Annex 1 lending: staying inside the perimeter

Page 1 of the flow: the Annex 1 gate, then the borrower and security tests for every facility

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A Fundsure guidance note for Annex 1 lenders, September 2026

1. Lending as a business in the UK?
Commercial, regular, held out, with a UK presence. Occasional or intra-group lending is not caught.

2. Which entity is lending, in substance?
The company that advances its own money, bears the credit risk and keeps the margin is the lender and must register, whoever signed first. A conduit at cost, or an SPV that only holds assigned loans, does not. A further advance is new lending, now, by whoever funds it.

3. Not authorised under FSMA?
An authorised person cannot be an Annex 1 firm (MLR reg 55(2)). If any activity needs Part 4A permission, the firm takes the authorisation route.

4. Apply to the FCA before the first loan
Annex 1 form via Connect, MLR Individual forms, DBS checks, fee (regs 55 to 57). Registered activity must match actual activity. Do not lend if the application is refused or withdrawn.

5. Then, every loan
Name the lender of record and confirm it is registered, at offer and at drawdown. Then run the flow below.

Q1. Who is the borrower?
The party receiving the credit, not a guarantor or third-party chargor. Look through nominees and bare trusts.

Company or LLP

PROCEED
Outside both regimes
Companies, LLPs and partnerships of four or more are not 'individuals' or 'relevant recipients of credit' (RAO Arts 60B, 60L), and Art 61 needs an individual or trustee borrower.

CHECK
Structure checks before you proceed
Company as a front for a consumer. A company formed so an individual can borrow against a home they or family will live in: the legal form may hold, but the FCA calls this consumer harm (20 March 2026). Decline it.
Third-party charge over a director's home. Not a regulated mortgage contract, as the credit is to the company; insist on independent legal advice for the chargor and record the business purpose.
Personal guarantees. Not credit; outside the regime.
Trustee borrowers. The 40% test runs on a beneficiary or related person (Art 61(3)(a)(iii)(bb)); a corporate trustee does not help.

Individual, sole trader, partnership of 2 or 3, trustees

Q2. Secured by a mortgage or charge on land in the UK?
Any ranking, legal or equitable.

No

CHECK
Unsecured credit to an individual
Exempt only if for **business purposes**, credit over **£25,000**, with the borrower's declaration in FCA form (Art 60C(3), (5)), or under the **high net worth** exemption: credit over **£60,260**, declaration and statement of wealth (Art 60H). The presumption fails if the lender has reason to suspect otherwise (Art 60C(6)). Otherwise regulated.

Not exempt

PROCEED
Proceed: unregulated lending within Annex 1
Record on the file: borrower type, security, dwelling percentage, purpose, exemption relied on and the evidence. Credit committee signs off before drawdown. Then apply the MLR controls on page 2.

STOP
STOP: Part 4A permission needed
Entering into a regulated credit agreement (Art 60B) or regulated mortgage contract (Art 61(1)) as lender is a regulated activity. Without permission: s19 FSMA general prohibition, s23 offence, agreement unenforceable and money recoverable (ss26-27). The Annex 1 form cannot be used by a firm that needs Part 4A permission. Restructure or do not lend.

Yes

Q3. Is 40% or more of the land used, or intended to be used, as or in connection with a dwelling?
For an individual borrower any dwelling counts, not only the borrower's own home (Art 61(3)(a)(iii)(aa)). Measure by area at the date of the loan.

No

PROCEED IF EXEMPT
Not a regulated mortgage contract
Commercial, land or semi-commercial under 40% dwelling. A consumer credit exemption is still needed: **Art 60D** (secured on land, under 40% dwelling use by the borrower or a related person), **Art 60C(3)** or **Art 60H**. Hold the declaration and property evidence on file.

Yes

Q4. Does an Art 61A exclusion apply?
Prima facie a regulated mortgage contract. Test the exclusion on the facts at the date of the loan. Business purpose alone does not take a first charge outside Art 61.

Yes

CHECK
Excluded from Art 61 only if
Investment property loan: under 40% dwelling use by the borrower or a related person, and wholly or predominantly business purposes. **Second charge business loan:** over £25,000, behind another charge, business purposes. **Limited payment second charge bridging loan:** four payments or fewer.

CHECK
Buy-to-let to an individual: the consumer buy-to-let trap
A landlord acting **wholly or predominantly for business purposes** (bought to let, never occupied by the borrower or a related person, or part of a portfolio: PERG 4.4.32G) is outside Art 61 as an investment property loan. An individual **not** acting for business purposes (accidental landlord, let-to-buy) is a **consumer buy-to-let** borrower: excluded from Art 61 by Art 61A(1)(e), but the lender must be registered under Part 3 of the MCD Order 2015 or authorised (PERG 4.10B.17G). Treat bridging-term CBTL the same way.

