

**Guideline on Auditor’s Report for Application for Certification of Funds
Issued by the Monetary Authority
for Funds and their Investment Managers**

1. Introduction

- 1.1. The Monetary Authority (“MA”) issued the [Guideline on Certification of Funds Issued by the Monetary Authority under Schedule 16D to the Inland Revenue Ordinance \(Cap. 112\)](#) (“Guideline on Certification”) in relation to tax concessions for carried interest under the Inland Revenue Ordinance (“IRO”) on 16 July 2021. The Guideline on Certification sets out the Criteria for Certification and other matters in relation to the MA’s certification of funds for the purposes of Schedule 16D to the IRO (“Certification”).
- 1.2. To apply for Certification, a fund, as the applicant, has to submit to the MA a completed Certification Application Form and an auditor’s report. To facilitate the Inland Revenue Department (“IRD”) in processing any claim for tax concessions, the MA may provide any information and documents submitted by the applicant, including but not limited to the Certification Application Form and the auditor’s report, to the IRD after the applicant has applied to the MA for Certification.
- 1.3. Unless otherwise defined in this Guideline, capitalised terms used in this Guideline have the same meanings given to them in the Guideline on Certification or the IRO as appropriate.

2. Responsibilities of the engaging party

- 2.1. The fund or its investment manager (“engaging party”) is required to engage a certified public accountant (practising)¹ (“Practitioner”) to prepare an auditor’s report in accordance with the [Hong Kong Standard on Related Services 4400 \(Revised\) Agreed-Upon Procedures Engagements](#) (“HKSRS 4400 (Revised)”) with respect to the matters set out in **Annex 1** on which the agreed-upon procedures are performed.
- 2.2. The responsible party² of the engaging party is responsible for providing true and accurate information and documents as listed in **Annex 1** or other information and documents as alternative where appropriate³ to the Practitioner for the purpose of preparing the auditor’s report.

¹ A certified public accountant (practising) means a person registered as a certified public accountant by virtue of section 22 of Professional Accountants Ordinance (Cap. 50) (“PAO”) and holds a practising certificate issued under the PAO before 1 October 2022 or issued under section 20AAD or 20AAI of the Accounting and Financial Reporting Ordinance (Cap. 588) from 1 October 2022.

² The responsible party of the fund or its investment manager is:

- (a) a director, company secretary or manager of the company if the fund or the investment manager is a company;
- (b) the general partner if the fund or the investment manager is a partnership;
- (c) the trustee if the fund is a trust; or
- (d) the principal officer of the body of persons if the investment manager is a body of persons.

3. Administrative matters

- 3.1. The MA may amend this Guideline and issue further guidance in relation to the matters in this Guideline as and when necessary.
- 3.2. Questions regarding this Guideline should be emailed to hkma.certification.ci@hkma.gov.hk.

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³ The responsible party of the engaging party should make its best endeavours to provide the information and documents as specified in Annex 1. If the responsible party is unable to provide such information and documents, it should provide the reason and the suggested alternative information and documents to the MA in writing. If the MA considers such reason and suggested alternative acceptable, the MA will issue to the responsible party a confirmation, which then can be submitted, together with any alternative information and documents as agreed by the MA, to the Practitioner to perform the relevant procedure(s). In such cases, the Practitioner should tailor the relevant procedure(s) in accordance with HKSRS 4400 (Revised) based on the alternative information and documents obtained. The Practitioner is not required to consider whether the alternative information and documents meet the MA's requirements.

Annex 1

1. Purpose

- 1.1 To assist the MA in determining whether a fund has directly or indirectly invested in shares, stocks, debentures, loan stocks, funds, bonds or notes (“Specified Securities”) of, or issued by, a Private Company or an Investee Private Company (as the case may be) during the Applicable Period as required under paragraph 2.1(a) of the Guideline on Certification.

