Guernsey Financial Services Commission

Feedback following the Commission’s consultation on the Lending, Credit & Finance Rules, Guidance and Implementation

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Background

On 21 July 2022 the Commission published its consultation paper on the Lending, Credit & Finance Rules, Guidance and Implementation, following the States of Deliberation's approval of the Lending Credit and Finance Law[1] ("the Law") on 14 July 2022. A copy of the CP is available on the Consultation Hub.

We received an excellent response from stakeholders, with 58 responses in total. The Commission is grateful to everyone who responded to the CP which has helped us to update and revise the initial proposals.

Attached to this feedback paper is a copy of the written instrument notifying the class exemptions which the Commission is putting in place in accordance with s40 of the Law (Annex 1) and a copy of the final rules issued by the Commission, the Lending Credit & Finance Rules and Guidance, 2023 (Annex 2).

We have drafted the Rules and Guidance to provide appropriate protection for all types of credit while aiming to remove barriers which might otherwise prevent access to credit and to strike a balance between the competing interests of different types of credit providers.

[1] Link to the Lending Credit and Finance (Bailiwick of Guernsey) Law, 2022

Summary and Analysis of Feedback

The Commission received 58 responses. Of these, 47 were made through the consultation hub and 11 by email or other means. The majority were from stakeholders directly affected by the new legislation and who would potentially require a licence in future.

We received responses from several law firms and the commercial bar together with industry groups such as GIFA, and GAT; and from a number of POI and Fiduciary licensees as well as representatives of the Fintech industry. 17 responses were from banks and other lenders. 19 were from providers of services ancillary to credit – which includes a diverse portfolio of credit and home finance brokers, retailers and motor traders who arrange car finance and a handful of other interested parties. The largest set of responses were from motor traders which accounted for around half of the responses from providers of ancillary service.

Most responses broadly supported the Commission's approach to the implementation of the Law and were largely content with the rules and guidance. There were however specific areas where individual respondents or a group of respondents sought changes to the rules and approach outlined in the Consultation Paper, and in some cases highlighted issues where the practical application of the proposed approach would be problematic. We explain in this document how and where we have changed our approach in response to these responses.

Next Steps

The final Lending Credit and Finance Rules and Guidance and a notice setting out the full range of class exemptions from licensing accompany this feedback paper.

The Commission will publish further information on its website including the answers to frequently asked questions (FAQs). These will be made available as soon as practicable before the end of January 2023.

Final copies of the application forms will be published shortly.

The window for licence applications will formally open on 1 February 2023.

Licensing commences and the new law comes into operation on 1 July 2023.

The NRFSB Law will be repealed on 1 July 2023.

Applications

Early applications are strongly encouraged. Firms that provide services which fall within the scope of the Law will need to be licensed by 1 July 2023 when the law comes into operation. If firms do not have an appropriate licence in place by this date they will not be able to conduct their business until an appropriate licence (or exemption) is in place.

The Commission will make reasonable endeavours to ensure it fully considers all applications received by 31 March 2023. Applications received after this date may not be able to be processed and fully considered before 1 July 2023. Applications received before the 31 March 2023 will benefit from a 50% reduction in their application fee.

Licensing

For the avoidance of doubt, the structure of licensing is unchanged and falls into four broad categories:

Part II – Consumer credit & Home finance

For consumer credit and home finance providers and those providing services ancillary to credit in relation to regulated agreements.

Part III – Financial Firm Businesses (FFBs)

For persons those carrying out the FFB activities identified in schedule 1 of the Law.

Part III – Virtual Asset Service Providers (VASPs)

For firms providing services in relation to virtual assets

Part IV – Fintech platforms

For persons operating a peer to peer (P2P) or crowdfunding platform from the Bailiwick.

Dual Licensing

Dual licensing will be required where a person carries out Consumer Credit or Home Finance activities which require a licence under Part II in addition to activities licensed by the Commission under another regulatory law or as a VASP or Fintech platform operator.

Persons licensed under Part II of the Law, under another regulatory law or an exemption described in Schedule 1 to the Law will not require a separate licence to carry out Part III FFB activities (but will need a separate licence in order to carry out Part III VASP activities).

