

Linklaters

Research project regarding money lending business regulations in the United Kingdom and the implementation of laws and regulations regarding money lending businesses in that jurisdiction

November 29, 2019

Prepared and Submitted by:

Linklaters

This Report is provided as a basis for policy discussions only. Nothing in this Report constitutes or should be interpreted as the provision of legal advice by Linklaters LLP or any of its partners or employees to you, and the submission of this Report does not establish a solicitor-client relationship between Linklaters LLP and any other party. While every effort has been made to ensure the accuracy and completeness of the material in this Report, Linklaters LLP does not authorise the reliance on this Report by any party and accepts no liability for any loss or damage arising from reliance on this Report by any party.

The opinions and analysis provided herein represent those of Linklaters LLP, and do not necessarily represent the positions of the Government of Japan or any other institution.

Linklaters

1. Regulations and restrictions imposed on licensed money lending business operator in the UK

1.1 Outline of the money lending business regulation		
<p>Outline of the money lending business licensing and operating requirements</p>	<p>Entering into regulated credit agreements as lender is a regulated activity in the UK. Exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement is also a regulated activity. In order to undertake such activities, a lender must be authorised by the FCA, which is the competent supervisory authority for regulated lenders.</p> <p><u>Authorisation</u></p> <p>In order to obtain authorisation, a firm must demonstrate that it meets the threshold conditions and that it is ready, fit and proper to carry on activities in the UK. The threshold conditions relate to the location of offices, the ability of the FCA to effectively supervise the firm, the firm having appropriate resources, the suitability of the firm to properly conduct regulated activities in compliance with the regulatory regime and the suitability of the business model.</p> <p>An application is made on a standard form application which requires the applicant to provide a significant amount of information including:</p> <ul style="list-style-type: none"> • the business with existing borrowers and why the firm wishes to carry out regulated activities • whether the firm has identified a business opportunity or borrower base • where borrowers will be sourced from with details of any lead generators or brokers • services (both regulated and non-regulated) the firm will sell as well as the areas it will specialise in • the experience the firm's governing body or senior management have of the regulated activities it wishes to carry out 	<p>Financial Services and Markets Act 2000 ("FSMA") and subsidiary legislation</p> <p>Consumer Credit Act 1974 ("CCA") and subsidiary legislation</p> <p>Consumer Rights Act 2015 ("CRA")</p> <p>Payment Services Regulations 2017 ("PSRs")</p> <p>The FCA handbook, including:</p> <ul style="list-style-type: none"> • PRIN Principles for Businesses • SYSC Senior Management Arrangements, Systems and Controls • COND Threshold Conditions • APER Statements of Principle and Code of Practice of Approved Persons

Linklaters

	<ul style="list-style-type: none"> • background and experience of everyone performing significant influence controlled functions (including their employment background and copies of relevant qualifications/examinations) • the long-term strategy and how that will be managed • how the firm will be financed and ensure financial resilience if challenging market conditions are experienced • the fees to be charged and how they are explained to the borrower • the policy and procedure relating to promotions and communications, including how they comply with CONC 3 • summary of the firm’s positioning in the credit market and how its products compare to competitors • summary of any security or guarantees the firm has and how borrowers are notified of this • how the firm will deal with borrowers who are in arrears on their repayments (including methods of contacting the borrower, assessments of whether they are in financial difficulty and details of any forbearance) • details of any second charge mortgage business • full details of how employees or agents of the firm will be paid • payments to lead generators or brokers • revenue to be generated from the regulated credit activities. <p>An authorisation fee is payable. The level of that fee is dependent on whether the business is classified as straightforward, moderately complex or complex and then on the anticipated revenue. The highest fee is currently £15,000.</p> <p>The FCA is required to make a decision on complete applications within 6 months. If the application is incomplete, it must make a decision within 12 months.</p>	<ul style="list-style-type: none"> • FIT Fit and Proper test for Employees and Senior Personnel • TC Training and Competence • GEN General Provisions • FEES Fees manual • SUP Supervision • DEPP Decision Procedure and Penalties Manual • DISP Dispute Resolution: Complaints • CONC Consumer Credit sourcebook
--	--	---

