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Employee share schemes: loans to employees and directors:

CONSUMER CREDIT ACT ISSUES

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An overview of the application of the Consumer Credit Act 1974 to loans to employees or directors made or arranged by the company in the context of an employee share scheme.

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EMPLOYEE LOANS: WHY IS THE CONSUMER CREDIT ACT RELEVANT?

Companies frequently use loans to employees as part of their standard employee benefits (for example, season ticket loans). However, companies may also use loans or credit arrangements as part of their employee share plans or other special employee incentive arrangements. For example by:

- Making a loan to an employee to:
  - fund the acquisition of shares in the company or its parent company;
  - acquire shares from an ***employee benefit trust*** (EBT); or

- pay the exercise price for share options (and any tax liability arising on exercise), on the basis that the amount will be repaid from the proceeds of sale of the shares.

- Deferring the time for payment by an employee for shares (see ***Practice note, Nil paid share schemes: an overview***).

If a company proposes to make loans, or extend credit in some other way, to its employees for any purpose, it will need to consider the impact of the ***Consumer Credit Act 1974*** (CCA 1974). Unless an exemption from the CCA 1974 regime applies, the company will need to consider which of the requirements of the CCA 1974 apply to the agreement, and whether to apply for a consumer credit licence.

If the employer fails to comply with the CCA 1974, loans may be unenforceable (at least without a court order). Other civil and criminal penalties may also apply (see ***Consequences of failure to obtain consumer credit licence or to comply with licensing obligations***).

DO EMPLOYEE LOANS AND CREDIT ARRANGEMENTS FALL WITHIN THE CCA 1974?

Employees are not treated as consumers for the purposes of other legal consumer protections (such as the ***Unfair Contract Terms Act 1977***). Therefore, companies may think that loans or credit offered to employees will not fall within the CCA 1974, as these are not "consumer credit" transactions. However, the exclusion of employee contracts from other consumer protection legislation does not affect the application of the ***CCA 1974*** to credit arrangements offered by employers to their employees.

A company may also think that a loan or credit arrangement offered to an employee is not a consumer credit transaction if the company's normal business does not consist of providing credit.

However, both of these are misconceptions. Employee loans and credit transactions **do** fall within the CCA 1974 for the following reasons:

- Despite its name, the CCA 1974 does not define the term consumer. Nor does it expressly restrict its scope to consumer credit. It applies to:
  - any credit,including cash loans and any other form of financial accommodation ***(section 9(1)***, CCA 1974) (see CCA and ***share plans: is "credit" provided?***); and
  - any individual (this includes partnerships of two or three persons and other unincorporated bodies (***section 189(1)***, CCA 1974)).
- A one-off loan or credit transaction offered by a company outside its normal business activities can be caught by the CCA 1974 if the person receiving the credit (the debtor) is an individual.

CCA AND SHARE PLANS: IS CREDIT PROVIDED?

The meaning of "credit" for CCA 1974 purposes is very wide. It includes "a cash loan, and any other form of financial accommodation" ***(section 9(1)***, CCA 1974). While no guidance is offered as to its scope, it would appear that "other financial accommodation" has to be in the nature of credit. Case law provides some assistance in determining whether certain types of share plan arrangements involve the extension of "credit" to employees, in particular:

- Nil and partly paid share plans (see ***Nil and partly paid shares***).
- Deferred payment share plans (see ***Shares issued on deferred payment terms***).

Other share plans situations where a concern may arise include:

- Companies guaranteeing bank loans taken out by employees.

Companies funding EBTs or family benefit trusts to provide benefits in the form of loans to beneficiaries. (Family benefit trusts are similar to EBTs, except the beneficiaries are the dependents of an employee rather than the employee himself. For more information, see ***Legal update, Special Commissioners' decision: Bonuses paid to EBTs were not subject to PAYE or NICs, but also not deductible for corporation tax***.)

Although not directly relevant, HMRC guidance on taxation of beneficial loans made to employees notes that a "loan means more than just lending money. It includes any form of credit" (***HMRC: Employment Income Manual: EIM26108: The benefits code: beneficial loans: meaning of loan***). EIM26108 refers to a tax case on this subject, where the judge held that "credit is the deferral of payment of a sum which, absent agreement, would be immediately payable" (*Grant v Watton (1999) STC 330*).