Scope of application – Applicability to existing credit business

We were asked to provide additional clarity on the applicability of the Law to existing business. From 1 July 2023, anyone who provides credit or has entered into an agreement which is a "regulated agreement" will require a licence under the relevant part of the Law unless they are covered by one of the class exemptions published by the Commission or have been granted an individual exemption. The requirement for licensing applies to existing arrangements as well as new agreements. This means that even if a firm is not carrying out new business it will need to be appropriately licensed (or exempted). This does not mean that firms are required to retrospectively review prior agreements, but going forwards, firms must apply the relevant conduct rules and ensure that they treat customers fairly.

The Commission has determined that firms which are in run off at the implementation date of the law (1 July 2023) should be permitted an exemption from the requirement for licensing. This exemption will be time limited and must be applied for individually by each credit provider. This is considered in more detail below, in the feedback to Q19 regarding firms in run off.

Equivalence

The States of Guernsey is, with the Commission's advice, considering regulations which would make the UK an equivalent jurisdiction under s10 of the Law. We anticipate that the States will make a decision shortly.

Part II – Consumer Credit & Home Finance

Most responses recognised that regulation to protect consumers was needed. Responses suggested several changes to the rules and guidance which the Commission has adopted.

The most significant changes are:

- changes to the range and detail of exemptions;
- reduced licence fees for ancillary service providers;
- a tiered fee structure for credit/home finance brokers (including motor traders and ancillary service providers);
- an increase in the total value (but not the number) of loans permitted for individual private lenders; and
- clarification of the rules and guidance on cooling-off periods, to confirm that the rules apply in respect of the finance agreement (and not the purchase of goods).

These changes are further elaborated below.

Q1 – Exemptions

Is the scope of exemptions appropriate?

We received a range of comments on the scope of exemptions and applicability of the law. This was one of only a handful of areas where more of the responses raised concerns than supported the detail of the Commission's proposals.

As a result, we have made several changes and amendments to the exemptions originally put forward in the consultation paper. The full suite of exemptions proposed under s40 of the Law following the consultation is attached in annex A. The Commission has already consulted with the States of Guernsey Policy & Resources Committee on these exemptions. Further details are set out below.

Administered entities & private equity

In order to address private equity and other administered structures, and avoid unintended consequences which might otherwise impact the investment sector in the Bailiwick, we have introduced a clear exemption from the Part III (FFB) licensing requirement for firms which are administered by persons licensed under the Fiduciary or POI Laws. This is intended to facilitate private equity and other investment firms where administrators already carry out the relevant oversight of AML/CFT and provide information and insight into the activities of administered firms as required by the Commission.

Bailiwick businesses

We have included an exemption from Part III (FFB) licensing for the benefit of established businesses which are locally based trading businesses within the Bailiwick, and which carry out lending ancillary to their main business. This might, for example, be as part of a treasury function within a group of companies or to another established business in the Bailiwick.

Employee Loans

Several responses requested that loans to employees should be exempt from the Law. We concur and have drafted an exemption so that employers making loans to employees will be exempted from the requirement to hold a licence under Part II or Part III of the Law. This applies to full and part time employees with a contract of employment.

Lending to family and friends

We originally noted that such lending was outside the scope of the Law. However, there are circumstances in which a loan to a family member could be considered to be a regulated agreement. To avoid any unintended requirement for licensing lending by individuals to close family members, we have introduced a specific exemption which confirms that such lending will not require a licence.

Several responses noted that the definition of family should be as broad as possible. We agree and refer to the guidance produced by the States of Guernsey as to who constitute family members for the purposes of the population management law. A copy of the guidance, as at 5 January 2023, is attached at Annex 3.

No changes are proposed in respect of lending to friends. Lending to friends for which there are no fees or interest charges is outside the scope of the law.

Other exemptions

The full suite of class exemptions is set out in Annex 1, which is the written instrument issued under s40 of the Law, giving Notice that the Commission has disapplied the requirement to hold a licence under the relevant section of the Law for the classes of activities identified in the notice.