Linklaters

	<p><u>Ongoing operating requirements</u></p> <p>Once authorised, a firm must ensure that its business is run in full compliance with the regulatory regime. This includes:</p> <ul style="list-style-type: none"> • Ensuring that the systems and controls and governance structure are effective and appropriate for the business • Complying with all of the relevant conduct of business rules including assessments of creditworthiness • Ensuring that complaints are dealt with in accordance with the regulatory requirements • Payment of annual fees • Complying with the ongoing regulatory reporting requirements – the frequency and nature of the reporting requirements depend on the activities undertaken <p>The requirements for authorisation are set out in FSMA and supplemented by the provisions in the FCA Handbook. FSMA also sets out the powers of the FCA to take enforcement proceedings against those who carry on regulated activities without being authorised and against authorised persons who are in breach of the regulatory requirements.</p> <p>The core conduct of business requirements for regulated credit lending are set out in CONC. However, all business is subject to the relevant wider provisions of the FCA Handbook, the CCA, PSRs and CRA.</p>	
<p>Name of supervisory authorities and outline of the supervising power exercised by the relevant supervisory authorities and relevant provisions thereon</p>	<p>The main regulator for regulated credit is the FCA, although banks are also supervised by the Prudential Regulation Authority (the “PRA”). The FCA is the regulator responsible for conduct of the regulated activities of entering into a regulated credit agreement and exercising rights under a regulated credit agreement and ancillary credit activities including credit-broking, debt collection, debt management and debt administration.</p> <p>The FCA’s powers are wide ranging. Aside from the fact that it can refuse to grant authorisation in the first place, as the enforcement authority for a wide range of matters, it has significant powers under FSMA to obtain information and to conduct or order investigations as</p>	<p>FSMA CRA</p>

Linklaters

	<p>a result of shortcoming it identifies as a result of its supervision work or where there has been a breach of the regulatory perimeter.</p> <p>The FCA takes a proportionate approach to supervision so that only those firms with the greatest potential impact on consumers and markets have dedicated supervision teams. For firms without a dedicated supervision team, performance is supervised in a number of ways including regulatory reporting, the obligation of individual firms to report material issues, investigating concerns raised by consumers and consumer bodies, and ongoing supervision and thematic work.</p> <p>The FCA's information gathering and investigation powers may be exercised against authorised firms and their staff. In some cases, depending upon the offence in question, the powers may also be exercised against people who are not within the regulated sector. In certain circumstances, including when a person has failed to comply with a requirement to provide information made under these powers, the FCA can apply to a magistrate for a warrant to enter premises and seize documents or information.</p> <p>Under FSMA, there are two types of formal disciplinary sanctions that the FCA can impose upon firms (aside from the powers it has to pursue action through the civil courts, and those in relation to certain criminal offences). These are:</p> <ul style="list-style-type: none">• public statements and public censure; and• financial penalties. <p>In addition to public censures, statements and financial penalties, the FCA has other disciplinary and enforcement powers. These include the following:</p> <ul style="list-style-type: none">• Variation and cancellation of an authorised firm's Part 4A permission on the FCA's own initiative.• Withdrawal of an individual's status as an approved person and prohibition of an individual from performing specified functions.• Suspension of a firm's permission to carry on regulated activities or restriction on its ability to carry on such activities.	
--	--	--

Linklaters

	<ul style="list-style-type: none"> • Suspension of any approval for a controlled function held by an approved function or restrictions imposed on the performance of any such controlled function. • Powers to apply to court for injunctions in various circumstances. 	
Recent developments and arguments to revise the above regulation	There are significant changes being made to legislation as a result of Brexit but it is not anticipated that this will have any material impact on the way in which regulated unsecured credit is supervised in the UK.	N/A
1.2 Loans subject to the money lending business regulations		
Loans subject to the money lending business regulations	<p>Lending to corporate entities is not regulated in the UK.</p> <p>It is important to note that, in the UK, there is no specific regulatory concept of SME lending, instead the key factor is the nature of the borrower. A regulated credit agreement is an agreement between an individual or relevant recipient of credit (“A”) and any other person (“B”) where B provides A with credit of any amount, and the agreement is not an exempt agreement</p> <p>A relevant recipient of credit means:</p> <ul style="list-style-type: none"> • A partnership consisting of two or three persons not all of whom are bodies corporate; or • An unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership. <p>As a result, lending to sole traders, small partnerships and unincorporated bodies is regulated in the UK, subject to certain exemptions.</p> <p>Loans made to individuals or relevant recipients are not regulated credit agreements if:</p> <ul style="list-style-type: none"> • The lender provides the borrower with credit exceeding £25,000; and • The agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower. 	<p>Regulation 60B RAO</p> <p>Regulation 60C RAO</p>