Evidence to hold on every file
Business-purpose declaration in FCA form (CONC App 1.4; PERG 4.4.29G to 4.4.30G) and the underwriter's note that nothing contradicts it. Valuation and planning evidence of the dwelling percentage. Tenancy evidence for investment property loans. High net worth statement where Art 60H is used. Corporate borrower: Companies House record, PSC register, commercial rationale. Credit committee sign-off naming the lender of record. **Language:** never describe an unregulated commercial facility as a mortgage, or the firm as a mortgage lender.

No: first charge on a home, or no exclusion

Decision | Proceed: unregulated, Annex 1 | Proceed only with the check made and evidenced | Stop: FSMA authorisation or other registration required

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Page 2 of the flow: activities around the loan that engage FSMA, and what keeps the registration

A. Activities around the loan that can pull the firm into FSMA

Funding the book
Accepting deposits, RAO Art 5

Keep to: bilateral facility agreements, or instruments acknowledging the firm's own indebtedness (Art 77), which take the advance outside 'deposit' (Art 9(1)). Fixed terms, an acknowledgement for every advance, nothing repayable on demand.
Trap: money from the public repayable on demand, or held 'on account' pending a loan, is deposit-taking.
Symmetry: the same document cannot be an acknowledgement of indebtedness for Art 9(1) and not a controlled investment under FPO Sch 1 para 15. See the next box.

Pooled funder money
Collective investment scheme, s235 FSMA; AIF

Keep to: funders lend to the firm as a body corporate (para 5, Schedule to the CIS Order 2001); the firm bears the credit risk and earns the margin; funder returns are fixed by contract.
Trap: returns that track specific loans in a pool the firm manages point to a CIS or AIF, and operating one is a regulated activity (Arts 51ZA to 51ZG).

Platform models
Operating an electronic system in relation to lending, Art 36H

The firm lends off its own balance sheet and is counterparty to every borrower. Matching named funders to named borrowers, with funders as lenders of record, is Art 36H P2P: Part 4A permission, not Annex 1.

Funder communications
Financial promotion, s21 FSMA

The fork. An invitation to lend to the firm on bilateral terms is treated as outside s21, because lending is not a controlled activity. But if the acknowledgement is what takes the advance outside 'deposit', it is a controlled investment (FPO Sch 1 para 15) and inviting funders to subscribe is a controlled activity (para 3): s21 applies. Use the FPO exemptions (Arts 19, 48, 49, 50A) with certificates on file, or have an authorised person approve. Breach is an offence (s25); the agreement is unenforceable (s30).
Disclosure: 'registered with the FCA for anti-money-laundering supervision only, not authorised by the FCA, and no recourse to the Financial Ombudsman Service or FSCS'. Never 'not regulated by the FCA'.

Broking and servicing
Arts 36A, 39D to 39H, 25A, 53A, 61(2)

Do not introduce declined individual applicants to other lenders for reward (Art 36A). Do not collect or administer other lenders' regulated loans (Arts 39F, 39G; the firm's own debts are excluded by Art 39H). Do not arrange, advise on or administer regulated mortgage contracts for anyone (Arts 25A, 53A, 61(2)). Introducing corporate borrowers is outside the regime.

Insurance and leasing
Art 25 (insurance distribution); Art 60N (consumer hire)

Arranging buildings insurance for borrowers is insurance distribution: refer them to a broker. Operating leases or hire to individuals is consumer hire and needs Part 4A permission.

B. Annex 1 registration and staying registered

Registration mechanics
MLR 2017 regs 21, 55 to 60

An Annex 1 financial institution carries on a Schedule 2 activity (item 2, lending) and is not an authorised person, MSB or payment service provider (regs 10(2)(a), 55(2)). It must not trade unless registered or its application is pending (reg 56(5)). **Fit and proper:** the FCA must refuse where the applicant, an officer or manager, or a beneficial owner is not fit and proper; a Schedule 3 conviction is conclusive (reg 58). Expect to give the ownership chart to the ultimate parent, with MLR Individual forms and DBS checks for every officer and beneficial owner over 25%. **Notifications:** the reg 21(1)(a) officer and reg 21(3) nominated officer within 14 days of appointment, **for each registered entity** (reg 21(4)); other changes within 30 days (reg 57(4)). Refusal, suspension or cancellation for incomplete or misleading applications or suspected non-compliance (regs 59, 60); misleading information is an offence (reg 88).