Other issues

Funeral plans

Some raised questions about Funeral Plans because they are newly regulated by the FCA in the UK (following some industry failures). For the avoidance of doubt, funeral plans fall outside the scope of Part II of the Law unless the plan involves the provision of consumer credit, in which case the plan provider may be a credit provider and the arranging firm could be a credit broker.

Further information will be provided on the website in response to FAQs.

Q2 – Rules in respect of consumer credit providers

Are the Rules in respect of consumer credit providers appropriate?

Q3 – Rules in respect of home finance providers

Are the Rules in respect of home finance providers appropriate?

For both sets of rules, most responses were supportive. The balance appears to be about right, recognising the need for regulation and appropriate consumer protection without seeking to be overly burdensome.

Several specific issues were raised by stakeholders. These have been addressed though minor changes to the rules and guidance or will be addressed in FAQs.

Q4 – Brokers

Are the arrangements in respect of brokers appropriate?

Most feedback was supportive; but some changes have been made as a result of specific points raised.

For credit brokers, the main concern was the level of fees related to the scale of business, especially for credit broking which is not home finance business. There was also substantial feedback from motor traders who arrange finance, see Q6 below.

Fees have been significantly reduced and restructured into 3 tiers, for small-medium and larger credit brokers with a separate tier for home finance brokers.

Tier		Original fee	New fee
1	Small-medium credit brokers	£3,000	£1,000
2	Large credit brokers	£3.000	£2,000
3	Home finance Brokers	£4,500	£3,000

Application fees have also been revised to bring them into line with the annual fees above.

These changes will affect motor traders and other ancillary service providers who act as brokers. Specific arrangements have been made for smaller motor traders who work directly with a lender to be exempt from the requirement for a licence. Further detail is provided in the motor traders section, Q6.

Q5 – High Street Retailers

Are the arrangements for high street retailers appropriate?

No significant changes were required. However, clarification was sought in respect of interest free credit and "Buy Now Pay Later" arrangements. These points are addressed in Q8 below.

Q6 – Motor Traders

Are the arrangements for motor traders appropriate?

While feedback supported the principle that motor traders should be regulated for arranging finance for their customers, we have made significant changes in response to stakeholder feedback.

The general message was that the fees were too high. It was suggested that fees should be tiered according to size, and that smaller traders should be exempt from licensing.

On commission payments, while some opposed the removal of the "Difference in Charges" (DIC), other were in favour of removing what could be considered an unfair practice. The issue of Commission payments is addressed in more detail in Q20 below.

The Commission has accepted that the fees originally proposed were high and has reduced and restructured charges for credit brokers (including motor traders). We consider that the fairest way to distinguish fee levels is by the value of loans brokered/arranged. We have therefore:

1 Reduced the overall level of annual fees and application fees for ancillary service providers including credit brokers and motor traders;

2 Introduced tiered charges for motor traders and other credit brokers

   - £1,000: small – medium sized brokers and motor traders; and
   - £2,000: large brokers and motor traders

   A higher tier fee of £3,000 fee will apply to any broker (including motor traders) which is involved in providing loans that are secured against residential property.

   Application fees will match the annual fees.

3 Introduced an "Appointed Motor Trader" arrangement for very small motor traders which is similar to the "Appointed Retailer" arrangement for high street retailers. This will permit very small motor traders to avoid the requirement to hold a licence in their own right provided they act for a licensed lender who supervises them and meet certain conditions. They are limited to:

   - simple repayment loans;
   - no balloon payments, PCPs or other complex transactions; and
   - maximum value of loans of £250k per annum.

Motor traders falling into the smallest category (<£250k) may choose whether to be an appointed motor trader (subject to suitable arrangements with a lender); to be licensed in their own right; or may choose to use another licensed credit broker to provide services.

In making the changes we have sought to ensure that suitable protection is in place for customers and to strike a balance between the different lenders, motor traders and independent credit brokers, without imposing unnecessary restrictions that may restrict or reduce customer choice.

Q7 – High Net Worth Individuals (HNWI)

Are the thresholds for HNWI customers set at the appropriate level?