Linklaters

	<p>Therefore, loans to sole proprietors, small partnerships and unincorporated bodies are classified as consumer loans but, where they are wholly or predominately for business use and the amount of credit exceeds £25,000, they are exempt from the regulatory requirements.</p> <p>It should be noted, however, that even where a credit agreement is exempt, there is still a possibility that the relationship between the lender and borrower can be challenged under the unfair relationships provisions contained in sections 140A to 140C of the CCA.</p>	
Historical, political and legal background of the above that consumer/retail loans and corporate loans are differently regulated	<p>Credit to individuals has been subject to legislative controls in the UK since the introduction of the Money-Lenders Act 1900 which was intended to ensure that individuals were not subject to financial abuse at the hands of unprincipled lenders. A radical overhaul of the legislation took place between 1968 and 1971 and, at that time, it was concluded that the protections should be extended, not only to consumers, but should include any partnership or other unincorporated body of persons not consisting entirely of bodies corporate. In 2007, the scope was narrowed so that only individuals, partnerships of two or three persons, not all of whom are bodies corporate, and unincorporated bodies benefit from the protections of the regulatory regime. The primary reason for this is that the UK legislators considered that small businesses should benefit from similar protections as consumers.</p>	N/A
Recent developments and arguments to revise the above regulation	<p>As a result of regulatory concerns regarding the mistreatment of many SMEs, the UK government has recently considered whether lending to SME corporates should be regulated. The Treasury Committee's proposal that all lending to SMEs should be regulated was not accepted by the government on the basis that the government is committed to regulating only where there is a clear case for doing so, to avoid putting additional costs on lenders that could ultimately lead to higher costs for businesses. It recognised that loans of less than £25,000 to the smallest businesses are already regulated. It is therefore unlikely that this matter will be subject to additional scrutiny in the short term.</p>	N/A
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and	<p>We are not aware of any such instance of circumvention of the regulation. The definition of "regulated credit agreement" has been deliberately drafted widely and therefore agreements that meet that definition are within the regulatory perimeter unless a relevant exemption can be applied.</p>	N/A

Linklaters

circumvent the above regulation		
1.3 Maximum rate of Interest regulations		
Usury limits or restrictions concerning interest rates under laws and regulations	<p>There are generally no usury limits or restrictions concerning interest rates in the UK, except in relation to facilities classified as high-cost short-term loans (“HCST loans”). HCST loans are defined as credit agreements where the APR is “<i>equal to or exceeds 100%</i>”, credit is provided up to a maximum of 12 months, and which are “<i>not secured by a mortgage, charge or pledge</i>”.</p> <p>Under section 137C, FSMA, the FCA has a duty to make general rules “<i>with a view to securing an appropriate degree of protection for borrowers against excessive charges</i>” (CONC 5A.1.4G). The FCA’s stated goals include “<i>securing an appropriate degree of protection for borrowers against excessive charges</i>” by “<i>restricting the charges for such HCST credit</i>” (CONC 5A.1.5G).</p> <p>In line with this, CONC 5 sets out rules in relation to responsible lending that apply to all consumer credit agreements but CONC 5A contains additional rules for HCST loans (CONC 5A.2.1R).</p> <p>Of the three caps set out in CONC 5A.2 in relation to HCST credit agreements, which are described below, the total cost cap applies an ultimate ceiling to the total amount repayable by the borrower, whether in default or not, of not more than the amount of credit provided under the agreement. The initial cost cap and default cap are further limits that apply beneath the umbrella of the total cost cap.</p> <p><u>Total cost cap</u></p> <p>CONC 5A.2.2R sets out a total cost cap for HCST loans, and provides that the interest and fees paid under the loan agreement must not exceed the amount of credit provided. This means that if the loan facility is for £1,000, the total amount repayable (which includes fees and interest) cannot exceed £2,000.</p>	Section 137C, FSMA CONC 5A

