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The FCA
Consumer
Credit Regime



The FCA Consumer Credit Regime

Introduction

Responsibility for the consumer credit regime was transferred to the FCA from the OFT on 1 April 2014 and the licensing regime under the *Consumer Credit Act 1974* (the “CCA”) was replaced with the authorisation regime under FSMA. As a result, the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (the “RAO”) was amended to bring credit-related activities within the framework of FSMA and consumer credit regulated activities are subject to the rules and guidance in the FCA Handbook. The consumer credit regime is set out in the new consumer credit sourcebook (CONC), which came into effect on 1 April 2014.

It should be noted, however, that a number of provisions of the CCA have been retained, as they confer specific rights or obligations on consumers or third parties, and that although the FCA has responsibility for the regulation of consumer credit, the rules and guidance are also relevant to PRA-authorised firms which carry on consumer credit regulated activities.

In order to ensure a smooth transition from the OFT to the FCA, an interim permission regime came into effect on 1 April 2014 for those firms which held a valid OFT consumer credit licence at the time of transfer. Further details of the interim permission regime are set out under the section ‘FCA Authorisation’ below.

The following summary aims to provide a brief overview of the main issues relating to the FCA consumer credit regime:

What is a credit regulated activity?

There are six specified consumer credit activities, as follows:

- (i) credit broking (Article 36A, RAO);
- (ii) operating an electronic system in relation to lending (Article 36H, RAO) (generally known as peer-to-peer lending);

(iii) debt-related regulated activities, including:

- debt-adjusting (Article 39D, RAO);
- debt-counselling (Article 39E, RAO);
- debt-collecting (Article 39F, RAO); and
- debt-administration (Article 39G, RAO).

(iv) entering into a regulated credit agreement as lender (Article 60B, RAO);

(v) entering into a regulated consumer hire agreement as owner (Article 60N, RAO); and

(vi) providing credit information (Article 89A, RAO) and credit references (Article 89B, RAO).

A firm carrying out any one or more of the above activities by way of business in the UK will be required to be authorised by the FCA unless the firm is exempt or any relevant exclusions apply.

However, the requirement to be authorised only relates to those credit related arrangements which are deemed to fall within the scope of the consumer credit regime, as discussed in the following section.

Arrangements falling within the scope of the consumer credit regime

Firstly, the activity must include the provision of ‘credit’, which is defined as including a cash loan and any other form of financial accommodation (Article 60L, RAO). The definition of credit includes the following elements:

- (i) the supply of a benefit to the debtor;
- (ii) a contractual duty of payment;
- (iii) there must be a money obligation; and
- (iv) the duty to pay must be contractually deferred.

Secondly, there must be a regulated agreement, which will be either:

- (a) a regulated credit agreement; or
- (b) a regulated consumer hire agreement.



Regulated credit agreement

A regulated credit agreement is any 'credit agreement' which is not an 'exempt agreement'. For the purposes of the consumer credit regime:

- (i) a credit agreement means an agreement between an individual (A) and any other person (B) under which B provides A with credit of any amount in accordance with Article 60B, RAO. An individual shall be deemed to include (a) a natural person, (b) a partnership consisting of 2 or 3 persons, not all of whom are bodies corporate, and (c) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership; and
- (ii) an exempt agreement means a credit agreement that is an exempt agreement as set out in Articles 60C to 60H, RAO.

Thus, credit agreements with non-individuals i.e. companies or other corporate bodies, for example, will not fall under the FCA's consumer credit regime.

Regulated consumer hire agreement

A regulated consumer hire agreement is any 'consumer hire agreement' which is not an 'exempt agreement'. For the purposes of the consumer credit regime:

- (i) a *consumer hire agreement* means an agreement between a person (the owner) and an individual (the hirer) relating to the bailment or hiring of goods to the hirer in accordance with Article 60N, RAO, which (a) is not a hire-purchase agreement, and (b) is capable of subsisting for more than 3 months; and
- (ii) an *exempt agreement* means a credit agreement that is an exempt agreement as set out in Articles 60O to 60Q, RAO.