GUARANTEEING BANK LOANS

If the company guarantees a bank loan taken out by an employee, rather than providing the loan funds directly, this would avoid the company needing to consider ***CCA 1974*** issues, since it will be the bank and not the company that is providing the credit. If security is provided by the company at the employee's request (express or implied), the security is only enforceable against the company to the extent that the agreement is enforceable by the bank against the employee under the CCA 1974.

NIL AND PARTLY PAID SHARES

Under UK company law, companies can issue shares nil or partly paid (so that the employee is not required to pay up the whole of the subscription monies until called by the company to do so). Companies sometimes use partly paid shares as part of employee share incentive arrangements (see ***Practice note, Nil paid share schemes: an overview***). However, these types of arrangements do not involve the company extending "credit" to the employee within the ***CCA 1974***, because the employee does **not** owe a debt to the company until the company makes a call for payment of the subscription monies (see *Whittaker v Kershaw (1890) LR 45 Ch D 320*). See also *Nejad v City Index Ltd [2000] CCLR7*, where the future indebtedness of Mr Nejad was speculative and accordingly there was no provision of credit.

However, a nil or partly paid share arrangement would still be taxable as though it was a beneficial loan to the employee. For more information, see ***Practice note, Nil paid share schemes: tax implications***.

SHARES ISSUED ON DEFERRED PAYMENT TERMS

Under UK company law, companies can issue shares fully paid, but defer the obligation to pay up the subscription monies. Companies sometimes use deferred payment terms as part of employee share incentive arrangements. However, these types of arrangements are likely to involve the company extending credit to the employee, as the employee is subject to an immediate contractual duty to pay the deferred amount at some time in the future (*Dimond v Lovell [2000] UKHL 27*).

Therefore, companies offering deferred payment terms for shares should check with their advisers whether an exemption from the ***CCA 1974*** applies before proceeding with the arrangements.

Many deferred payment arrangements are operated through EBTs. The ***Finance Act 2011*** introduced anti-avoidance legislation which imposes immediate income tax and NICs charges, payable through PAYE, on certain benefits provided through EBTs. This legislation has a significant impact on deferred payment arrangements and should be considered carefully before such an arrangement is put in place. For more information, see ***Practice note, Disguised remuneration tax legislation (Part 7A of ITEPA 2003): issues for share plans and other employee benefits: Relief for consideration will not protect deferred payment share plans from Part 7A***.

DOES AN EXEMPTION APPLY?

Unless an employee loan or credit transaction is exempt from the ***CCA 1974*** licensing regime, the agreement will be regulated by the CCA 1974, and the employer will need to comply with any requirements for regulated agreements that apply in the circumstances and may need to consider whether to apply for a consumer credit licence.

There are a number of types of exempt agreement. However, the exemption most likely to apply to employee loans or credit is the exemption for "low cost" credit agreements (***section 16(5)***, *CCA 1974* and ***article 4***, *Consumer Credit (Exempt Agreements) Order 1989 (SI 1989/869)* (Exempt Agreements Order 1989)).

EXEMPTION FOR LOW-COST CREDIT AGREEMENTS

For an agreement to fall within this exemption, the credit must be:

- Structured as a debtor-creditor agreement.
- Offered only to a particular class of individuals and not to the public (in the case of share plans, the obvious "particular class" would be employees or former employees).

In addition, one of the following must apply:

- The only charge for the credit is interest and the annual interest rate cannot at any time exceed 1% above the base rate of banks listed in the ***Exempt Agreements Order 1989*** (or the highest such rate) in operation 28 days before the date of the agreement.
- The rate or amount of any interest or other charge in the total charge for credit must not be capable of being increased after the date of the agreement and must not exceed 1% above the base rate of banks listed in the Exempt Agreements Order 1989 (or the highest such rate) in operation 28 days before the date of the agreement.

Debtor-creditor agreements

A debtor-creditor agreement can be any of the following:

- A restricted-use credit agreement within ***section 11(1)(b)*** of the CCA 1974, where the credit is used to finance a supply by a third party, provided:
  - there are no pre-existing arrangements between the creditor company and the supplier; and
  - no such arrangements are contemplated.

(*Section 13(a)*, *CCA 1974*.)

- A restricted-use credit agreement within section 11(1)(c) of the CCA 1974, where the credit is used to refinance existing indebtedness (*section 13(b), CCA 1974*).
- An unrestricted-use credit agreement, where the credit is used to finance a supply by a third party supplier, but:
  - there are no pre-existing arrangements between the creditor company and the third party supplier; and
  - the agreement is not made in the knowledge that the credit will be used to finance a supply by the third party.