This was one of the few areas where more responses disagreed than agreed the Commission's original proposals. Several respondents wanted us to exempt from regulation altogether services provided to customers classed as HNWI.

The Commission does not agree. While it may be appropriate to disapply certain rules – such as the need for specific credit checks or affordability assessments – HNWI are as likely to be vulnerable as other customers. Providing services to HNWI therefore remain within the regulatory framework and is subject to the same licensing requirements as for any other individuals.

Customers may be treated as HNWI provided that they meet the relevant qualifying criteria and choose to be treated as a HNWI, with a clear understanding that this means that they will not have the benefit of consumer protection rules that are disapplied for HNWI customers. The Rules and Guidance set out which rules do not apply to HNWI customers.

It is important that customers continue to be treated fairly and to be protected in case of vulnerability. Firms may allow individuals to self-certify their wealth. However, credit providers will be expected to take into account any contrary information they may have, and to extend the same precautions and protections for vulnerable customers to HNWI who fall into any of the categories. Older customers should not automatically be assumed to be vulnerable. Licensees must take appropriate steps to safeguard their customers interests, to ensure that they are treated fairly and that on particular for those over 75 appropriate accommodation is made to ensure they can access services and that assessments such as for HNWI, are properly evidenced and supported.

Some responses noted the inconsistency between the HNWI thresholds and those of the FCA. There was an error in the thresholds set out in the CP. Correct figures are now included in the rules and are broadly consistent with those set by the FCA for the UK.

Q8 – Buy Now Pay Later

Is the approach in respect of "buy now, pay later" arrangements reasonable?

There was confusion on this question amongst some respondents so the following is set out here for clarification. It will also be addressed in FAQs on the website

Interest free credit, including true "buy now, pay later" arrangements fall outside the scope of Part II of the law, provided that there are no fees, interest or other charges.

Such arrangements must not include hidden fees or charges or revert to arrangements which charge interest (or other fees). If there are charges – for late payment or otherwise – or if the agreement may revert to one with interest or fees, it would be a regulated agreement with the scope of the Law.

BNPL does not include arrangements which begin as "interest free" but may revert if repayments take longer than originally intended or if fees or charges are levied for example, for late payments. For these arrangements it is essential that customers are properly informed and credit providers give due consideration to affordability and other relevant issues. As a rule, if there are any fees or charges for credit – whether through higher prices – or hidden charges such as a requirement to buy specific warranties or insurance, or to be tied into another product or service offered by the retailer then this would mean that an appropriate licence would be needed under Part II of the Law.

Q9 – Information requests

Are the information requirements for licensees reasonable?

Responses confirmed that the information requests proposed by the Commission were reasonable.

Q10 – APR Calculations

Is it reasonable to adopt APR calculations in line with those in the UK?

An overwhelming majority of respondents were content with the choice of APR. The calculation proposed by the Commission is the same as that used by the UK FCA. This means firms should be able to make use of existing software, or off the shelf software, from a much larger market and avoids the need for expensive, bespoke local systems.

Q11 – Limits on consumer credit charges

Is it reasonable to apply limits on consumer credit charges as described?

There was strong support for limiting consumer credit charges. Some suggested alternative mechanisms, but these would potentially be more intrusive and less practical to apply, so no changes are proposed.

For clarity, the cap of 100% does not apply to home finance, but only to consumer credit arrangements.

Q12 – Advertising and Promotion

Is it reasonable to apply the proposed rules for promotions?

The overwhelming majority of responses supported our proposed approach. There were a couple of respondents who did not want to disclose the full range of information either for practical reasons or for concerns over the potential to confuse customers.

Some minor technical and cosmetic changes have been made. The reference to the ASA's Code of Non-broadcast Advertising and Direct and Promotional Marketing (CAP) is moved from the rules to guidance.

Q13 – Cooling off periods

Is the proposed approach to cancellation, cooling off and periods of reflection reasonable?

While there was strong support in principle for such provisions, there were several comments highlighting that details of implementation are important and further guidance was needed.

Consumer credit cooling off period

There was concern that the previous draft might lead customers to believe they could terminate any finance agreement, return the goods and that outstanding debt would be cancelled automatically. It was a particular concern for motor traders in the financing of vehicle sales.

