



# Guernsey Financial Services Commission

## **Notice with respect to the disapplication of the requirement to hold a licence under section 40 of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the “Law”)**

Pursuant to section 40 of the Law and following consultation with the Policy & Resources Committee of the States of Guernsey in accordance with subsection 40(1), the Guernsey Financial Services Commission (“the Commission”) disapplies the requirement to hold the following licences, issued under the Law, in the following specific circumstances.

In this Note all terms follow the definition given to them in the Law.

### **Requirement to hold a credit business licence in accordance with Part II of the Law**

This requirement is disapplied and the following do not require a licence under Part II of the Law:

- I. Persons<sup>1</sup> who extend credit to family members<sup>2</sup>.
  
- II. Entities which extend credit to family members<sup>3</sup>, where that entity is wholly owned by related family members (whether or not that credit is extended to the owners of that entity).

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<sup>1</sup> In this note ‘persons’ includes legal persons.

<sup>2</sup> In this case those falling under the definition of ‘family members’ are set out at Appendix 1 (originally set out as part of the States of Guernsey Guidance on Housing).

<sup>3</sup> *Ibid.*

- III. Entities which extend credit to their registered directors, registered partners, registered shareholders, or beneficial owners<sup>4</sup>. **Note** shareholder loans will only qualify for the exemption where it is clear that the borrowers are *bona fide* shareholders of the entity i.e., that the shareholding has not been created solely for the purpose of the extension of credit.
- IV. Entities which extend credit to their employees<sup>5</sup>.
- V. Guernsey trustees who extend credit to named beneficiaries of the trust from which the credit is sourced.
- VI. Lombard lending, which is carried out by persons holding licences under another regulatory law, where lending is secured against marketable securities (of which, cash as a marketable security may represent no more than 50% of the total value of the loan made). **Note** this disapplication only applies where lending is to individuals who are High Net Worth individuals as defined in the Commission's Lending, Credit and Finance Rules.
- VII. Hiring or leasing arrangements where such arrangements are not hire purchase agreements or other arrangements to purchase goods.
- VIII. Secured lending where the security is held against real property which is not situated in the Bailiwick of Guernsey and is not the borrower's residence.
- IX. Secured lending where the security is held against real property which is situated in the Bailiwick of Guernsey and is not the borrower's residence.
- X. Insurance intermediaries, licensed under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, and offering insurance payable in instalments, under finance agreements, where the credit facility is an arrangement made directly with the insurance provider.
- XI. Appointed retailers who provide credit facilities, through a single credit provider and subject to a written agreement with that credit provider, for goods and services offered by that retailer.

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<sup>4</sup> Where 'beneficial owners' has the definition given to it under paragraph 22 of Schedule 3 to The Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999.

<sup>5</sup> 'Employees' means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment : *following the definition set out in the Protection of Investors (Bailiwick of Guernsey) Law, 2020.*

- XII. Appointed motor traders who provide credit facilities, which are simple repayment loans, through a single credit provider and subject to a written agreement with that credit provider, for goods and services offered by that motor trader. **Note** that this disapplication will only be available where simple repayment loans are offered provided that the total amount of credit extended, through the motor trader, does not exceed £250,000 per annum.

### **Requirement to hold a financial firm business licence in accordance with Part III of the Law**

This requirement is disapplied and the following do not require a financial firm business licence under Part III of the Law:

- I. Persons who carry out lending to family members<sup>6</sup>.
- II. Persons who carry out lending to family members<sup>7</sup>, where that entity is wholly owned by related family members (whether or not that credit is extended to the owners of that entity).
- III. Persons who carry out lending to their registered directors, registered partners, registered shareholders, or beneficial owners<sup>8</sup>.
- IV. Registered directors, registered partners, registered shareholders, or beneficial owners who carry out lending to associated entities<sup>9</sup>.
- V. Persons who carry out lending to their employees<sup>10</sup>.
- VI. Guernsey trustees who carry out lending to named beneficiaries of the trust from which the credit is sourced.

