Title:
Legislation and Governing Bodies Affecting the Secured Loans Industry

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Summary:
It is often said the Secured Loans Market is unregulated - but is it? This article attempts to answer that fundamental question

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Article Body:
Introduction

The <i>Secured Loans</i> market is often referred to as 'Unregulated', but what does this mean? This article will attempt to answer this question by looking at the both official and non-official governing bodies that have an affect Secured Loans. It will also briefly discuss the various Parliamentary Acts that incorporate legislation affecting the Secured Loans or Second Charges market. The target readership for the article is either those involved in the Finance Industry, specifically secured loans, or members of the public with a general interest in Consumer Credit legislation which may affect them.

The Office of Fair Trading (OFT)

The Office of Fair Trading, or O.F.T as it is more commonly referred to, is responsible for a number of key areas with the ultimate aim of protecting the consumer. It has three main purposes. These are the enforcement of Competition and Consumer Protection rules, the analysis of markets to make sure they are working and communication to consumers, businesses and the government.

In terms of Secured Loans there are a number of areas the O.F.T deals with that affect the way that operators in the market promote themselves. The first of these is by administering Consumer Credit Licenses. With the rapid growth in people taking out credit in the early 1970s an act of parliament was passed in 1974 called the Consumer Credit Act and it is under this at that Consumer Credit Licences are granted. If an entity advertises promotes or brokers Secured Loans it must have a Category C Consumer Credit License. On application the O.F.T will investigate all people connected to the business applying to ensure that they are all people worthy of issuing or guiding people to enter into credit. There is a general misconception in the market that the Consumer Credit License is only required if the Secured Loans Company offers loans less than £25,000, but the Act clearly states that a Category C license is required for businesses that provide credit of ANY amount secured on land.

Other areas the O.F.T deal with that affects secured loans are there enforcement of other elements of the 1974 Act and also the updates to the Act which occurred in 2004 - these are the 'Agreements Amendment', 'Disclosure of Information' and 'Early Settlement' Consumer Credit Acts.

For secured loans these act govern a number of things. The first of which is the way that organisations can advertise secured loans. The Acts have rules governing what can and cannot be said in an advertisement and also have stipulation over certain words that have to appear in the advertisement. For example the words "YOUR HOME MAY BE REPOSSESED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT" probably have to appear on most Secured Loans advertisements. The Acts also stipulate that the Annual Percentage Rate (APR) must appear on Credit advertising and also given rules give its calculation (commonly known as the TTC calculation or total charge for credit).

There is a growing momentum in the Mortgage and Secured loans industry that at some time secured loans will be regulated by the F.S.A. With the already increased workload of the F.S.A it is more likely that an 'official' recommendation for their regulation by the F.S.A is more likely to come from the O.F.T

Financial Services Authority (FSA)

The Financial Services Authority, or F.S.A as it is more commonly know, is responsible for enforcing the rules of the Financial Services and Markets Act (FSMA) 2000. Contrary to popular belief it is actually a non-government independent body and is financed solely from the income it receives from the very organisations it legislates. Although it is accountable to Treasury Ministers it is operationally independent.

In terms of legislation affecting Secured Loans the F.S.A regulates activities in relation to payment protection insurance (P.P.I). So if a business helps customers buy or claim on payment protection insurance it is highly likely it will need to apply to the F.S.A to be regulated. In the Secured Loans market whether you need to be legislated by the F.S.A largely depends on your involvement in P.P.I. If an organisation simply acts as an introducer it is quite likely it does not need to be regulated, however it is always advisable to seek legal advice.

At the time of writing the FSA is very active in the area of P.P.I. It is presently looking into what happens to Insurance premiums when someone either settles a loan early or want to cancel only the P.P.I element of a secured loan. At the moment most insurance providers have a 'no refund' clause for both cases.

Another area the F.S.A deals in that may affect Secured Loans providers is their regulation of Mortgages. The FSMA states that if an authorised lender gets second charge loans business from an unauthorised lender then their advertisements must be approved by the F.S.A approved firm.

Finance Industry Standards Institute (FISA)

The Finance Industry Standards Institute (FISA) is a self-governing body set up independently by the industry to govern itself in the Secured Loans market. An annual subscription fee from its members funds FISA. It publishes a Code of Conduct for its Members that cover the standards it requires in advertisements. In essence these are guidelines that give the requirements of the O.F.T specifically for the Secured Loans sector. FISA also publishes a disciplinary procedure and warns in its documentation that it will enforce legislation on non-members, in the first instance by contacting the offending organisation and in the second instance by informing the relevant regulatory body.

FISA also conducts training courses every month or so. These cover the legislative requirements of being involved in the Second Charge sector. In the future the organisation plans to have three levels of 'qualification', these will be Foundation, Associate and Member, but it is waiting on developments in the O.F.T and F.S.A before it does this. One supposes whether this happens will also be influenced by the level of regulation that those two bodies impose on the Secured Loans sector.

Information Commissioners Office (ICO)

The Information Commissioners Office (ICO) enforces the requirements of the Data Protection Act (1998). Given that all businesses in the secured loans sector will at some time hold information about individuals they must be registered as a Data Controller with the ICO. In summary, the Data Protection Act ensures that all data kept on an individual (including employees) is accurate, fairly and lawfully processed, adequate relevant and not excessive, used for limited purposes, not sent overseas and is kept securely.

Other Regulatory Bodies and Secured Loans

Although the following organisations do not have a direct power or control over the secured loans market it is worthwhile mentioning them, not only for reasons of clarity, but also, as it is possible there will be changes in legislation, these organisations may later have more influence over the secured loans sector.

The Consumer Credit Trade Association (CCTA) is another independent body, but differs from FISA in that it deals with the whole Consumer Credit market. It also offers training courses, publishes regular newsletters and actively lobbies the Government about consumer credit related issues. In a world where we assume taking out credit is a relatively new phenomenon it is useful to note that the CCTA was founded well over a hundred years ago in 1891.

The Intermediary Mortgage Lenders Association (IMLA) is an independent body that represents the views and interests of institutions in the generation of mortgage business through Intermediaries.

The Council of Mortgage Lenders (CML) is yet another self-governed body operating in the Mortgage Industry. In a similar fashion to the CCTA it is also involved with government with legislative issues, issues policy guidelines. It is also renowned for produces statistics about the UK lending market covering, amongst other things, arrears and repossessions, the number of mortgages being taken out and specifics like the number of buy to let mortgages being taken out.

To finish this section, there is one more independent organisation called the Association of Mortgage Intermediaries (AMI) who acts as the trade body for mortgage intermediaries.

Conclusion

Although the <i>Secured Loans</i> sector is commonly referred to as 'unregulated' this document has hopefully shown there is still a lot of regulation (both official and un-official) that affects and encompasses the secured loans sector. In the finance area where the UK has a reputation for being the most regulated in Europe it is only a matter of time before secured loans come under the umbrella of the FSA. It is believed that instruction for the FSA to take control of the secured loans market is more likely to come from the treasury rather than the FSA itself. What is certain is that the secured loans market will become more legislated in the coming years. One thing to note if you are going to business in the Mortgage or Secured Loans market that subscription to these organisations can add up to many thousands of pounds per year.

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