  (*Section 13(c), CCA 1974.*)
- An unrestricted-use credit agreement, where the credit is used to finance a supply by the company itself.

Are the proposed share plan loans low-cost debtor-creditor agreements?

Employee credit arrangements related to share plans may not be able to satisfy the low-cost debtor-creditor agreement requirements, for the following reasons:

- The company may wish to charge a higher rate of interest than is permitted for low-cost credit agreements under the ***Exempt Agreements Order 1989***.

  Companies may decide to charge interest on employee loans or credit, because otherwise, the benefit of the loan or credit may be a taxable benefit to the employee. Under the tax rules on employee loans, there is a benefit if the rate of interest the employee is charged is less than HMRC's ***official rate of interest***. If HMRC's official rate of interest is more than 1% above the base rates for the banks listed in the Exempt Agreements Order 1989, an employee loan falling within the low-cost credit exemption would be a taxable benefit. The balance between CCA 1974 and tax issues for employee loans is something companies should consider carefully before proceeding with any employee loan or credit arrangements.
- Agreements are often structured so that the company (or the trustee of an EBT) itself both provides the credit and supplies the shares. This is a debtor-creditor-supplier agreement under ***section 12*** of the CCA 1974, rather than a debtor-creditor agreement under ***section 13***.
- The provision of credit by the company to finance a supply of shares by a third party (such as an EBT) is likely to be part of pre-existing or contemplated future arrangements between the lender and the supplier of the shares as the term arrangements is given a wide interpretation under the CCA 1974. Again, this would be a debtor-creditor-supplier agreement under section 12 of the CCA 1974.
- The company may want to ensure that the employee only uses the funds to buy shares and therefore pay or use the money directly as payment for the shares, making it a restricted-use credit agreement.

  However, if a loan is made by a company to its employee to subscribe for shares in the company, but the employee has the opportunity to use the loan for other purposes (for example, because the loan funds are paid into the employee's bank account), the loan will be treated as unrestricted use credit under ***section 11(3)*** of the CCA 1974 and should fall into section 13 as a debtor-creditor agreement, even if the terms of the loan require the employee to use the funds to buy shares. This approach will only assist if the creditor and the supplier are the same entity; it will not assist if the shares are provided by a third party (for example, the trustee of an EBT), or if the lender is another member of the group. If the employer company has arrangements with the third party supplying the shares or loaning the funds, since it would be known that the funds are to be used to buy shares, this would be a debtor-creditor-supplier agreement under section 12(c) of the CCA 1974. A company will need to consider the circumstances and risks carefully before relying on this analysis.

Debtor-creditor-supplier agreements

If the proposed credit arrangements are debtor-creditor-supplier agreements, it is unlikely that the exemptions specific to debtor-creditor-supplier agreements (for example, the exemption for interest-free loans repayable within 12 months by not more than four repayments (see ***article 3(1)(a)(i)***, *Exempt Agreements Order 1989*)) will apply.

EXEMPTION FOR HIGH NET WORTH BORROWERS

Another exemption which may be relevant to employee loans the exemption for high net worth borrowers (***section 16A, CCA 1974*** and the ***Consumer Credit (Exempt Agreements) Order 2007 (SI 2007/1168)***).

To fall within this exemption, the following must apply:

- The borrower must be a natural person with net income during the 12 months before the loan agreement is made which exceeds £150,000 (or net assets which exceed £500,000).

- The agreement must contain a declaration in a prescribed form waiving the borrower's rights, had the agreement been regulated under the CCA 1974.
- The borrower must provide a declaration of high net worth, completed with 12 months before the loan agreement is made. The declaration must be signed by:
  - the company (if it is appropriately licensed to do so under the ***Financial Services and Markets Act 2000***); or
  - an accountant who is a member of one of the specified professional bodies.