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<sup>6</sup> In this case 'family members' include 'close relatives' of a person, as defined in The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, and the 'extended family' of a person, the meaning of which is provided in the States of Guernsey Guidance on housing.

<sup>7</sup> *Ibid.*

<sup>8</sup> Where beneficial owners has the definition given to it under paragraph 22 of Schedule 3 to The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

<sup>9</sup> *Ibid.*

<sup>10</sup> 'Employees' means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment: *following the definition set out in the Protection of Investors (Bailiwick of Guernsey) Law, 2020.*

- VII. Persons who carry out lending and are administered by a licensee which holds a licence under the Protection of Investors (Bailiwick of Guernsey) Law, 2020. **Note** that this disapplication will only be available where either the extension of credit is ancillary to the main activity of the entity offering the credit facilities; or the extension of credit is one component of an investment, group, or holding structure of which the entity which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties).
- VIII. Persons who carry out lending and are administered by a licensee which holds a licence under the Regulation of Fiduciaries Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020. **Note** that this disapplication will only be available where either the extension of credit is ancillary to the main activity of the entity offering the credit facilities, or the extension of credit is one component of an investment, group, or holding structure of which the entity which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties).
- IX. Persons who carry out lending and are administered by a licensee which holds a licence under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002. **Note** that this disapplication will only be available where either the extension of credit is ancillary to the main activity of the entity offering the credit facilities, or the extension of credit is one component of an investment, group, or holding structure of which the entity which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties).
- X. Individuals, who are investors, who carry out lending to administered entities. **Note** that this disapplication will only be available where either the extension of credit is ancillary to the main activity of the individual offering the credit facilities, or the extension of credit is one component of an investment, group, or holding structure of which the individual which extends the credit forms a part (where the primary purpose of such a structure is to hold underlying assets, act as a corporate group, or make one or more investments into underlying assets, by equity or by debt, but the primary purpose is not to act as a lender to unconnected third parties).

- XI. Persons who carry out lending internally, within the group structure to which they belong, where the lending entity which has an established place of business in the Bailiwick of Guernsey<sup>11</sup>.
- XII. Persons, whose established place of business is within the Bailiwick, who carry out lending to other entities whose established place of business is also within the Bailiwick<sup>12</sup>. **Note** that this disapplication will only be available where the extension of credit is ancillary to the main activity of the entity offering the credit facilities
- XIII. Entities holding a Part III VASP licence issued under the Law.

### **Requirement to hold a VASP licence in accordance with Part III of the Law**

This requirement is disapplied and the following do not require a VASP licence under Part III of the Law:

- I. Persons who make investments, hold, or trade, in virtual assets for their own benefit. **Note** that this disapplication will not apply to persons, or persons within groups, offering products or services related to virtual assets.
- II. Licensees, who hold a licence under the Regulation of Fiduciaries Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, in the course of providing administration or management services, as services offered under that licence, to VASPs which either hold a Part III VASP licence issued under the Law or are exempt under (I).
- III. Licensees, who hold a licence under the Protection of Investors (Bailiwick of Guernsey) Law, 2020, in the course of providing administration or management services, as services offered under that licence, to VASPs which either hold a Part III VASP licence issued under the Law or are exempt under (I).

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<sup>11</sup> 'Established place of business', in relation to a body, and without limitation, does not include an office in the Bailiwick at which is transacted only such administrative business as is necessary to enable that body to comply with the requirements of the Companies (Guernsey) Law, 2008, the Companies (Alderney) Law, 1994, the Partnership (Guernsey) Law, 1995, the Limited Partnerships (Guernsey) Law, 2013, the Foundations (Guernsey) Law, 2012, or any corresponding legislation in force in any jurisdiction outside the Bailiwick: *following the definition set out in The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020.*

