. the period for which the credit, or any of it, is to be, or may be, provided cannot be ascertained at the date of the making of the agreement; and

B. the rate, or amount, of any item included in the total charge for credit will change at a time provided in the transaction within one year beginning with the relevant date,

the rate, or amount, must be taken to be the highest rate or amount under the transaction at any time in that year;

ii. where the earliest date on which credit is to be provided cannot be ascertained at the date of making the agreement, it must be assumed that credit is provided on that date;

iii. in the case of any transaction, it must be assumed –

A. that a charge payable at a time, which cannot be ascertained at the date of the making of the agreement, is to be payable on the relevant date, or, where it may reasonably be expected that a customer will not make payment on that date, on the earliest date at which it may reasonably be expected that they will make payment; or

B. where more than one payment of a charge of the same description is to be made at times which cannot be ascertained at the date of the making of the agreement, that the first such payment will be

payable on the relevant date[10] (or, where it may reasonably be expected that a customer will not make payment on that date, at the earliest date on which it may reasonably be expected that they will make payment), that the last such payment will be payable at the end of the period for which credit is provided and that all other such payments (if any) will be payable at equal intervals between those times.

Total charges for credit – home finance agreements

8. For the purposes of home finance agreements, the total charge for credit, which may be provided under an actual or prospective agreement, is the total of the charges specified in this Schedule, less the exclusions specified in this Schedule, which apply in relation to the regulated agreement and determined at the time of the making of the agreement.

9. The amounts of the following are included in the total charge for credit, in relation to an agreement (subject to the exceptions set out below) –

    a. the total of the interest on the credit which may be provided under the agreement;

    b. other charges, at any time payable, under the transaction by, or on behalf of, the customer whether to the business or any other person; and

    c. where the making, or maintenance, of a contract of insurance is required by the business –

        i. as a condition of making the agreement; and

        ii. for the sole purpose of ensuring complete, or partial, repayment of the credit and complete, or partial, payment to the business of such charges included, in the total charge for credit, as are payable to them under the transaction in the event of death, incapacity, illness, or unemployment of the customer,

[10] 'relevant date' is the date from which the borrower is entitled to receive funds or payment under the agreement or, if not specified, the date on which the agreement is made.

notwithstanding that the whole, or part, of the charge may be repayable at any time or that the consideration may include matters not within the transaction or subsisting at a time not within the duration of the agreement.

Guidance

This means, for example, that the following charges must be included within the total charge for credit –

- any fee payable to a mortgage intermediary for arranging the contract; and
- any higher lending charge.

10. Charges required to be included within the total charge for credit must not be excluded on the basis that those charges are refundable under certain circumstances.

11. The total charge for credit and APR must not reflect the 'value' of any cashback or similar incentive linked to the agreement.

12. The following charges must not be included in the total charge for credit in relation to an agreement –

    a. any charge payable, under the agreement, to the business upon failure, by the customer, to do, or not to do, anything which they are required to do, or not to do;

    b. any charge –

        i. which is payable, by the business to any person, upon the failure, by the customer, to do, or not to do, anything which they are required under the agreement to do, or not to do; and

        ii. which the business may, under the agreement, require the customer to pay to them, or to another person on their behalf;

    c. any charge related to a regulated restricted-use credit agreement to finance a transaction between the customer and the business (whether forming part of that agreement or not), or to finance a transaction between a person (the "supplier"), other than the business, which would be payable if the transaction were for cash;

    d. any charge (other than a fee, or commission, charged by a credit broker or intermediary), not within (1)(c) –

i. of a description which relates to services or benefits incidental to the agreement, and to other services, or benefits, which may be supplied to the customer; and

ii. which is payable to fulfil an obligation incurred by the customer under arrangements which were effected before they applied to enter into the agreement and are not arrangements under which the customer is bound to enter into any personal credit agreement;

e. any charge under arrangements for the care, maintenance or protection of any land or goods, except as at 13.;

f. charges for money transmission services relating to an agreement for a current account, under which the customer may, by cheques or similar orders payable to themselves or to any other person, obtain or have the use of the money held, or made available, by the business and which records alterations in the financial relationship between the business and customer – being charges which vary with the customer's use of the agreement;

g. any charge for a guarantee, other than a guarantee –

i. which is required by the business as a condition of making the agreement; and

ii. the purpose of which is to ensure complete, or partial, repayment of the credit and complete, or partial, payment to the business of such of those charges included in the total charge for credit as are payable to them, under the agreement, in the event of death, incapacity, illness or unemployment of the customer;

h. charges for the transfer of funds (other those set out at f.) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the customer does not have reasonable freedom of choice and where such charges are abnormally high – this does not exclude, from the total charge for credit charges for the collection of the payments to which it refers, whether these payments are made in cash or otherwise; and

i. a premium, under a contract of insurance - other than a contract of insurance set out as being specifically included, in the total charge for credit, at paragraph 9c.