Linklaters

	<p><u>Initial cost cap</u></p> <p>CONC 5A.2.3R sets out a separate initial cost cap, which states that the amount of interest and fees charged under the loan agreements must not exceed 0.8% per day of the amount borrowed, e.g. if the loan facility is for £1,000, the total amount of interest and fees repayable in a month (with 30 days) should not exceed £240.</p> <p>Accordingly, while there is no maximum rate of interest per se, HCST loan lenders must ensure that the interest rate, together with any applicable fees or charges, would not result in the borrower paying a total (principal and interest) of more than twice the amount of credit borrowed. Conversely, where the initial cost cap would be lower than the total cost cap, for example where the term length of a loan is too short for the accrued maximum chargeable interest rate of 0.8% per day to exceed 100% of the amount borrowed, the initial cost cap would act as the effective ceiling.</p> <p><u>Default cap</u></p> <p>If the borrower defaults, the lender cannot charge total default fees exceeding cumulatively £15 and / or interest of more than 0.8% per day on the default fees (CONC 5A.2.14R). According to CONC 5A.2.14R (1) and (2), the calculation for the default cap is as follows:</p> <p>(default fee(s) that is capped at £15 in total, whether as a one-off charge or as cumulative charges) + (default fees x 0.008 x total days in arrears).</p> <p>In addition, CONC 5A.2.14R (3) acts as a “sweep-up” clause in relation to (1) and (2), designed to ensure that the default cap formula is maintained and that firms cannot seek to work around the cap by imposing additional charges to be triggered by the lender falling into arrears. It provides for the payment by the borrower of one or more charges (except for a charge to which (1) or (2) applies), on any amount of credit provided which in breach of the agreement has not been repaid, that alone or in combination exceed or are capable of exceeding 0.8% of that amount calculated per day from the date of the breach until the date that the amount has been repaid. The calculation according to CONC 5A.2.14R (3) would be:</p> <p>(amount of credit unpaid in breach of the agreement) x 0.008 x (total days in arrears).</p>	
--	---	--

Linklaters

	<p>This default cap is also subject to the total cost cap mentioned above. Further, it should be noted that this formula relates to charges other than default fees and any interest on the default fee. It is additionally worth noting that the FCA prohibits the charging of compound interest for HCST loans; only simple interest can be charged (CONC 5A.2.19R).</p> <p>In cases where the above default cap formulae do not apply, for example where an agreement is not an HCST, there are no restrictions or caps on interest rates. Under CONC 7.7.5R, default charges on non HCST loans are subject to the requirement that they are no higher than necessary to cover the reasonable costs of the firm</p> <p><u>Refinancing</u></p> <p>Under CONC 5A.2.10R, the original HCST loan lender(s) are prohibited from entering into a replacement HCST loan that provides for the payment by the borrower of one or more charges that, taken together with the earlier agreement, exceed the amount of credit provided under the replacement and original HCST loan.</p> <p>Under CONC 5A.2.11R, HCST loan lenders are also prohibited from entering into a replacement HCST loan if the replacement loan has charges on default by the borrower that, taken together with the default charges of the earlier agreement, would exceed the default cap of £15.</p> <p>Under CONC 5A.2.13R, any amounts provided to a borrower to repay outstanding credit or any outstanding charge under an earlier HCST loan would not count towards the amount of credit provided for the purposes of calculating the initial cost cap or the amount of credit for the purposes of CONC 5A.2.10R.</p> <p><u>Creditworthiness assessment</u></p> <p>While there are no standard maximum permissible interest rates for credit agreements other than HCST loans, this does not necessarily mean that lenders are able to charge any interest rate. Under CONC 5.2A, lenders must carry out a creditworthiness assessment, which includes determining whether the credit agreement would be affordable to the borrower. Firms</p>	
--	--	--