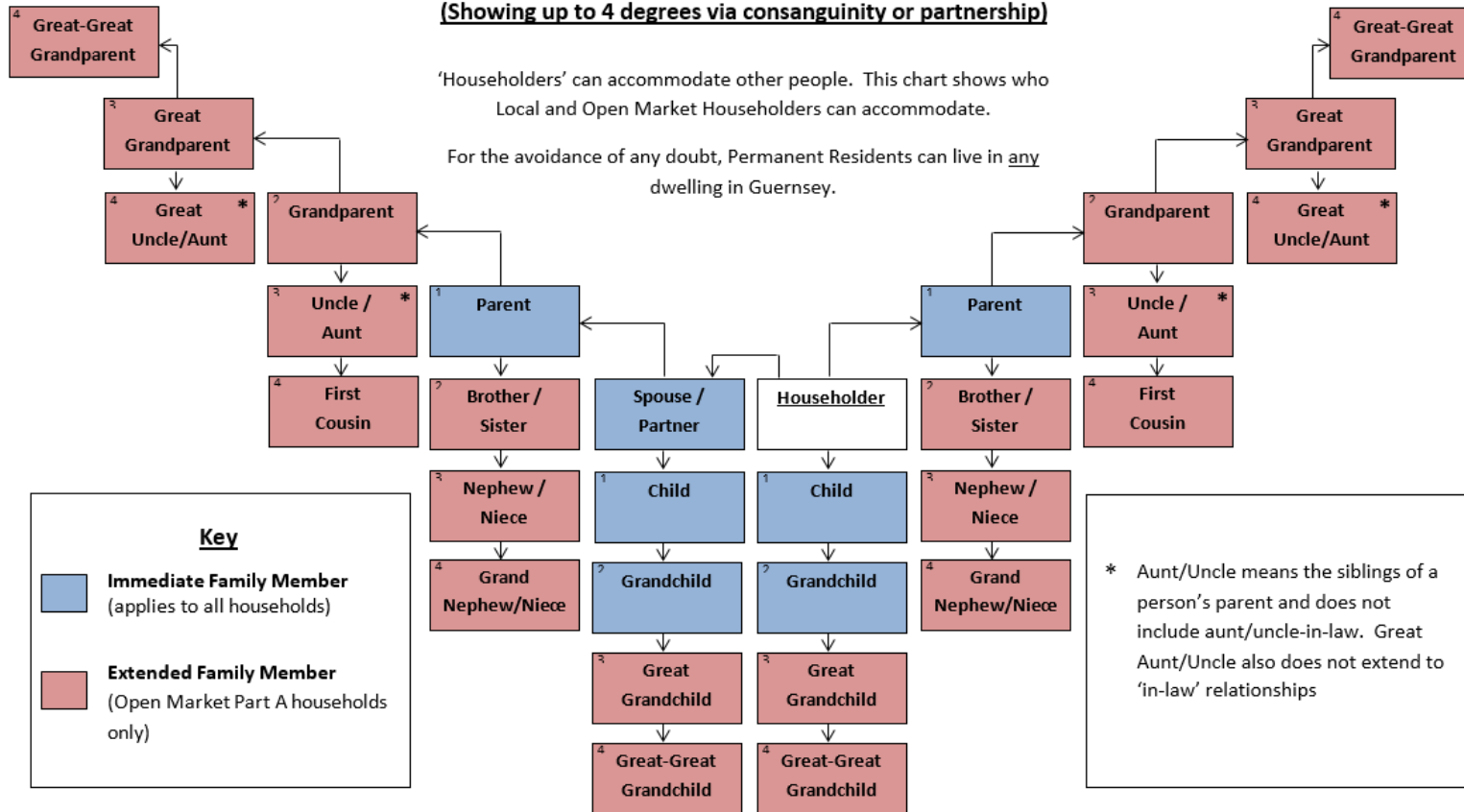
<sup>12</sup> *Ibid.*

- IV. Licensees, who hold a licence under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, in the course of providing administration or management services, as services offered under that licence, to VASPs which either hold a Part III VASP licence issued under the Law or are exempt under (I).
  
- V. Authorised or Registered Collective Investment Schemes investing, holding, or trading in virtual assets.

Date of issue: 1 February 2023

# APPENDIX 1 – FAMILY MEMBERS

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



### 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)