Since June 2010, there are further limitations on the use of the high net worth borrower exemption, following the adoption of ***Directive 2008/48/EC on credit agreements for consumers*** (Consumer Credit Directive). In particular, the exemption will only apply to loans exceeding the amount specified in the Directive (EUR75,000, or in the UK adopting legislation, £60,260 (***article 2***, *Consumer Credit (Exempt Agreements) Order 2007*). However, for loans to very senior employees and directors, this exemption may avoid the problems that may prevent the low-cost credit exemption from applying, particularly:

- The arrangements involving credit for a supply of shares by a different party to the creditor (for example, where shares are provided by an EBT and credit by the company, or where shares are provided by the company and credit by another group company). Under the high net worth borrower exemption, it does not matter that the credit agreement is a debtor-creditor-supplier agreement.
- The mismatch between HMRC's official rate of interest and the maximum rate required under the low-cost credit exemption. Under the high net worth borrower exemption, there is more flexibility about the rate of interest charged for the loan.

FORMER EXEMPTION FOR CREDIT EXCEEDING £15,000/£25,000

When ***CCA 1974*** was originally enacted, agreements extending credit in excess of £5,000 were outside the scope of the Act. This limit was increased to £15,000 in 1983 (*column 4, Part II,* ***Schedule****, Consumer Credit (Increase of Monetary Limits) Order 1983 (SI 1983/1878)*). The limit was increased again to £25,000 with effect from 1 May 1998 (***article 2****, Consumer Credit (Increase of Monetary Limits) (Amendment) Order 1998 (SI 1998/996)*).

This financial limit was repealed on 6 April 2008 (***section 2****, Consumer Credit Act 2006*). All consumer credit agreements are now within the scope of the CCA 1974, regardless of their value (except for loans wholly or predominantly for the purpose of a business carried on by the debtor, where the £25,000 limit still applies).

REGULATED AGREEMENTS

If an agreement is not exempt, it is a regulated agreement under the ***CCA 1974***. The employer must comply with the requirements of the CCA 1974 both before and after the agreement has been entered into. A summary of these requirements is set out below, including the formalities required by Part V of the CCA 1974 before and at the time of the signing of the credit agreement and requirements as to its content.

Importantly, where the agreement is a non-commercial agreement (under ***section 74(1)***, *CCA 1974*), Part V largely does not apply. Therefore, in most cases of non-commercial employee loans, the onerous formalities required by Part V of the CCA 1974 described below can be dispensed with. Non-commercial agreements should cover transactions that are merely occasional (for more information, see ***Is a consumer credit licence required?***).

FORMALITIES BEFORE A REGULATED AGREEMENT IS SIGNED

Before the agreement is signed, the employer must provide the debtor with a document setting out certain pre-contract information (PCI) (sometimes referred to as Standard European Consumer Credit Information (SECCI)). The information should be provided in a standard form, which is set out in ***Schedule 1*** to the Consumer Credit (Disclosure of Information) Regulations 2010 (*SI 2010/1013*).

Creditors must provide an adequate explanation of the credit arrangement to the borrower before the agreement is signed (***section 55A***, *CCA 1974*). The explanation must enable the borrower to assess whether the agreement is suited to his needs and financial situation. In particular, the explanation must cover:

- Any features of the credit that may make it unsuitable for particular types of use.
- How much the borrower will pay periodically and in total.
- Features that may have a significant adverse effect in a way that the borrower is unlikely to foresee.
- The principal consequences of failure to make repayments, including legal proceedings.
- The right of withdrawal and how and when this can be exercised.

- In addition, the borrower must be advised to consider the PCI and that he can take it away and can ask questions. He must also be advised how to ask the creditor for further information or explanation. The explanation and advice must be given orally in certain circumstances.

CONTENT OF REGULATED AGREEMENT

Regulated agreements must contain the following information:

- The name and address of the creditor and the debtor.
- The type of agreement.
- The duration of the credit.
- The amount of the credit.
- The rate of interest.
- The total amount payable by the debtor.
- The timing and amount of repayments.

(***Regulation 3*** *and* ***Schedule 1***, *Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014).*)

The required information must be presented in a clear and concise manner. In particular, the terms must be easily legible and printed in a colour "readily distinguishable from the background" *(regulation 3(3), Consumer Credit (Agreements) Regulations 2010*).

The agreement must also contain a 14-day withdrawal period (*paragraph 25, Schedule 1, Consumer Credit (Agreements) Regulations 2010*). If the debtor does withdraw, the credit must be repaid within 30 days of withdrawal.

OBLIGATION TO PROVIDE ANNUAL STATEMENT OF ACCOUNT

The creditor must give the debtor an annual statement of account for a fixed-sum credit agreement (***section 77A***, *CCA 1974*). The statement must contain the following information:

- The opening balance.
- The amount and date of any payment made by the debtor.
- The amount and date of any interest or other charge imposed by the creditor.
- The balance of the agreement at the end of the period to which the statement relates.