Linklaters

	<p>should ensure that any loans they make to relevant recipients of credit are affordable – failure to do so is a breach of the regulatory rules.¹</p> <p><u>Unfair relationships</u></p> <p>In addition to the requirement to carry out a creditworthiness assessment prior to entering into a credit agreement, lenders should also consider whether excessive interest rates and charges might result in an ‘unfair relationship’ between the lender and borrower. Under s 140A(1) of the CCA, the court has the power to make various orders (including to reduce or discharge any sum payable by the borrower) if it determines that the relationship between the lender and borrower is unfair to the borrower because of one or more of the following:</p> <ul style="list-style-type: none"> (a) any of the terms of the agreement or of any related agreement; (b) the way in which the lender has exercised or enforced any of his rights under the agreement or any related agreement; (c) any other thing done (or not done) by, or on behalf of, the lender. <p>Terms of the agreement would include terms relating to the interest rate and there have been a number of cases where the interest rates have been challenged on this basis. However, to date, the courts have not suggested that there is a set point at which an interest rate would be automatically be considered to give rise to an unfair relationship. Instead, when looking at the question of interest rates, the courts have considered the rates charged on appropriate comparator products. The courts have taken the view that their role is not to revise the interest rate downwards to be in line with comparators, but rather to determine if the rate is so high so as to generate an unfair relationship.</p> <p>In summary, while there is no legal / regulatory limit on interest rates for credit agreements other than HCST loans, lenders are indirectly constrained by the obligation to ensure the credit agreement is affordable to the borrower (having to carry out a creditworthiness assessment</p>	<p>CONC 5A CONC 5.2A Section 140A, CCA</p>
--	--	--

¹ See the FCA Consultation Paper 14/10 on introducing the cost caps for HCST loans, where the FCA declined to extend the duration in the definition of HCST loans, i.e. to cover loans repayable over 12 months. The FCA considered it adequate protection that “firms will need to demonstrate that products that charge a high interest rate for periods longer than 12 months are affordable for consumers” (para. 6.13).

Linklaters

	under CONC 5) and the risk that excessive interest rates might give rise to an unfair relationship under s 140A of the CCA, resulting in a court order discharging any sums payable by the borrower under the agreement. ²	
Recent developments and arguments to revise the above regulation	In 2017, the FCA undertook a review of the HCST rules, including the cost caps (as set out above). ³ Following this review, the FCA decided to maintain the cost caps for HCST loans but will review this again within three years (i.e. by the end of 2020).	N/A
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	<p>The consumer credit legislation is specifically drafted to ensure that lenders are unable to circumvent the rules by, for example, contractually obliging a borrower to “opt-out” of the relevant legislative and regulatory provisions.⁴</p> <p>As explained above, entering into a regulated credit agreement as a lender is a regulated activity. It is a criminal offence to undertake regulated activities without being appropriately authorised by the relevant regulatory authority so unlicensed lenders face financial penalties and imprisonment.</p> <p>It should also be noted that regulated credit agreements made by unlicensed lenders are unenforceable against the borrower. The borrower is entitled to recover any money or other property paid or transferred under the agreement and to compensation for any loss sustained by him as a result of having part with the money or other property.⁵</p> <p>The National Illegal Money Lending Team (“NIMLT”)⁶ actively investigates unlicensed lenders and regularly prosecutes them. The NIMLT works alongside the FCA in policing the regulatory perimeter.</p> <p>The FCA has also recently prosecuted an individual for operating as an unlicensed consumer credit lender. On 8 February 2018, the individual was sentenced to 3.5 years of imprisonment.⁷</p>	Section 173, CCA Section 19, FSMA

² The powers of the court are set out in s 140B, CCA, and includes more than just discharging any sums payable by the borrower. We have not listed all these powers out here.

³ The FCA Published its response in its Feedback Statement 17/2 (July 2017), accessible at: <https://www.fca.org.uk/publication/feedback/fs17-02.pdf>.

⁴ Section 173, CCA.

⁵ Section 26, FSMA.

⁶ Information on the NIMLT can be found at: <http://www.stoploansharks.co.uk/who-we-are/>.

⁷ See <https://www.fca.org.uk/news/press-releases/gopee-convicted-illegal-money-lender-sentenced>.