The framework the FCA will test
proportionate to this firm, not a template

Risk assessment: business-wide, covering money laundering, terrorist and proliferation financing, with methodology and residual risk (regs 18, 18A); customer risk assessment scored per customer (regs 28, 33).
Controls: policies approved and reviewed (reg 19); nominated officer and senior manager in post (reg 21); screening and, where proportionate, independent audit (reg 21(1)(b), (c)); training (reg 24).
Due diligence: on borrowers, funders and beneficial owners (regs 27, 28, 5); enhanced measures for high-risk countries, PEPs and unusual transactions (regs 33, 35); ongoing monitoring (reg 28(11)); reliance and outsourcing (reg 39); records for five years (reg 40).
Reporting: SARs (POCA 2002 ss330 to 332; TACT 2000 s21A); sanctions screening beyond the UK list, with OFSI reporting.

What the FCA has said it is looking for
2024 to 2026

Dear CEO letter, 5 March 2024: registered and actual activities out of step; controls not keeping pace with growth; weak risk assessments; under-resourced financial crime functions.
Statement, 20 March 2026: regulated firms told to verify Annex 1 status before dealing with unregulated lenders; consumers being encouraged to form companies to access unregulated bridging.
Statement, 7 August 2026: closer scrutiny of applications and longer timelines; information requests to around 900 firms; each entity needs its own controls, not its parent's; concern over SPV structures.

STOP

Consequences of drifting across the line

FSMA: general prohibition (s19), offence carrying up to two years (s23), regulated agreements unenforceable (ss26, 27), financial promotion offence (s25). MLR: acting unregistered or breaching a requirement is an offence (reg 86) and grounds for refusal or cancellation (regs 59, 60).

Rule of thumb for the credit committee

A named, registered lender advancing its own money to companies for their own business, secured on property nobody lives in, funded by bilateral lines with an acknowledgement for every advance: Annex 1. Any individual, any home, any pooled money, any platform, or any doubt about which entity is lending: stop and re-run the flow.

Decision | Proceed: unregulated, Annex 1 | Proceed only with the check made and evidenced | Stop: FSMA authorisation or other registration required

Explanatory note

The law behind the flow: the Annex 1 gate, the borrower tests, buy-to-let and corporate borrowers

Purpose and how to use the flow

Annex 1 registration is premised on the lending being outside the Financial Services and Markets Act 2000 (FSMA). The FCA registers Annex 1 financial institutions only for supervision under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs). Page 1 is designed to be run at credit committee for every facility and again whenever a product, borrower type, security or funding line changes. Page 2 covers the activities around the loan that most often pull a lender across the line, and what keeps the registration. Green means proceed, amber means proceed only with the check made and evidenced, red means stop until the firm holds Part 4A permission or the deal is restructured.

The Annex 1 gate

An Annex 1 financial institution carries on a Schedule 2 activity as a business in the UK and is not an authorised person, money service business or payment service provider (MLR regs 10(2)(a), 55(2)). Item 2 of Schedule 2 is lending, expressly including credit relating to immovable property and the financing of commercial transactions. The FCA applies a business test (commercial element, regularity, holding out) and a UK test (a UK office or activity). In lending, the entity that must register is the one lending in substance. The application form's note that an SPV taking only the legal or beneficial interest in completed loans need not register describes a passive holder: a company that advances its own money, bears the credit risk, holds the security and keeps the margin over its funders' rate is lending and must be registered, whether or not it signed the facility first. A further advance under an existing facility is new lending at the date it is made, by whichever company funds it, so a group cannot rely on the registration of the entity that wrote the original loan. That is why the flow asks the credit committee to name the lender of record and confirm its registration at offer and again at drawdown; where firms have gone wrong it has usually been the choice of entity on the day, not the analysis of the loan. Under reg 56(5) a firm must not carry on Annex 1 business unless registered or with an application pending, and the FCA's current practice is to direct unregistered firms to stop. Registration is refused where the application is incomplete or misleading, the fee is unpaid or the FCA suspects the firm or its officers will not comply (reg 59), and may be suspended or cancelled on the same grounds (reg 60). Question 2.2 of the form asks how the firm falls outside the Regulated Activities Order; the analysis below is that answer.