(***Regulations 3-11*** *and* ***Schedule 1***, *Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (SI 2007/1167).*)

IS A CONSUMER CREDIT LICENCE REQUIRED?

A consumer credit licence is required if the creditor is carrying out a consumer credit business (***section 21(1)***, *CCA 1974*). A "consumer credit business" is defined as including a business which comprises or relates to the provision of credit under regulated credit agreements (***section 189(1)***, *CCA 1974*). Section 189(2) provides that "a person is not to be treated as carrying on a particular type of business merely because occasionally he enters into transactions belong to a business of that type".

Strictly, therefore, a consumer credit licence is unlikely to be required for occasional loans or other occasional credit arrangements made by an employer in connection with employee share incentive arrangements.

In *Hare v Shurek [1993] CCLR 47*, it was held that if the credit agreement was either private between the parties, or was unique, or was a manifestation of occasional transactions only:

- By virtue of section 189(2) of the CCA 1974, the lender was not carrying on a consumer credit business (and so did not need a licence).
- The definition of non-commercial agreements in section 189(1) of the CCA 1974 (an agreement "not made by the creditor or hirer in the course of a business carried on by him") referred to a consumer credit business.

The credit agreements were accordingly non-commercial agreements within the meaning of section 189(1) and therefore did not have to comply with Part V of the CCA 1974.

- However, some advisers recommend that an employer does obtain a consumer credit licence, and if it is proposing a share plan involving credit arrangements which will be offered to large numbers of employees, it may be difficult to describe this as “occasional”.

CONSUMER CREDIT LICENCES

The consumer credit licensing regime is intended to protect consumers by ensuring that a provider of credit:

- Satisfies the requirements set out by the ***Office of Fair Trading*** (OFT) for fitness to hold a consumer credit licence.
- Complies with the provisions of the ***CCA 1974*** and the licensing regime operated by the OFT, including ongoing obligations to inform the OFT of any changes to company personnel or ownership.
- Uses credit documentation that contains all the information required under the CCA 1974 and by the OFT.

OBTAINING A CONSUMER CREDIT LICENCE

To obtain a consumer credit licence, the company must:

- Complete an online application (see ***OFT: Apply for new credit licence***). In exceptional circumstances, the OFT will allow a company to make a paper application, but the company must request this by e-mail.
- Pay the relevant fee to the OFT (see ***OFT: Fees, refunds and payments for credit licences***).

On the application form, the company must specify:

- The type of business it carries out.
- The type of loans it intends to make. Different types of credit are categorised by the level of risk involved. The OFT categorises risk on the basis of the terms for the credit and the cost of the credit. If the company provides the OFT with the relevant information about the employee loans, the OFT is likely to categorise the activity as low risk.
- Details of the officers of the company and other people who control or influence the company’s business, including whether any of those individuals:
  - have been declared bankrupt or had county court judgements against them;
  - have been officers of a company which has gone into administration, liquidation or a winding up;
  - have been disqualified from acting as directors;
  - have been subject to disciplinary proceedings by a professional body;
  - have had ***Financial Services Authority*** (FSA) authorisation refused or revoked; or
  - have been convicted of any criminal offence.

The OFT may ask supplementary questions about the type of lending the company proposes to carry out, to determine the level of risk involved.

The OFT aims to process applications in relation to low-risk credit activities within 25 to 35 days. If the OFT has concerns about the information provided in the application (for example, in relation to the personnel involved in arranging the loans or the company’s record keeping or administration), it may grant the licence subject to conditions. The licence holder must comply with these conditions in offering credit or entering into credit agreements (although it would seem unlikely that the OFT would use these powers in the context of low-risk employee share plan loan arrangements). Failure to comply with the conditions may result in a financial penalty of up to £50,000.

MONEY LAUNDERING REGULATIONS REGISTRATION

The OFT has responsibility for supervising compliance with the ***Money Laundering Regulations 2007 (SI 2007/2157)*** for consumer credit financial institutions (CCFIs). CCFIs are businesses that offer consumer credit but are not supervised by HMRC or the FSA. (The main types of businesses that are supervised by HMRC for anti-money laundering purposes are “money service businesses”, including third party cheque cashers and bureaux de change.)

