



Guernsey Financial
Services Commission

**Draft Regulation of Fiduciaries, Administration Businesses and Company Directors, etc
(Bailiwick of Guernsey) Law, 2018**

Key Issues for consideration

1. Extension of regulated activities to Limited Liability Partnerships

The Commission and the Law Officers have previously undertaken engagement in relation to including the provision of services to, and acting as member of, a Limited Liability Partnership (“LLPs”) in the Regulation of Fiduciaries Law 2000. The draft Regulation of Fiduciaries Law has been updated accordingly to explicitly include LLPs (and thus be consistent with Limited Partnerships), and specific exemptions have been added also. The exemptions relating to LLPs include, amongst other things:

- (a) acting as a member in a LLP, but only where the members’ agreement provides, as referenced in section 14(3)(b) of the Limited Liability Partnerships (Guernsey) Law, 2014, that the member may not take part in the conduct or management of the partnership; and
- (b) acting as a member of a LLP which has an established place of business within the Bailiwick provided that no services consisting of or comprising a regulated activity are supplied to the LLP by the member (other than acting as member).

Do you foresee any unintended consequences in relation to this issue?

2. Exemption for Ancillary Vehicles notified under the Protection of Investors Law

The draft Regulation of Fiduciaries Law contains an exemption for ancillary vehicles (this is defined in the draft Protection of Investors Law and the definition is set out below).

"ancillary vehicle" means a body, entity or arrangement -

- (c) which is ancillary to a controlled investment or to the carrying on of a regulated activity within the meaning of the Protection of Investors Law,
- (d) which, or the carrying on of which, is not required to be licensed, authorised or registered under the provisions of the Protection of Investors Law, and
- (e) 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.

Do you foresee any unintended consequences in relation to the definition of “ancillary vehicle” or the proposed exemption?

3. Introduction of Secondary Fiduciary Licence

The draft Regulation of Fiduciaries Law 2018 creates a new category of licence for companies, legal persons (other than individuals) or partnerships, being a secondary fiduciary licence. In order to be granted this category of licence, the structure must fulfil certain criteria. These include being a subsidiary of or wholly beneficially owned by the holder of a full fiduciary licence or the holding company of the holder of a full fiduciary licence and that the secondary fiduciary licensee may have a corporate director.

The Commission may make rules in relation to a number of matters including secondary fiduciary licensees, in particular in relation to secondary fiduciary licensees and the circumstances in which they may actively trade.

Further the Commission will be able to make rules in relation to the conversion of a full fiduciary licence into a secondary fiduciary licence. These will be subject to separate consultation.

Do you foresee any unintended consequences in relation to the introduction of secondary fiduciary licensees?

4. Power to issue directions

The power for the Commission to impose directions upon a “directed person” has been included in the draft Regulation of Fiduciaries Law. “Directed persons” is defined in section 11. Directions, while similar to conditions, can apply to a much broader range of persons.

Do you foresee any unintended consequences in relation to the definition of “directed person” or the power to impose directions?

5. Provision of information and “relevant persons”

The power to provide information under the draft Regulation of Fiduciaries Law will apply in relation to a “relevant person”. The term “relevant person” and the persons who may be subject to the information gathering power is defined in section 26. This is partly due to other new provisions and to enable the Commission to obtain information in a consistent manner for the performance of its functions.

Do you foresee any unintended consequences in relation to the scope of “relevant person”?

6. Requesting meetings with auditors, actuaries and others

The draft Regulation of Fiduciaries Law will contain a power to request meetings with auditors, actuaries and others. This can be done on a bilateral basis or with the relevant licensee or former licensee.

Do you expect that this will cause significant issues which are unintended?

7. Appointment of Skilled Person

The power to appoint a skilled person, which is standardisation of the Commission’s current power to require a report from a nominated or approved independent professional person, has been included in the draft Regulation of Fiduciaries Law. The term “inspected person” is used to define the type of persons whom a skilled person may be appointed in relation to.

Do you foresee any unintended consequences in relation to provision or the scope of “inspected person”?

8. Supervised Roles

As approved in the Policy Letter, Approved Supervisory Roles, Vetted Supervisory Roles and Notified Supervisory Roles have been introduced. All Supervised Roles require the licensee to notify the Commission where a person has started to hold or ceased to hold a Supervised Role. In addition a person seeking to hold an Approved Supervised Role or Vetted Supervised Role must apply for the Commission's prior "no objection" in relation to that specific role.

Relevant International Standards are one of the factors considered when determining whether a role is an Approved Supervised Role, a Vetted Supervised Role or Notified Supervised Role. At present the Regulation of Fiduciaries Law does not contain any Vetted Supervised Roles.

Do you expect that this will cause significant issues which are unintended?

9. Representations, notices of decisions and appeals

Generally in the decision making process of the Commission relating to "minded to" notices, decisions, reasons for decisions and rights of appeal have been made consistent.

In addition a provision restricting the application for the variation or revocation of specified decisions, has been included. This means that in certain circumstances, the Commission will not be required to consider a further application for variation or revocation of these types of decisions.

Do you expect that this will cause significant issues which are unintended?

10. Other unintended consequences or significant issues? Please provide details quoting paragraph numbers or sections