The borrower gate: consumer credit

Entering into a regulated credit agreement as lender is a regulated activity under article 60B of the Regulated Activities Order 2001 (RAO). An agreement is regulated only where the borrower is an individual or a "relevant recipient of credit": a partnership of two or three persons not all of whom are bodies corporate, or an unincorporated body not consisting entirely of bodies corporate (art 60L). Lending to a company, an LLP or a partnership of four or more is outside consumer credit regulation whatever the purpose or amount. Where the borrower is an individual, sole trader or small partnership, the agreement is regulated unless an exemption applies. The usable exemptions are: business purposes with credit over £25,000 (art 60C(3)), supported by a declaration in the FCA's prescribed form which raises a presumption that fails if the lender or anyone acting for it knows or has reasonable cause to suspect the purpose is not business (art 60C(5), (6)); the investment property exemption for credit secured on land where less than 40% is used or intended as a dwelling by the borrower or a related person (art 60D), subject to the Mortgage Credit Directive carve-out in art 60D(4); and the high net worth exemption for an individual borrowing over £60,260 or on the security of land, with a declaration and a statement of income or assets (art 60H). "Related person" means a spouse or civil partner, a cohabiting partner, or a parent, brother, sister, child, grandparent or grandchild.

The borrower gate: regulated mortgage contracts

Entering into a regulated mortgage contract as lender, and administering one, are regulated activities under art 61(1) and (2). A contract is a regulated mortgage contract if the lender provides credit to an individual or to trustees, repayment is secured by a mortgage or charge of any ranking over land in the UK, and at least 40% of that land is used or intended to be used as or in connection with a dwelling (art 61(3)). Two points catch commercial lenders out. First, since 21 March 2016 the 40% test for an individual borrower is not limited to the borrower's own home: any dwelling counts, which is why buy-to-let to an individual is prima facie within art 61 and has to be taken out by an exclusion. Second, a first charge over a home taken for business purposes is still a regulated mortgage contract; the business exclusions in art 61A reach only second and later charges and investment property. The relevant art 61A exclusions are the investment property loan (less than 40% dwelling use by the borrower or a related person, and wholly or predominantly business purposes), the second charge business loan (credit over £25,000, ranking behind another charge, business purposes) and the limited payment second charge bridging loan (a land purchase, second charge, no more than four payments). A trustee borrower does not escape: the test then runs on occupation by a beneficiary or their related person, so a corporate trustee holding a family home is caught.

Buy-to-let and the consumer buy-to-let regime

A buy-to-let loan to an individual acting wholly or predominantly for business purposes is an investment property loan and outside art 61. PERG 4.4.32G treats a borrower as acting for business purposes where the property is bought to let and neither the borrower nor a related person has occupied it, or where the borrower already lets other property. Where the individual is not acting for business purposes, typically an accidental landlord or a let-to-buy of a former home, the loan is a consumer buy-to-let mortgage contract under article 4 of the Mortgage Credit Directive Order 2015. It is excluded from art 61 by art 61A(1)(e), but a lender may only enter into it if registered under Part 3 of that Order or authorised (PERG 4.10B.17G). A bridging-term consumer buy-to-let loan is likewise outside art 61 (PERG 4.10B.21G(2)(b)), but PERG does not say it is outside the Part 3 regime, and the firm should proceed on the basis that it is not. The safe operating rule is that buy-to-let to individuals is confined to declared business landlords with the evidence on file.

Corporate borrowers: legal form and FCA concern

Lending to a company is outside both regimes, and a director's personal guarantee or a third-party charge over a director's home does not change that, because neither the guarantor nor the chargor receives credit. The firm should nevertheless be alert to the case the FCA named on 20 March 2026: consumers encouraged to form a company so that they can borrow unregulated bridging finance, usually against a home they or their family will occupy. The legal analysis may hold, but the FCA treats it as consumer harm, will probe it in the registration questionnaire and in information requests, and it is the kind of fact pattern that invites a sham argument. The credit policy should exclude it, or at least require senior sign-off, independent legal advice for any individual giving security and a documented commercial rationale for the company.

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Funding, promotions and platform models

The lending side is only half the perimeter. Money taken from funders is a deposit under art 5 unless an exclusion applies. The standard route is that each advance is made under a bilateral agreement and acknowledged by an instrument creating or acknowledging the firm's indebtedness, which art 9(1) takes outside the definition of deposit; that depends on the acknowledgement being issued for every advance, on fixed terms and not on demand. Where funders' money is pooled and their returns depend on the performance of specific loans managed by the firm, the arrangement risks being a collective investment scheme (s235 FSMA) or an alternative investment fund; the usual protection is paragraph 5 of the Schedule to the CIS Order 2001, lending to a body corporate on terms materially different from the on-lending, with the firm bearing the credit risk. A model in which funders are matched to named borrowers through a platform, with the funders as lenders of record, is operating an electronic system in relation to lending under art 36H and needs Part 4A permission.

