**RDO RULES AND GUIDANCE ON THE CHANGES TO CONSUMER LENDING REGULATIONS IN THE UK**

As highlighted in the March edition of RDO Insider, the Financial Conduct Authority (FCA) took over from the Office of Fair Trading as the new consumer credit regulator in the UK on April 1st. Anyone providing credit to UK consumers or introducing customers to finance provider must now have registered with the FCA on [www.fca.org.uk](http://www.fca.org.uk) for interim permission in order to continue carrying out consumer credit activities.

RDO has put together these Rules and Guidance to help companies that currently offer, or are considering offering consumer finance in the UK as the new regime under the FCA is set to be more controlled and with stricter threshold conditions that companies must demonstrate to obtain and maintain authorisation.

**Important Note**

*Please note the following is not meant to be legal advice and is no substitute for legal advice from lawyers experienced in Timeshare/ Consumer Credit Regulations and familiar with your business.*

**Rules and Guidance**

* Companies/individuals that have Interim Permission from the FCA after 1st April 2014 will be invited to apply to be authorised commencing October 2014. How long it will take the FCA to get through this process with the numbers of companies and individuals involved is unknown but the process could take some time. It is unclear how the FCA is likely to select which are to be the first companies/individuals through the process of Authorisation.

We understand there will be 2 levels of authorisation, Limited and Full. Full or Limited permission will be determined by whether the main activity is introducing customers to lenders or whether credit broking is a secondary activity.

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We anticipate that the FCA’s due diligence process to obtain Limited Authorisation would be fairly straightforward. If a company is running its own finance company it will, however, be required to apply for Full Authorisation and the due diligence process will be more robust and will be undertaken by an officer in the FCA.

* Overseas companies that offer their own “ In House” finance programmes to British citizens may not need to be FCA Authorised providing they have no “Touch Points” with any other Bank, Lender, Administrator or Collection Agency arrangements in the United Kingdom. However, we would advise extreme caution as even credit card payments paid through a UK merchant facility could trigger a “touch point”. If they have such arrangements they will need to be authorised as a part of the credit process is in the United Kingdom.
* To be authorised under FCA criteria “Mind and Management” (terminology used by the FCA meaning in practice directors, compliance and audit functions etc), the company/individuals must be based in the UK and background checks will be carried out on both the firm and individual.  Persons in key control positions will need to be approved by FCA.

A company with operations in other European countries with some key personal based in the UK but perhaps with finance and compliance controls based elsewhere in the EU might need to make minor adjustments to satisfy the FCA that they would qualify by simply relocating the other part of their operation to the UK.

* We believe that “ Passporting” a CCA Licence from other EU counties to the UK may be limited to banking institutions **that hold a 123 Banking Licence** and cannot be invoked by companies offering in-house finance.

* Lenders must assess credit worthiness and affordability of customers before granting a loan – this includes developers’ own “in house” finance. Plus all paperwork/processes including arrears management must be fully compliant with the current Consumer Credit Act.
* The FCA will be prepared to enforce on breaches of both rules and principals – it is important that TCF (Treating Customers Fairly) is considered throughout the business.
* There are 11 “Principles for Businesses” that Authorised companies need to comply with according to the FCA, these being:

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| 1 Integrity | A *firm* must conduct its business with integrity. |
| 2 Skill, care and diligence | A *firm* must conduct its business with due skill, care and diligence. |
| 3 Management and control | A *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. |
| 4 Financial prudence | A *firm* must maintain adequate financial resources.  |
| 5 Market conduct | A *firm* must observe proper standards of market conduct.  |
| 6 Customers' interests | A *firm* must pay due regard to the interests of its *customers* and treat them fairly. |
| 7 Communications with clients | A *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading. |
| 8 Conflicts of interest | A *firm* must manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. |
| 9 Customers: relationships of trust | A *firm* must take reasonable care to ensure the suit- ability of its advice and discretionary decisions for any *customer* who is entitled to rely upon its judgment. |
| 10 Clients' assets | A *firm* must arrange adequate protection for *clients'* assets when it is responsible for them. |
| 11 Relations with regulators | A *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice. |

**It is apparent that the regime for consumer lending is set to be far tougher under the FCA and the consequences of falling foul of the FCA are potentially very serious indeed. With this in mind, we cannot emphasise enough the importance of taking independent legal advice on any matters about which you have concerns.**

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