

CLIENT ALERT

# UK QAHC Update: Draft Legislation Published on Eligibility of Parallel Funds

July 21, 2022

## AUTHORS

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Following consultation with a number of industry stakeholders, including Willkie, the UK Government yesterday [published](#) draft legislation amending the eligibility criteria of the qualifying asset holding company ("QAHC") regime to facilitate funds utilising parallel and feeder structures to use the QAHC regime. This is great news which better reflects the reality of how investment funds are structured and operate in practice and will open up access to the QAHC regime to a great many more funds.

## Background

One of the key requirements for an asset holding company to enter the QAHC regime is, broadly, that it is at least 70% owned by "good" investors. One such group of "good" investors for these purposes is "qualifying funds", being funds that meet a diversity of ownership condition.

At present, the QAHC legislation requires the qualifying fund status of each investing entity in the QAHC to be assessed individually. This precludes many funds from accessing the QAHC regime as, for example, parallel vehicles may be established to cater for specific investors during the fundraising process and may fail the qualifying fund test as they are neither widely marketed nor diversely held. An aggregator vehicle through which other fund vehicles invest often may not qualify as it has not been widely marketed.

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### Feeder funds

The draft legislation will treat aggregator vehicles in feeder fund structures as qualifying funds where each person or fund with an interest in the aggregator fund is a CIS which meets either the GDO condition or is treated as meeting the diversity of ownership condition by virtue of being a parallel fund.

### Parallel funds

The draft legislation will deem qualifying parallel fund entities to be qualifying funds which will count as "good" investors in a QAHC. The conditions parallel funds will be required to meet are complex and are set out further below, but in summary a parallel fund will qualify where (a) its management is substantially coordinated with that of another fund entity which is a qualifying fund in its own right and (b) each entity invests in the QAHC and underlying assets on substantially the same terms and in the same proportions.

#### The detail

As mentioned above, the specific conditions that parallel fund entities will need to meet are complex and will require detailed evaluation by funds looking to access the QAHC regime. These conditions are as follows, all of which the parallel entity will need to meet in order to be considered a qualifying fund:

- the parallel entity is a collective investment fund ("**CIS**") and is a parallel fund of another CIS that meets the genuine diversity of ownership ("**GDO**") condition;
- the investment business of each CIS concerns investments in substantially the same assets as the other CIS (i.e. each vehicle should hold the same class(es) of shares in the QAHC);
- the investments of each CIS in particular assets are held through the same company or companies (the "**AHC**") (i.e. the main vehicle and the parallel vehicle must invest in the same QAHC);
- the interests of each CIS in that AHC are held on substantially the same terms (the potential breadth of this condition means additional guidance here will be valuable, but an example may include requiring that the main vehicle and parallel vehicle should be subject to the same "drag and tag" rights);
- each CIS holds investments through that AHC in particular assets on substantially the same terms as the other CIS holds its investments in those assets through that AHC (this is an inelegantly worded condition that essentially concerns interests the underlying assets in the QAHC rather than the shares in the QAHC itself – although in practice we would expect that where this condition is breached one or more of the prior conditions would also be failed);

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- the ratio of each CIS's interests in particular assets through that AHC to the interests the other CIS has in those assets through that AHC is the same for all particular assets those CISs have investments in through that AHC (e.g. where the main vehicle and parallel vehicle invest in one asset class in a 3:2 ratio, they should hold investments in other asset classes in the same ratio);
- the management of the CISs is substantially coordinated such that the schemes act together in relation to their investments as if they were a single CIS; and
- neither of the CISs is a party to any arrangements that would cause any of the conditions above to cease to be met.

### Collective investment schemes

The draft legislation also contains an expansion of the definition of "collective investment scheme" for the purposes of the QAHC regime. As it currently stands, the definition of CIS, borrowed from regulatory legislation, excludes corporate entities. This means that corporate fund vehicles cannot access the GDO condition in the QAHC legislation, which is perhaps the easiest of the qualifying funds conditions to satisfy. The proposed changes mean that corporate entities, which would be a CIS if they were not corporates, are now capable of utilising the GDO condition, which should make it much easier for such entities to access the regime. This particular change will be deemed to have effect from 1 April 2022.

### Concluding thoughts

Overall, the draft legislation published yesterday is a very welcome development, which will go a long way in addressing existing gaps in the legislation to facilitate many more investment funds to access the QAHC regime. As ever, however, the devil will be in the detail and funds assessing the possibility of establishing a QAHC should consider the conditions carefully.

Finally, while the proposed changes are undoubtedly good news, there remain certain shortfalls in the draft legislation, additional guidance will be needed to aid investment funds in applying the legislation, and it is not yet known when the changes will come into effect. Willkie will continue to engage with HM Treasury and HMRC on these points and the development of this regime more generally to ensure it works as intended and is easily accessible to a range of investment funds.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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