13. A charge under 12e. only has effect –

a. where, under the arrangement –

   i. the services are to be performed if, after the date of making the agreement, the condition of the land, or goods, becomes, or is in immediate danger of becoming, such that the land, or goods, cannot reasonably be enjoyed or used; and

   ii. the charge will not accrue unless the service is performed; or

b. where –

   i. provision of substantially the same description as to which the arrangements relate is available, under comparable arrangements, from a person who is not the business, or a supplier, or a credit-broker, or a mortgage intermediary, who introduced the business and the customer;

   ii. the arrangements are made with a person chosen by the customer; and

   iii. if, in accordance with the agreement, the consent of the business, or of a supplier, or of the mortgage intermediary or credit broker who introduced the customer and the business is required to the making of the agreement – where the agreement provides, such consent may not be unreasonably withheld because no incidental benefit will, or may, accrue to the business, or to the supplier, or to the credit broker, or to the mortgage intermediary, or on any other ground.

14. References, in this Schedule, to the business, a supplier, a mortgage intermediary, and a credit broker include references to their near relative, partner, or a member of a group of which they are a member, any person nominated by them or any such person in relation to the arrangements, and to a near relative of that partner; and 'near relative' means, in relation to any person, the husband, wife, civil partner, father, mother, brother, sister, son or daughter of that person; and 'group' means the person (including a company) having control of a company together with all the companies directly, or indirectly, controlled by them.

SCHEDULE 3

Calculation of maximum early repayment fees in relation to Regulated Agreements

1. **Regulated agreements (excluding home finance agreements)**

Licensees must not charge more than one month of interest payments, as an early repayment fee, for regulated agreements with a remaining duration of less than twelve months.

Licensees must not charge more than two months of interest payments, as an early repayment fee, on regulated agreements with a remaining duration of twelve months or more.

2. **Regulated agreements that are home finance agreements**

In the case of home finance agreements where the interest rate payable is fixed or discounted for a set period of time, in the first year of that set period, licensees must not charge early repayment fees in excess of 1% (one percent) of the outstanding principle of the loan, for each remaining year or part thereof, that the interest rate is fixed, or discounted, under the agreement. In the final year of the set period licensees must not charge early repayment fees in excess of 1.5% (one and a half percent) of the outstanding principle of the loan.

SCHEDULE 4

Unfair agreement terms in relation to Regulated Agreements

1. This Schedule contains an inexhaustive list of terms which the Commission would consider to be unfair agreement terms in most circumstances.

2. When deciding whether a term is unfair the Commission will take all circumstances into account. There are certain circumstances where a term, which would otherwise be considered unfair, would be permissible.

> **Guidance**
>
> For example, the following is a situation where a term, which would otherwise be considered unfair, would be permissible:
> Changes made to interest rates to reflect changes in the base rate.
> However, in this circumstance the Commission would expect that the customer would be notified immediately.
> An additional example would be where the FCA has agreed that a term is not unfair. This would only apply to the same product or circumstances that the FCA reviewed and licensees would need to prove, to the Commission that the FCA had made such a decision.

List of Unfair Terms[11]

1. A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.
2. A term which has the object or effect of making an agreement binding on the consumer in a case where the provision of services by the trader is subject to a condition whose realisation depends on the traders will alone.

[11] This list is not exhaustive and the Commission, at all times, retains discretion with respect to unfair agreement terms.

3. A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.
4. A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation or for services which have not been supplied.
5. A term which has the object or effect of requiring a consumer who fails to fulfil their obligations under the contract to pay a disproportionately high sum in compensation.
6. A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for services not yet supplied by the trader where it is the trader who dissolves the contract.
7. A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.
8. A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early
9. A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has no real opportunity of becoming acquainted before the conclusion of the contract.
10. A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.
11. A term which has the object or effect of permitting the trader to determine the characteristics of the subject matter of the contract after the consumer has become bound by it.
12. A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.
13. A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.
14. A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.
15. A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract, or giving the trader the exclusive right to interpret any term of the contract.
16. A term which has the object or effect of limiting the trader's obligations to respect commitments undertaken by the trader's agents or making the trader's commitments subject to compliance with a particular formality.

17. A term which has the object or effect of obliging the consumer to fulfil all of the consumer's obligations where the trader does not perform the trader's obligations.
18. A term which has the object or effect of allowing the trader to transfer the trader's rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer's agreement.
19. A term which has the object or effect of excluding or hindering the consumer's rights to take legal action or exercise any other legal remedy, in particular by – a. requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, b. unduly restricting the evidence available to the consumer, or c. imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.
20. A term which has the object or effect of excluding or limiting the trader's ability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader.
21. A term which prevents consumers form taking out further loans with other credit providers.

Guidance

Cancellation without reasonable notice does not include a term by which the business reserves the right to terminate, unilaterally, a contract of indeterminate duration without notice where there is a valid reason, and the business is required to inform the customer of the cancellation immediately and advised of the date from which the change will take effect.

Variation without a valid reason does not include a term by which the business reserves the right to alter the interest payable by, or due to, the customer, or the amount of other charges for services, where there is a valid reason, provided –

- the business is required to inform the customer of the alteration at the earliest opportunity, and
- the customer is free to dissolve the agreement immediately.