Linklaters

1.4 Fees, costs and charges must be included in the calculation of annual percentage rates (“APR”)		
<p>Scope of and out of scope of the fees, costs, charges and any other money received by a lender (“Fees, etc.”), including concrete examples such as an upfront administrative fee, ATM usage fees, and replacement card reissuance fees</p>	<p>The APR is the annual rate of the total charge for credit, which is defined in the FCA Handbook as the <i>“true cost to the borrower of the credit provided”</i>. The total charge for credit and APR are calculated according to the rules in CONC App 1.1. and 1.2. The former sets out the rules for agreements secured on land and the latter the rules for all other credit agreements (apart from regulated mortgage contracts).</p> <p>In what follows, the details of the regulations focusing on the latter are explained.</p> <p>In CONC App 1.2, the total charge for credit is the total cost of credit to the borrower, which is defined as <i>“all costs, including interest, commissions, and any other kind of fees which are required to be paid by, or on behalf of, the borrower or a relative of the borrower in connection with the regulated credit agreement, whether payable to the lender or to any other person, and which are known to the lender, except for notarial costs”</i>.</p> <p>CONC 1.2.3R stipulates that the following costs must be included in the total cost of credit to the borrower:</p> <ul style="list-style-type: none"> • Any fee or charge payable to a credit broker in connection with the agreement (if the fee or charge is known to the lender) and if a credit broker was involved. • The costs of maintaining an account recording both payment transactions and drawdowns. • The costs of using a means of payment for both payment transactions and drawdowns. • Other costs relating to payment transactions. • Cost for an ancillary service if the conclusion of the service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.⁸ <p>When it comes to upfront administrative fees relating to the credit facility, these must be included in the APR calculation.</p>	<p>CONC App 1.1.5R CONC App 1.2.3R</p>

⁸ CONC App 1.2.3R (6) explains that an ancillary service means a service that relates to the provision of credit under the agreement, including insurance or payment protection policy.

Linklaters

	<p><u>Exclusion from the calculation of the APR</u></p> <p>The APR is calculated with reference to the amount of credit granted at the time the agreement is entered into and therefore does not include charges which may be charged but which are not certain, such as ATM usage fees or replacement card reissuance fees.</p> <p>The following costs are excluded from the total cost of credit to the borrower (CONC App 1.2):</p> <ul style="list-style-type: none"> • Where the opening of the account is optional and the costs of that account have been clearly and separately shown in the agreement made with the borrower.⁹ This would include the monthly charge for a higher-specification account, such as one with a “free” overdraft buffer and travel insurance included, where it is not mandatory to hold that account as a condition of the credit agreement. • Any charges payable for non-compliance of the borrower’s commitments in the credit agreement.¹⁰ For example, if there are late payment charges, charges for returned direct debits, or default fees. • Charges which, for the purchase of goods and services, the borrower or a relative of his is obliged to pay whether the transaction is effected in cash or on credit.¹¹ This would include, for example, a “gate fee” paid to a car dealership which is charged whether or not the car is purchased on credit. 	<p>CONC App 1.1.6R CONC App 1.2.3R Regulation 2, Consumer Credit (Disclosure of Information) Regulations 2010</p>
<p>Recent developments and arguments to revise the above regulation</p>	<p>There have been no recent developments or arguments relating to the calculation of APR, or the Fees included in its scope.</p>	<p>N/A</p>
<p>Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and</p>	<p>We are not aware of any such instance of non-compliance that are public. As we set out above, operating as an unlicensed lender is a criminal offence under FSMA, and unlicensed lenders could face financial penalties or imprisonment.</p>	<p>N/A</p>

⁹ CONC App 1.2.3R (3)(a).

¹⁰ CONC App 1.2.3R (5)(a).

¹¹ CONC App 1.2.3R (5)(b).

Linklaters

circumvent the above regulation		
1.5 Total loan amount restriction (volume restriction)		
Restrictions on the total loan amount per individual/entity borrower to which licensed money lenders may offer	<p>There are no such restrictions in the UK. However, as set out above, lenders have an obligation to carry out a creditworthiness assessment under CONC 5.2A and to assess whether the loan is affordable. Lenders must assess the risk that the borrower would be unable to make repayments under the agreement by the due dates and the risk to the borrowers of not being able to make repayments under the agreement (i.e. the borrower's ability to afford the credit).¹² There are specific rules relating to the treatment of salary and other income, including discretionary income such as annual bonuses.</p> <p>One of the sources which firms must use to determine a borrower's creditworthiness is the borrower's income.¹³ Accordingly, while there is no fixed upper limit in terms of multiples of income etc, lenders are only permitted to advance loans that are affordable.</p>	N/A – but CONC 5.2A sets out the obligation to carry out a creditworthiness assessment prior to a lender entering into a regulated credit agreement.
Recent developments to revise the above regulation	We are not aware of any such developments or arguments to revise the regulations.	N/A
Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation	We are not aware of any such instance.	N/A

¹² CONC 5.2A.10R.

¹³ CONC 5.2A.12R (2)(a).