This is not the case. The cooling off period offers a brief window for customers to consider finance arrangements they have entered into and whether to withdraw and replace them with an alternative. We agree that our original guidance could have been clearer and we have now updated it accordingly.

For the avoidance of doubt, the 'right to withdraw' applies to the finance element of the agreement. There is no separate or implicit right to return the goods already purchased.

Home Finance period of reflection and early repayment

Concerns were raised that the arrangements proposed would introduce a long (14 day) delay which would slow down the process and could prevent customers from closing on a property they want to buy. In the UK there is a 14-day cooling off period for consumer finance but for home finance the period for reflection is only 7 days.

It was always intended that customers could terminate the reflection period early. We have made this clearer in our rules and reduced the period of reflection to 7 days to match the UK approach.

Although the rules for early repayment if a sale does not proceed are unlikely to be needed in the normal course of events, they provide a useful safeguard for customers.

Nevertheless, some private banks said that for making substantial loans to customers (who are likely to be HNWIs), the costs involved in repayment without penalty if the deal does not proceed could be significant and this prevented them from recovering the costs of arranging such loans.

Customers who meet the HNWI criteria may choose whether or not to be treated as HNWI customers, and accept the disapplication of the relevant home finance rules. This includes rules governing cooling off periods and other aspects of conduct (there are exceptions for rules on the fair treatment of customers and rules relating to vulnerable customers which apply to all customers). We consider that this addresses the concerns raised by private banks. Otherwise, this protection around early repayment stands.

Q14 – Early repayment

Is the approach to early repayment fees reasonable?

There was strong support for the proposal, but some requests for guidance on how it would operate in practice. This has been covered by changing the rules, which are now clearer. Where there is flexibility in the approach, it is subject to the principle that licensees should advise customers at the outset which approach they intend to use.

Q15 – Unfair contract terms

Is the approach to unfair contract terms and grey-listing reasonable?

There was overall support and recognition of the need to introduce ways to address unfair contract terms. The Commercial Bar proposed that the terms listed (in Schedule 4 to the rules) should be aligned with those in the UK. Clearly there are advantages and disadvantages to using UK terms or modifying them for specific use in the Bailiwick. Given that such arrangements have been in place for some time in the UK and there is a significant amount of precedent to follow, on balance we agree that it is clearer to adopt terms in line with the (current) UK approach rather than create a separate set of terms for the Bailiwick. This change has been made.

It was also requested that terms which are "grey-listed" in the UK and which we proposed should not be permitted should not be automatically disallowed. It was suggested that there may be circumstances where the use of the listed terms might be appropriate and individual customers should be permitted to accept such terms where they choose to do so.

While reputable firms are unlikely to require these terms in their contracts, adopting a more restrictive approach than the UK could limit the availability of some products and services for local consumers. The Commission recognises that there may be occasions where terms listed in the schedule would be permitted, for example where they have been reviewed and approved for use by the FCA and provided they are limited to the same products or circumstances as reviewed by the FCA.

Licensees should not require customers to waive their statutory rights under this law.

Q16 – Forbearance and Default

Is the approach to forbearance and default reasonable?

While supportive overall, responses raised concerns about whether we were seeking to impose additional restrictions on the use of *saisie* or other remedies.

For clarity, this is not the intention. The rules implement what is currently good practice, and we expect that where a licensee exercises its rights over security, any surplus realised after expenses (and any outstanding debts under *saisie* arrangements have been satisfied) should be returned to the borrower.

The Commission would be concerned if a firm took security over an individual's home with a view to long term possession in the event that it was forced to realise that security or if it was seeking additional profit from the exercise of such security.

Q17 – Private Lenders

Is it appropriate to allow small private lenders to be exempted from the requirement to hold a licence?

There was overall support for the proposal but several responses raised concerns that licensed firms would provide more safeguards for customers and would not be able to compete on a level playing field with unlicensed private lenders. While we understand this view, and are sympathetic to some of the concerns raised, we consider that the requirement for an Appointed Service Provider (ASP) to oversee the private lender will provide reasonable protection for borrowers and strikes an appropriate balance between consumer protection and maintaining choice in the market.

