

Guernsey Financial Services Commission

Discussion Paper on Ancillary Vehicles

Issued 20 August 2020

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Responses to this Discussion Paper are sought by 5 October 2020.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

Introduction

Purpose of the Discussion Paper

The Projets de Loi for the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (“the 2020 Fiduciaries Law”) and the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the 2020 PoI Law”) were approved by the States of Deliberation on 18 August 2020¹. (see Billet D’état XVII 2020 here <https://www.gov.gg/CHttpHandler.ashx?id=128687&p=0>)

The 2020 Fiduciaries Law introduces a new statutory licensing exemption (section 3(1)(aa)) for activities being carried out by or in respect of “ancillary vehicles” when such activities are notified to the Commission in accordance with rules made under section 20 of the 2020 PoI Law. It is proposed that the Commission will issue notification rules and supporting guidance under the PoI Law.

The purpose of this Discussion Paper is to seek feedback from all interested parties on the proposed types of entity and activities which fall within the notification regime.

Responses to this Discussion Paper will be considered by the Commission with a view to making more detailed policy proposals in the form of a Consultation Paper to be issued later in the year.

This Discussion Paper is a working document and does not prejudice any final decision to be made by the Commission.

Ancillary vehicles

Under the current legal framework, some entities and activities which are related to fund structures fall within scope of the Fiduciaries Law. Whilst acting as a general partner of a Guernsey fund is and will continue to be covered by an exemption under the Fiduciaries regime, other activities closely connected to a registered or authorised fund, and only existing because of the fund, are not subject to a statutory exemption. Entities carrying out such activities in most cases seek a discretionary exemption (DE) from the Commission under the current Fiduciaries Law. This is often the case for general partners of carried interest vehicles and co-investment vehicles which are established in the form of a limited partnership.

The 2020 Fiduciaries Law introduces a new statutory exemption for certain activity which is ancillary to investment activity, bringing this more clearly under the umbrella of the PoI Law regime. The new exemption relates to:

¹ Whilst we acknowledge that the 2020 Fiduciaries Law and the 2020 PoI Law remain in draft form and have not been approved by the Chief Pleas of Sark or the States of Alderney, the Discussion Paper has been issued at this time to provide sufficient time to ensure that the views of interested parties can be considered in the drafting of proposed rules to be issued at the time the new laws may come into effect, if approved.

“the creation, use or carrying on of an ancillary vehicle, or activity in respect of an ancillary vehicle, when notified to the Commission in accordance with rules made by the Commission under section 20 of the PoI Law, but subject to the provisions of the rules.” [section 3(aa) of the 2020 Fiduciaries Law]

Complementary provisions are made in section 20 of the 2020 PoI Law which defines an “ancillary vehicle” as

“a body, entity or arrangement -

- (a) which is ancillary to a controlled investment or to the carrying on of a regulated activity, within the meaning of this Law,*
- (b) which, or the carrying on of which, is not required to be licensed, authorised or registered under the provisions of this Law, and*
- (c) which, or any activity in respect of which, is -*
 - (i) a regulated activity within the meaning of the Regulation of Fiduciaries Law, and*
 - (ii) required to be licensed under that Law or exempted by the provisions of that Law from the requirement to be licensed thereunder.”*

The 2020 PoI Law further provides for the making of rules by the Commission for the notification of ancillary vehicle activity.

The revised law therefore provides for a new category of exemption for ancillary vehicle activity under the Fiduciary regime, the scope of which is tied to a notification process under the PoI Law regime.

Scope of Ancillary Vehicle Notification under the PoI Law

It is proposed that the relevant rules and guidance related to the notification of ancillary vehicles will provide for notification of a general partner of a carried interest L.P. or a co-investment L.P. of a registered or authorised fund. Such activity, which is currently commonly subject to application for Discretionary Exemption, would now be statutorily exempt from licensing under the Fiduciaries Law, subject to the making of a valid notification to the Commission.

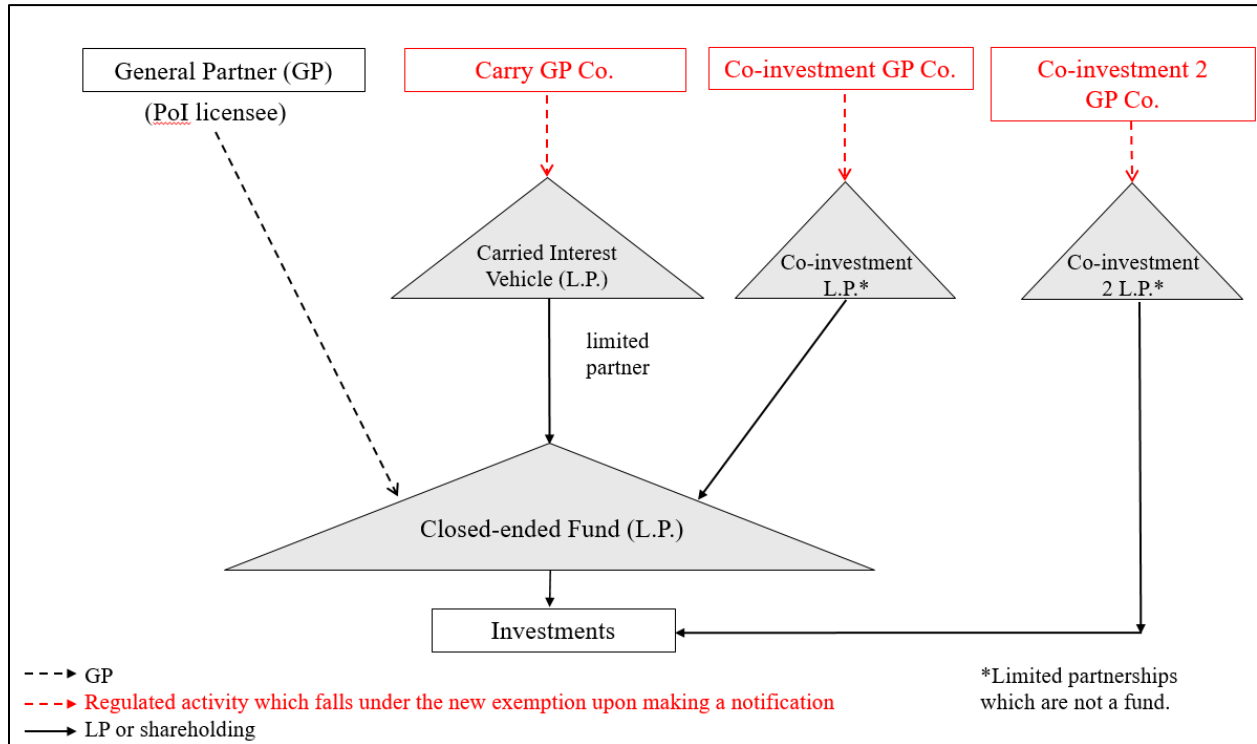
While there is general understanding on what carried interest vehicles and co-investment vehicles are, it is proposed that the definitions below apply:

“Co-investment vehicle” means a limited partnership whose business is to co-invest alongside an authorised fund or a registered fund in companies or other entities in which the fund invests.

“Carried interest vehicle” means a limited partnership established with an intention to receiving carried interest from an authorised fund or a registered fund. “Carried interest” or “carry” is a share of fund profits which is distributed to a fund’s management team.

Examples

Examples of the general partners of the limited partnerships which would fall under the new exemption are illustrated below.



Other activities

The Commission is aware that there may be other common, definable ancillary vehicle-related activities which could be included within the scope of notification and exemption. The proposed inclusion of carried interest vehicles and co-investment vehicles within scope places reliance on the association with a regulated fund (whether authorised or registered) and a fiduciary licensee which administers the exempt entity. These two factors provide the Commission with comfort and assurance as the exempted entities are closely connected to or administered by the Commission's regulated entities and the exempt entities are captured within the AML/CFT framework.

Whilst the Commission welcomes suggestions on other ancillary vehicle-related activities which could be covered within the notification regime (for instance acting as a director of an ancillary vehicle, acting as a general partner of a limited partnership which holds a single asset and therefore not a fund or acting as a general partner of a co-investment vehicle which is a non-Bailiwick fund) in considering any expansion of the proposed scope of notification and exemption there must be no unacceptable increase in regulatory or AML/CFT risk.

Q1: Do you agree that the general partners of co-investment & carried interest vehicles should fall under the new exemption?

[yes or no with comments]

Q2: Do you agree with the proposed definitions of “co-investment vehicle” and “carried interest vehicle”?

[yes or no with comments]

Q3: Are there any other type of ancillary vehicles and/ or other activities which should fall under the new exemption? If so, please explain why the inclusion of such vehicles or activities would not increase regulatory or AML/CFT risk.

[yes or no with explanation and rationale]

Notification Process

The following table provides a summary of the notification process:

Notification	Proposals
Who can make the notification?	Administrator of the exempt entity.
Information	A notification form will be made available on the Commission website (similar to the current DE application). Information disclosed in the form may include: <ul style="list-style-type: none">– name of the entity;– company registration number of the entity;– its directors, shareholders and the identity of beneficial owners where those shareholders are private corporate entities;– structure chart which can demonstrate that the entity forms a part of the same structure as a registered or authorised fund;

	<ul style="list-style-type: none"> – name of the administrator; and – any other activities being carried out by the entity.
Time limit on notification	It is important that the Commission’s records remain accurate and up-to-date. There have been a number of cases where the Commission has not been notified appropriately of surrender of DEs and the Commission introduced a 3 year DE time limit ² , in response. It may be that a similar AV notification time limit may be appropriate with a requirement to renew notification.

Q4: Do you agree with the proposals concerning notification?

Q4.1: Who can make the notification

[yes or no with comments]

Q4.2: Information required.

[yes or no with comments]

If no, please provide rationale (for instance, if you believe that some information is available elsewhere).

Q4.3: Time limit on notification

[yes or no]

Please provide views on the appropriate time limit period or any views on alternative approaches to ensuring that records of AV notification remain up-to-date.

² As announced by the Commission on 1 October 2019 (link [here](#)).

Ancillary vehicles with DEs previously granted

It is not proposed that entities currently granted a DE but eligible under the new exemption will be required to make notification and surrender the DE following the issuing of the notification rules and guidance. However, we would encourage that a DE is surrendered and a notification is made when there is a touch point with the Commission. For instance, where a new co-investment vehicle is established within a funds structure and a notification is to be made and there is an existing DE granted in relation to Ancillary Vehicle activity within the structure, the Commission would expect that a notification is also made for that exempt entity and the existing DE to be surrendered at the same time.

Q5: Please provide any further comments you may wish to share with respect to the proposals as set out in this Discussion Paper.

Next Steps

The closing date for the Discussion Paper is 5 October 2020. The Commission will then consider all the comments received and engage with relevant industry representative bodies with the view to consulting on detailed proposals in due course.