Communications to funders are treated by market practice as outside the s21 financial promotion restriction where they simply invite a loan to the firm, because lending is not a controlled activity. That position has to be run together with the deposit analysis, and this is where lenders most often contradict themselves. If the firm relies on an acknowledgement of indebtedness to take funder money outside "deposit" under art 9(1), that acknowledgement is a controlled investment under paragraph 15 of Schedule 1 to the Financial Promotion Order 2005, and inviting funders to subscribe for it is a controlled activity under paragraph 3. The same document cannot be an investment for art 9(1) and mere lending for s21. Either the firm accepts that its funder communications are financial promotions and relies on the exemptions for investment professionals, certified high net worth individuals, high net worth companies and self-certified sophisticated investors (arts 19, 48, 49, 50A), keeping the certificates, or has an authorised person approve them; or it runs a pure bilateral loan model and finds its deposit exclusion elsewhere. Issuing loan notes is not dealing or arranging in the firm's own securities (RAO arts 18 and 34), but the promotion analysis still applies. Whatever the route, funders and borrowers should be told that the firm is registered with the FCA for anti-money-laundering supervision only, is not authorised by the FCA, and that there is no recourse to the Financial Ombudsman Service or the Financial Services Compensation Scheme. "Not regulated by the FCA" is wrong for a registered firm, which appears on the Financial Services Register, and misleads in the other direction.

Ancillary activities

Credit broking (art 36A) is engaged if the firm introduces declined individual applicants to other lenders for a fee or commission; introducing companies is not. Collecting or administering debts under other lenders' regulated agreements is debt collecting or debt administration (arts 39F, 39G), although collecting the firm's own debts is excluded (art 39H). Arranging, advising on or administering regulated mortgage contracts for others (arts 25A, 53A, 61(2)) and arranging insurance for borrowers (art 25) are regulated. Consumer hire, meaning operating leases to individuals (art 60N), needs Part 4A permission and is another activity the Annex 1 form excludes.

Staying registered

Registration is the start of the obligation, not the end of it. The FCA's Dear CEO letter of 5 March 2024 identified four common failings in Annex 1 firms: discrepancies between registered and actual activities, controls that had not kept pace with growth, inadequate business-wide and customer risk assessments, and under-resourced compliance functions. Its statement of 7 August 2026 added that firms in groups must have controls of their own rather than relying on a parent's, that it is scrutinising applications more closely with longer determination times, and that it has issued information requests to around 900 registered firms. The firm should therefore maintain a business-wide risk assessment covering money laundering, terrorist financing and proliferation financing (regs 18, 18A), a per-customer risk assessment that drives due diligence depth (regs 28, 33), approved and reviewed policies (reg 19), a nominated officer and senior responsible manager in post, each notified to the FCA within 14 days of appointment and separately for every registered company in a group (reg 21(1)(a), (3) and (4)), screening, training and, where proportionate, an independent audit function (regs 21, 24), due diligence on borrowers and funders alike (regs 27, 28), enhanced measures for high-risk third countries and politically exposed persons (regs 33, 35), ongoing monitoring (reg 28(11)), controlled reliance and outsourcing (reg 39), five-year records (reg 40), a suspicious activity reporting procedure under POCA 2002 and sanctions screening with OFSI reporting. Changes to the firm's details, activities or MLR individuals must be notified within 30 days (reg 57(4)). The fit and proper test in reg 58, applied to Annex 1 institutions by reg 58(2), reaches the applicant, each officer and manager and each beneficial owner, and a Schedule 3 conviction is conclusive against fitness. In practice the FCA asks for the full ownership chain to the ultimate parent and treats a missing beneficial owner or an unchecked controller as a reason to refuse, so the ownership chart, MLR Individual forms and DBS checks should be reconciled against the PSC register before submission and kept current afterwards.

Sources and status

Checked on 18 and 19 September 2026 against legislation.gov.uk (MLRs 2017 regs 10, 21, 55 to 60 and Schedule 2; RAO 2001 arts 60B, 60C, 60D, 60H, 60L, 61, 61A; Financial Promotion Order 2005 Schedule 1), the FCA Handbook (PERG 2.7, 4.4, 4.10B), the FCA's Annex 1 registration page and application form, the Dear CEO letter of 5 March 2024 and the FCA statements of 20 March 2026 and 7 August 2026. Thresholds (£25,000, £60,260, 40%) are as in force at that date. This note is compliance guidance prepared by Fundsure Limited and is not legal advice.

Fundsure Limited
Compliance consultancy for FCA-regulated firms and Annex 1 lenders: Annex 1 registration and remediation, FCA authorisations and variations of permission, outsourced SMF and MLRO roles, fund structuring and launches, and compliance advisory.
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