We have increased the maximum value of the loan portfolio to £2m in total. This includes any lending carried on outside Part II (or lending exempted from Part II) – for example lending to businesses or factoring carried out under Part III of the law.

Q18 – Appointed Service Providers (ASPs)

Are the arrangements for Appointed Service Providers appropriate?

There was broad support for the proposed arrangements and only minor technical and cosmetic changes have been made.

Q19 – Firms in run off

Is it reasonable to exempt firms in run-off and permit them to make limited contract changes?

There was strong support for the Commission's proposed exemption from licensing (on application) for firms in run off, as at the date the LCF Law comes into effect (1st January 2023), and the principle that some changes would be permitted. However, the Commission is not inclined to extend the proposed duration or to broaden the exemption.

Firms in run off will need to apply to the Commission if they wish to benefit from an exemption. This will be time limited, to a maximum of 5 years. Subject to meeting the appropriate criteria, firms granted the exemption will be permitted to make certain changes to contracts – for example, to change interest rates on variable rate home finance loans. If the run off is expected to take longer than 5 years it is unlikely that the Commission would grant an exemption.

Q20 – Approach to fees and commission

Is the approach to fees and commission payments reasonable?

There was a broad consensus although a number of firms, in particular motor traders who arrange finance as credit brokers, were concerned about two aspects. These were disclosure of commission figures and the types of commission payment that would be permitted in future.

Disclosure of commission is a requirement for home finance. For consumer credit, brokers need not disclose the amount of their commission unless requested to do so – but they must disclose the fact that they will receive a commission for arranging finance and the nature of the arrangement (for example, does the commission increase with the amount borrowed?). Note that although brokers may not be required to disclose figures up front, lenders may be required to do so in the detail of the credit agreement with the customer (in particular, they will need to disclose it in the overall cost of credit if it is paid for directly by customers).

Moving on to types of commission payment, while some respondents supported the continued use of “difference in charges” (DIC) for commission, more were against its use. The Commission does not propose to change its approach. “Difference in charges” arrangements are unfair to customers. They incentivise brokers to act contrary to their customer’s interests by encouraging them to use interest rates higher than would otherwise be the case for affected customers. Respondents who were lenders did not object to the removal of this practice. It was restricted some time ago in the UK and replaced by alternative approaches to broker remuneration.

The Commission does not intend to specify “permitted” remuneration arrangements. These are commercial matters for the traders/credit brokers and lenders. We do not propose, at the present time, to stop the use of volume-based discounts provided that they do not lead to worse outcomes for customers or to high pressure selling by motor traders in order to meet financial targets for commission payments. Credit brokers, including motor traders will be expected to offer and to recommend finance arrangements which are best for the customer, rather than those which meet dealers’ or brokers’ commission targets.

Part III – FFBs (Financial Firm Businesses)

Responses were broadly supportive of our approach but identified some specific areas where the approach could be revised or improved. We have not made wholesale changes, but the relevant rules and guidance have been updated to take into account a number of the responses and to make other minor and technical changes.

Q21 – Approach to regulating FFBs

Is the approach to regulating FFBs reasonable to meet the licensing requirement?

As noted above, only minor technical and cosmetic changes have been made.

Q22 – Business Lending

If you provide loans to businesses, to what degree is lending part of your core business, and how do you satisfy AML/CFT obligations?

Responses provided useful feedback which has enabled us to adjust the scope of exemptions and provide additional guidance. In particular it should be noted that:

(i) Lending which is Part III FFB Lending (and not a regulated agreement under Part II) undertaken outside the Bailiwick is generally outside the scope of the Law unless it meets the definition in s16 of the Law;

(ii) Debt instruments and bonds are not considered to be "lending" for these purposes;

Q23 – Specific Rules for types of FFB

Are there specific Rules that should be applied to certain types of FFB?

The majority of responses considered that there did not need to be individual rules for specific types of FFBs.

There may in future be the need for specific rules for particular types of business, but they are not required at this stage.