Linklaters

1.6 Special provisions for small-amount and short-term loans		
Other than those discussed above, other special provisions governing small-amount and short-term loans	<p>There are no such special provisions, which allow lenders to impose exceptional interest rates or special charges for small-amount and short-term loans in the UK. However, some regulations are relaxed in the case of small agreements.</p> <p><u>Small agreements</u></p> <p>Small agreements are defined in section 17 of the CCA as regulated consumer credit agreements for credit not exceeding £50, other than a hire-purchase or conditional sale agreement. In the case of small agreements some of the regulatory and statutory requirements are relaxed, for example:</p> <ul style="list-style-type: none"> • There is no need to provide statements;^{14 15} • The borrower does not need to be provided with a copy of the executed agreement in connection with a credit-token agreement;¹⁶ • Notices of Sums in Arrears (“NOSIAs”) are not required;¹⁷ • Notices of default sums are not required;¹⁸ and • Notices relating to post-judgment interest in connection with a judgment sum (i.e. a sum the borrower is required to pay under a judgment given in relation to the agreement) are not required.¹⁹ 	Sections 17, 77A, 78, 85, 86B, 86C, 86E, 130A, CCA Articles 60C – 60H, RAO CONC 5A
Recent developments and arguments to revise the above regulation	We are not aware of any such developments or arguments to revise the regulations.	N/A

¹⁴ Section 77A, CCA.

¹⁵ Section 78, CCA.

¹⁶ Section 85, CCA.

¹⁷ Sections 86B and 86C, CCA.

¹⁸ Section 86E, CCA.

¹⁹ Section 130A, CCA.

Linklaters

<p>Incidents detected by relevant authorities for an unlicensed lender to deliberately avoid and circumvent the above regulation</p>	<p>As set out above, entering into credit agreements is a regulated activity and there is a general prohibition against carrying on a regulated activity without being authorised. Accordingly, unlicensed lenders face a number of penalties, including monetary fines and imprisonment.</p>	<p>N/A</p>
--	---	------------

2. Transaction Lending and any other online lending

<p>Current situation on whether or not there have been requests to relax or tighten the regulations from relevant stakeholders, and the responses to the above requests by relevant government agencies and Congress/Parliament</p>	<p>As set out above, the UK government has recently considered whether lending to SME corporates should be regulated and concluded that the current regulatory perimeter should not be changed.</p> <p>Given the long history of credit regulation in the UK, in our view, there is unlikely to be a reduction in the regulatory perimeter in the short to medium term.</p> <p>In the UK, the term “transaction lending” usually means short term funding (also known as same-day funds or flash funding). Many of these transactions are exempt agreements. In order to confirm whether or not such a facility falls within the regulatory perimeter, analysis of the specific product will be required.</p> <p>The UK regulatory regime for lending is not dependent on channel (although there are different information requirements etc depending on the medium used).</p> <p>In terms of lobbying, a significant amount is undertaken by UK Finance, the trade association for the UK banking and financial services sector. However, they have not been seeking the deregulation of credit.</p> <p>We are not aware of any specific lobbying to request the deregulation of transaction lending or online lending.</p>	<p>N/A</p>
---	---	------------

Linklaters

3. Multiple-debt problem (i.e. too much borrowing problem) as a result of high-interest lending

<p>Recent movement and discussions made within the government and Congress/Parliament</p>	<p>As set out above, the issue of HCST credit has been the subject to significant recent regulatory intervention and the position will be reviewed again in 2020.</p> <p>The FCA recently undertook a high-cost credit review which was a detailed, wide-ranging exercise and resulted in measures designed to protect some of the most vulnerable consumers of financial services. The review led to interventions for home-collected credit, catalogue credit and store cards, rent-to-own (RTO), buy now pay later offers (BNPL), and overdrafts. The review recognised that high-cost credit is not the right answer for some consumers, and the FCA confirmed its position of wanting to promote the availability and the provision of alternatives to high-cost credit.</p>	<p>N/A</p>
---	---	------------

4. Special treatments given to small and medium enterprises lending (“SME Lending”)

<p>Favourable treatments for the SME Lending including loans provided by governmental financial institutions, subsidies, favourable tax treatment</p>	<p>We are not aware of any favourable treatment for SME Lending.</p>	<p>N/A</p>
<p>Recent movement and discussions made within the government and Congress/Parliament</p>	<p>We are not aware of any recent discussions within the UK government or the regulator (the FCA) about strengthening SME support measures through public financial support.</p>	<p>N/A</p>