All CCFIs are required to register with the OFT for anti-money laundering purposes. So unless a company offering loans for share plans purposes is already supervised by the FSA or HMRC, it will have to register with the OFT for anti-money laundering purposes. This registration is separate to the consumer credit licence process.

- To register, companies should:
  - Complete the anti-money laundering registration form (see ***OFT: Anti-money laundering registration form***).
  - Pay the appropriate fee.

For more information, see ***OFT: Anti-money laundering registration***

and ***Legal update, OFT anti-money laundering registration requirement: consequences for companies offering employee loans***.

NORMALLY NO NEED TO RENEW CONSUMER CREDIT LICENCE

Indefinite licences are now issued in most cases.If a company has an existing licence that does have an end date, this will need to be renewed if the company proposes to make any further loans.

For more information, see ***OFT: Renew a credit licence***.

ONGOING OBLIGATIONS OF CONSUMER CREDIT LICENCE HOLDER

A company holding a consumer credit licence must notify the OFT (within 21 days) of:

- Any change to the officers of the company.
- Any change to any company that controls the company.
- Any change of control of the licence holder.

The OFT may require the licence holder to provide further details following the initial notification. ***(Section 3.6, General guidance on for licencees and application on fitness and requirements (OFT969)***.)

The OFT monitors licence holders' activities through organisations such as local Trading Standards Services, the FSA and consumer bodies such as ***Citizens' Advice***. Its guidance confirms that information received from these and other bodies may trigger an OFT investigation into a licence holder's fitness to continue to be licensed. The OFT can request access to documents as part of an investigation, so it is necessary for the company to maintain adequate records of employee loans, even after they have been repaid or written off.

CONSEQUENCES OF FAILURE TO OBTAIN CONSUMER CREDIT LICENCE OR TO COMPLY WITH LICENSING OBLIGATIONS

If a company made loans to employees at a time when it required but did not hold a consumer credit licence:

- The loans are unenforceable unless a validation order is made by the OFT under ***section 40(2)*** of the CCA 1974 (see ***Obtaining retrospective CCA 1974 validation of credit agreements***).
- The company has committed a criminal offence, the penalty for which (on indictment) is a maximum of two years imprisonment or a fine, or both (***sections 39*** *and* ***167*** *and* ***Schedule 1***, *CCA 1974*).
- If a company commits an offence under the CCA 1974 with the "consent or connivance or, or because of neglect by, any individual" who is a director, manager, secretary or similar officer of the company, that individual is deemed to commit the offence (***section 169***, *CCA 1974*).
- The receipt of payments under the loans may trigger due diligence issues and issues under the ***Proceeds of Crime Act 2002***.

It is a civil offence to fail to comply with conditions attached to a consumer credit licence, or with the obligation to notify changes to officers or changes of control of the company (see ***Ongoing obligations of consumer credit licence holder***). The OFT can impose financial penalties of up to £50,000 for failure to comply with these requirements (***section 39A***, *CCA 1974*). It can also vary or revoke the company's consumer credit licence (***sections 31*** *and* ***32***, *CCA 1974*).

For more information on the OFT's policies on civil penalties under the CCA 1974, see ***OFT: Statement of policy on civil penalties (OFT 971)***.

REFUSAL OR REVOCATION OF CONSUMER CREDIT LICENCE

If the company is refused a consumer credit licence, or has its licence revoked by the OFT, the company can appeal the OFT's decision in the First-tier Tribunal (see ***PLC Financial Services, Practice note, Consumer credit overview and resources: Key players***

OBTAINING RETROSPECTIVE CCA 1974 VALIDATION OF CREDIT AGREEMENTS

If a company has entered into regulated credit agreements without obtaining a consumer credit licence, it is possible to apply to validate the agreements concerned. Validation makes the agreements enforceable by treating them as if they were made by a licensed credit provider. The validation process requires the company to complete an application form and pay a fee based on the number of credit agreements involved. The remedy is discretionary.

Companies need not apply for validation of the following types of credit agreements:

- Exempt agreements (for example, agreements that fall under the low-cost credit exemption).
- Agreements that have been repaid or written off.

The OFT has confirmed that a company applying for validation of a credit agreement does not also need to apply for a consumer credit licence for the appropriate activity, unless it proposes to make further offers of credit for which a licence is required.

For more information on the validation process, see ***OFT: Validating credit agreements***.