Q24 –Exemption for CIS (collective investment schemes)

Is it reasonable to exempt authorised/registered collective investment schemes from the need for an individual licence?

There was strong agreement that the correct approach was to permit an exemption for authorised/registered CIS and an exemption is included in Schedule 1 to the Law.

Q25 – Administered entities

Is it appropriate to exempt administered entities in respect of intra-group lending within an administered structure from the requirement for licensing?

There was strong support for permitting exemptions for administered entities in respect of lending within a group structure, where the administrator was licensed under the POI or Fiduciary Laws.

Administrators will be required to provide the Commission relevant information on the administered entities. We have also included an exemption for entities administered by appropriately licensed insurance managers. This means that captive insurers managed by a licensed insurance manager will not require a Part III FFB licence when lending to their parent group.

Part III – VASPs (Virtual Asset Service Providers)

Following feedback from a range of stakeholders, including the Fintech Oversight Group[2], we have made some limited changes to our approach and provided clarification in respect of a number of issues, including outsourcing.

We remain of the view that virtual assets pose significant additional risks compared to traditional financial assets and therefore deserve to be treated with a great deal of caution. Recent market events and the collapse of a number of high-profile crypto currency firms bear out the risks involved.

We continue our approach that individuals and other persons (which includes incorporated entities) should be able to invest in such assets and trade them on their own behalf – where the profit or loss from such activity falls to them as the person carrying out the trading. There is no restriction on persons accessing virtual asset providers or exchanges outside the Bailiwick for their own purposes. However, as a consumer protection measure, any VASP adverts that target Bailiwick residents must be issued by a VASP licensed under the Law or receive the Commission's prior consent. This is similar to the restriction on deposit adverts under the Banking Supervision Law.

Q26 – Exemptions

Is the Commission's approach to exemptions for VASP activities reasonable?

Several respondents stated that the Commission's proposed restrictions on who a licensed VASP can do business with were too restrictive. In our original paper we proposed to limit the licensing of VASPs to firms which dealt with wholesale and institutional investors only. We recognise that ultimately products and services which are initially provided to wholesale and institutional investors may end up in the hands of individual investors, indirectly, as a result of secondary trading or in some cases through direct arrangements.

The rules do not allow VASP licensees to deal directly with individuals. Nevertheless, the Commission will consider licensing VASPs, subject to a number of caveats and conditions, to carry on business which may be directed to individuals, provided that such business is conducted through a properly regulated intermediary. The Commission may also, as a condition to licensing, require some VASPs to seek our 'no objection' before using a new intermediary to distribute their products or services. We will not permit VASP licensees to offer products or services which are targeted at retail customers.

Q27 – Environmental disclosure

Do you agree with the proposed environmental disclosure rules for VASPs?

Some respondents said that the Commission's proposed environmental impact disclosure rules were too onerous and difficult to comply with. There were concerns regarding the need to provide a third-party report on the firm's disclosures as part of the licence application. Some respondents also noted that such disclosures were not required in other sectors nor in other jurisdictions.

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[2] The FOG is an advisory group comprising officers from the States and industry representatives.

The Commission has taken on board this feedback by making the disclosure requirements simpler to comply with and remove the requirement to provide a third-party report. The rules are now focused on the environmental impact of the consensus mechanism of the firm's virtual assets (such as Proof of Work, for example. This is referred to as the validation or mining process on pg. 58 of the LCF CP), instead of all of their activities. This should align more with the approach taken in the forthcoming EU regulations. Only virtual assets with consensus mechanisms that require the consumption of resources (such as Proof of Work) are required to include detailed figures on energy usage and carbon emissions within their environmental disclosures.

The Commission has expanded the guidance in this section to make it clear that firms can complete their disclosures on a 'best efforts' basis.

Q28 – Outsourcing

Is the Commission's proposed approach to substance and outsourcing reasonable?

We received feedback from a number of respondents that preventing VASP licensees from outsourcing outside the Bailiwick would limit the growth of the sector as in many cases there may not be sufficient expertise within the Bailiwick.