Thus, if the agreement does not relate to the provision of credit and/or if the credit agreement is not a regulated credit agreement or regulated consumer hire agreement, then the arrangements are unlikely to fall within scope

of the FCA consumer credit regime. However, it should be noted that each specific arrangement should be considered on a case by case basis taking into account all the circumstances of the arrangements in question.

FCA authorisation

If a firm is carrying on, or intends to carry on, a regulated consumer credit activity, it will require FCA authorisation. An obvious point to note is that the need to be authorised applies to the lender (under a regulated credit agreement) or the owner (under a regulated consumer hire agreement) and not to the borrower.

When authorising consumer credit firms, the FCA distinguishes between the core credit authorisation regime for firms carrying on higher-risk consumer credit activities and the limited permission regime for firms carrying on lower-risk consumer credit activities. Generally, firms that need full permission will be subject to more checks and have more conditions to meet at authorisation and when carrying out consumer credit-related activities.

Full permission activities

These can broadly be summarised as follows:

- (i) credit broking, where introducing customers to lenders is a main business activity;
- (ii) credit broking, where the sale of goods or services takes place in the customer's home (i.e. domestic premises supplier);
- (iii) debt administration;
- (iv) debt collection;
- (v) consumer credit lending which is not limited permission (e.g., personal loans, credit cards, overdrafts, pawnbroking, hire-purchase or conditional sale agreements);
- (vi) providing credit information services;
- (vii) providing credit reference agency services; and
- (viii) peer-to-peer lending.



Limited permission activities

These can broadly be summarised as follows:

- (i) consumer hire;
- (ii) credit broking, other than by a domestic premises supplier where the sale of goods or non-financial services is the main business and broking is a secondary activity to help finance the purchase of those services or goods;
- (iii) credit broking in relation to hire or hire purchase agreements;
- (iv) lending, where the sale of goods or non-financial services is the main business and there is no interest or charges and the agreements are not hire-purchase or conditional sale agreements;
- (v) local authorities lending within the scope of the Consumer Credit Directive; and
- (vi) not for profit bodies providing debt counselling, debt-adjusting and/or credit information services.

Information on how to apply for FCA authorisation as a consumer credit firm can be found on the FCA's website at:

www.the-fca.org.uk/firms/consumer-credit.

Interim Permission

As mentioned above, an interim permission regime came into effect on 1 April 2014 for those firms which held a valid OFT consumer credit licence at the time of transfer from the OFT to the FCA. Those firms with interim permission must apply for FCA authorisation within the firm's allocated application period and, according to the FCA website, interim permission to conduct consumer credit activities will last until a firm has completed the application process and the FCA has granted a decision regarding authorisation or until a firm cancels its permission.

If a firm held an OFT licence and has not registered for interim permission, it cannot legally continue carrying out consumer credit activities and must stop doing so until it is FCA

authorised. Those firms which have interim permission are listed on the FCA's consumer credit register.

Firms with an interim permission are not subject to all of the FCA rules set out in the FCA Handbook, but are subject to a number of requirements set out in PRIN, GEN, SYSC, SUP and CONC. The following permissions do not apply to firms with an interim permission: approved persons requirements; requirements relating to controllers; periodic reporting; complaints reporting and publication rules; and, for debt management firms, requirements relating to client assets and prudential standards.

The FCA currently expects the process of assessing authorisation applications to be finished by March 2017.

Consumer credit passporting into the UK

EEA firms

EEA firms wishing to carry out consumer credit related activities in the UK will be exempt from the requirement to obtain FCA authorisation if they provide their services entirely at a distance by electronic means from an EEA Member State and operate under a MiFID or UCITs passport.

The passport does not apply to secondary credit activities, however, such as firms providing debt management services, so an EEA firm will need additional permissions to carry on such activities in the UK.

Non-EEA firms

All non-EEA firms wishing to carry out consumer credit related activities in the UK will need to be FCA authorised and be established in the UK.

**This document is for general guidance only. It does not constitute advice
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