

Guernsey Financial Services Commission

**Discussion Paper on the New Fiduciary Licence  
Categorisation**

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](http://www.gfsc.gg)).

## Introduction

### *Purpose of the Discussion Paper*

The *Projet de Loi for the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020* (“the 2020 Fiduciaries Law”) was approved by the States of Deliberation on 18 August 2020<sup>1</sup>. (see Billet D’état XVII 2020 here <https://www.gov.gg/CHttpHandler.ashx?id=128687&p=0>)

The 2020 Fiduciaries Law will introduce two new categories of fiduciary licence: primary and secondary. The personal fiduciary licence category remains unchanged.

The purpose of this Discussion Paper is to seek feedback from existing full fiduciary licensees and any other interested parties on the proposed definition of “actively trading” which will become relevant to the distinction of licence categories under the new 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.

### *Background*

The concept of lead and joint licensees is currently introduced in the Financial Services Commission (Fees) Regulations (“fee regulations”) where applicants for full fiduciary licences can submit their application “jointly” if they are in the same ownership and have common staff, procedures and clients. The fee regulations prescribe that the applicants shall nominate one of the parties as “lead” applicant. In practice, joint licensees normally are companies set up to support the “lead” licensee by providing specific services. For instance, ABC Trustee Limited is a lead licensee whereas ABC Corporate Directors Limited is a joint licensee. It is recognised that the joint licensees exist to support the lead licensee and do not operate independently. As such these joint licensees are deemed to present a different level of risk and are therefore carved out from the scope of capital and liquidity requirements under the Financial Resources Requirements Rules, 2018 (“FRR Rules”). Nevertheless, there have been issues where joint licensees have not been truly passive and have provided services independently from the lead licensee. The proposed changes to be introduced under the 2020 Fiduciaries Law will greater clarify and distinguish the licensing of fiduciaries which actively trade and those which play a secondary, supporting role.

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<sup>1</sup> 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.

### *Primary fiduciary licence and secondary fiduciary licence*

The 2020 Fiduciaries Law will introduce two new fiduciary licence categories of “primary” and “secondary”, effectively replacing the respective “lead” and “joint” categorisations. The Fiduciaries Law places a restriction on corporate directors on the board of a primary licensee and a common ownership requirement on secondary licensees.

The Commission proposes to further distinguish the two categories by the making of a rule prohibiting a secondary licensee from actively trading.

Key characteristics of the new categories can be summarised as follows<sup>2</sup>:

	<b>Primary fiduciary licence</b>	<b>Secondary fiduciary licence</b>	<b>Reference</b>
<b>Corporate director</b>	Cannot have a corporate director on the board.	May have (and may be) a corporate director.	Section 4(2)(b) and 4(3)(b) of the 2020 Fiduciaries Law.
<b>Ownership</b>	No specific requirements nor prohibition re ownership in the 2020 Fiduciaries Law.	May only be granted to an entity which is a subsidiary <sup>3</sup> of, or wholly beneficially owned by, a primary fiduciary licensee or the holding company of a primary licensee.	Section 4(3)(a) of the 2020 Fiduciaries Law.
<b>“Actively trading”</b>	No prohibition and therefore can actively trade.	Will be prohibited from actively trading.	Rules to be issued under section 61 of the 2020 Fiduciaries Law.
<b>Others</b>	Common staff, procedures and clients.		Fee regulations continue to apply.

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<sup>2</sup> The position summarised here was previously communicated to licensees and the public in 2015 in the Discussion Paper on RoL, Policy Letter for RoL and the brief paper jointly prepared by GAT and the Commission which was published in the September 2015 GAT bulletin.

<sup>3</sup> Definition of “subsidiary” can be found in Schedule 2 of the 2020 Fiduciaries Law. A company is a subsidiary of another company if that other company (i) is a member of it and controls the composition of its board of directors, or (ii) holds more than half in nominal value of its equity share capital.

### *Actively trading*

As described above, secondary (joint) licensees are generally established to provide support to the primary (lead) licensee. It is observed that in most cases secondary licensees do not reflect any income or expenditure in their financial statements or at least do not collect any third party fee income.

It is therefore proposed that the rule prohibiting secondary licensees from actively trading will define “actively trading” as the charging or receipt of fees directly from third parties.

**Q1: Do you agree with the proposed definition of “actively trading”?**

[yes or no with comments]

### *Transition to the new categories of licences*

#### **Personal Fiduciary Licensees (PFLs)**

This type of licence will remain unchanged under the 2020 Fiduciaries Law and therefore PFLs are not impacted by the 2020 Fiduciaries Law.

#### **Full Fiduciary Licensees (FFLs)**

Lead licensees - The 2020 Fiduciaries Law provides that the conversion will be automatic and therefore no action is required from lead licensees.

Joint licensees - The Commission will issue rules which will enable the conversion of joint licensees to secondary licensees upon receipt of an agreement and confirmation of qualification from the joint licensee. The Commission is therefore seeking comments on the proposed definition of “actively trading” at this point with a view to consult on rules regarding conversion in due course. The Commission does not request for such agreement to be submitted at this stage.

As previously advised, licensees should consider the impact of the changes to be introduced and, if applicable, take the necessary steps to ensure compliance, if they have not already done so. If a licensee anticipates difficulty in complying with the 2020 Fiduciaries Law, they should contact the Investment, Fiduciary and Pension Division (ifpd@gfsc.gg).

Q2: 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 licensees with the view to consulting on detailed proposals in due course.