This is not the Commission's intention and was not what the draft Rules stated. VASP licensees will require the Commission's consent before outsourcing functions outside the Bailiwick. This consent will generally be discussed during the application process.

Part IV – Crowdfunding and Peer to Peer Platforms

Q29 – Peer to Peer and Crowdfunding

Is the approach to regulating peer to peer and crowdfunding services reasonable?

Q30 – Investment limits

Is it reasonable to limit investment to 10% of an individual investor's net wealth?

Most responses supported the overall approach; but a small majority were opposed to the limit on individual investment. Some preferred an alternative approach with less regulatory oversight.

The main concern identified was in the limit on individual investments, but a number of respondents would also prefer to have exemptions for investors meeting certain criteria – such as professional investors or high net worth individuals.

After consideration, the Commission has decided to increase the limit for individual investments to 15% of net assets.

We note that in other jurisdictions, for example the UK, the limits may be waived entirely for certain categories of investor. However, the criteria can be difficult to assess and in many cases are not sufficiently rigorous to ensure that they could not be met by many individuals who have no more detailed or better understanding of the products and platform investments than a typical retail investor. We consider that this would pose unacceptable risks for individual investors and for the reputation of the Bailiwick should such arrangements be exploited.

The Bailiwick business model is different to that in the UK. Our focus is a global market rather than a large domestic market and this means that the 15% cap can bring in significant sums from wealthy global investors. We do not want individual investors to be exposed further than this or to risk losing their entire net assets in a single platform.

Charity platforms

We also clarify that charity "crowdfunding" arrangements, such as "just giving" style platforms, which are vehicles for individual to make donations to charities are not considered to be investment or loan funding platforms and do not fall within the scope of the LCF Law. They therefore do not require a specific licence under the Law.

Other issues

Q31 – Information gathering

Is the Commission's proposed approach to information reporting reasonable?

Q32 – Applications

Is the Commission's proposed approach to applications reasonable?

Q33 – Comments on clarity of rules

Do you have any comments regarding the clarity of the Rules?

Q34 – Comments on other topics

Do you have any further comments regarding the topics covered by the Consultation?

Most responses were content with the proposed approach to information gathering.

Similarly, with application forms, responses were generally positive, but indicated a need for further support and guidance, particularly for firms new to being regulated by the Commission. The Commission has made a number of changes to improve the application forms and add further guidance to assist applicants in their completion. FAQs will also be available on the Commission's website together with assistance from lcf@gfsc.gg if needed.

Annex 1 – Lending, Credit & Finance Exemptions

See attached document

Annex 2 - Lending Credit & Finance Rules and Guidance, 2023

See attached document

Annex 3 - Lending Credit & Finance Guidance, family members

Immediate and Extended Family Members of a Householder
(Showing up to 4 degrees via consanguinity or partnership)

'Householders' can accommodate other people. This chart shows who Local and Open Market Householders can accommodate.

For the avoidance of any doubt, Permanent Residents can live in any dwelling in Guernsey.

Great-Great Grandparent
Great Grandparent
Great Uncle/Aunt *
Grandparent
Uncle / Aunt *
First Cousin
Parent
Brother / Sister
Nephew / Niece
Grand Nephew/Niece
Spouse / Partner
Child
Grandchild
Great Grandchild
Great-Great Grandchild
Householder
Child
Grandchild
Great Grandchild
Great-Great Grandchild
Parent
Brother / Sister
Nephew / Niece
Grand Nephew/Niece
Grandparent
Uncle / Aunt *
First Cousin
Great Grandparent
Great Uncle/Aunt *
Great-Great Grandparent

Key

Immediate Family Member (applies to all households)

Extended Family Member (Open Market Part A households only)

* Aunt/Uncle means the siblings of a person's parent and does not include aunt/uncle-in-law. Great Aunt/Uncle also does not extend to 'in-law' relationships

Policy Presumptions

Immediate Family Member - The spouse/partner of an immediate family member **will be** issued with a Discretionary Resident Permit to enable them to live with the householder (Reference DR2)

Extended Family Member - The spouse/partner of an extended family member **will not be** issued with a Discretionary Resident Permit to enable them to live with the householder (Reference DR5)