2. Requirements of the responsible party of the engaging party

- 2.1 Select any one acquisition of Specified Securities which has been disposed.
- 2.2 Provide to the Practitioner the following information / documents in respect of the selected Specified Securities:
- (a) the executed sale and purchase agreement for the acquisition of the Specified Securities, or for the first acquisition if there were more than one acquisitions (“Acquisition S&P”);
 - (b) the ownership structures presented in diagrams (“Ownership Structures Diagrams”), showing:
 - (i) the description of the Specified Securities as stated in the executed Acquisition S&P, for example, 100% of the issued shares of an entity;
 - (ii) the acquisition date of the Specified Securities (or the date of the first acquisition if there were more than one acquisitions);
 - (iii) the percentage of the fund’s participation interests or equity interests, directly or indirectly, in the issuer of the Specified Securities, specifying the name and the identity of each entity (e.g., the fund, Special Purpose Entity (“SPE”), Interposed Special Purpose Entity 1/2/3 (“Interposed SPE 1/2/3”), Private Company or Investee Private Company (as the case may be)) as at the date of acquisition (or the date of the first acquisition if there were more than one acquisitions) and the date of last disposal of the Specified Securities, or the date of declaration of the carried interest⁴, whichever is earlier (“Holding Period”); and
 - (iv) the following information in respect of each entity in the Ownership Structures Diagrams:
 - principal activity;
 - place of incorporation; and
 - entity type, e.g., private company, public company, partnership, etc.

⁴ The date of declaration of the carried interest should be the same day on which such carried interest was received by, or accrued to, the investment manager, whichever is earlier.

(see **Annex 2** for illustration).

- (c) the executed sale and purchase agreement for the disposal of the Specified Securities, or for the last disposal if there were more than one disposals (“Disposal S&P”); and
- (d) the effective date of the executed Disposal S&P.

2.3 For each of the SPEs, Interposed SPEs and issuer of the Specified Securities in the Ownership Structures Diagrams, provide the following documents to demonstrate the entity’s principal activity and that it is a Private Company⁵ (if applicable):

- (a) a copy of the entity’s audited financial statements for the financial year in which the carried interest was declared (“Declaration Year”):
 - (i) if the entity did not prepare the audited financial statements for the Declaration Year but has prepared the audited financial statements for the year preceding the Declaration Year, provide a copy of the audited financial statements for the year preceding the Declaration Year; or
 - (ii) if the entity did not prepare the audited financial statements for the Declaration Year and the year preceding the Declaration Year or was exempted from audit pursuant to any overseas legislation, or if the principal activity of the entity was not stated in the audited financial statements provided to the Practitioner, or if the engaging party cannot obtain the audited financial statements prepared by the entity, provide a written representation (see **Annex 3** for illustration) stating the same, the overseas legislation concerned (if applicable), the reason for not being able to obtain the audited financial statements (if applicable), and the entity’s principal activity for the Declaration Year.
- (b) a copy of the entity’s certificate of incorporation if the entity is a company:
 - (i) if the entity was incorporated in Hong Kong, provide a copy of the entity’s Annual Return (Form NAR1) previously submitted to the Companies Registry which was made up during the Holding Period and indicated that the entity was a Private Company. Alternatively, provide a copy of the Notice of Change of Company Status (Form NAA4) previously submitted to the Companies Registry indicating that the effective date of alteration of the entity’s company status fell within the Holding Period; or

⁵ As explained in paragraph 126 of the [Departmental Interpretation and Practice Notes No. 61](#), an investment is considered as an investment in a Private Company / Investee Private Company even if a fund sells the investment in the Private Company / Investee Private Company through an initial public offering, or if a listed company is privatised and later sold as a Private Company / Investee Private Company. As such, when applying for Certification, it is sufficient for a fund to demonstrate that it has invested in a company that satisfied the definition of a Private Company or an Investee Private Company for a certain period of time (i.e., not the entire period) during the Holding Period. Please refer to paragraph 2.3(b) of this Annex for the relevant requirements.

- (ii) if the entity was not incorporated in Hong Kong, provide a written representation (see **Annex 3** for illustration) stating that the entity was not allowed to issue any invitation to the public to subscribe any of its shares or debentures at least one point in time during the Holding Period.

2.4 Except for the Ownership Structures Diagrams⁶, any other documents provided to the Practitioner for the purpose of preparing the auditor's report are not required to be provided to the MA when the auditor's report is submitted. However, the MA may request such other documents and any further information and documents as the MA deems fit to assist the MA in reviewing an application.

2.5 In addition to the written representations mentioned above, the Practitioner may request such other written representations as they may consider necessary.

⁶ The Practitioner is required to attach the Ownership Structures Diagrams as appendices to the auditor's report. Actual names of the entities in the Ownership Structures Diagrams should be provided to the Practitioner but such names will not be disclosed in the auditor's report or the Ownership Structures Diagrams attached to the auditor's report.

Annex 2⁷

Ownership structures diagrams⁸

Diagram 1

Ownership structures between [name of the fund] and [name of the issuer of the Specified Securities] as at the [date] (i.e., acquisition date of the Specified Securities, or the first acquisition date if there were more than one acquisitions) (“Acquisition Date”)

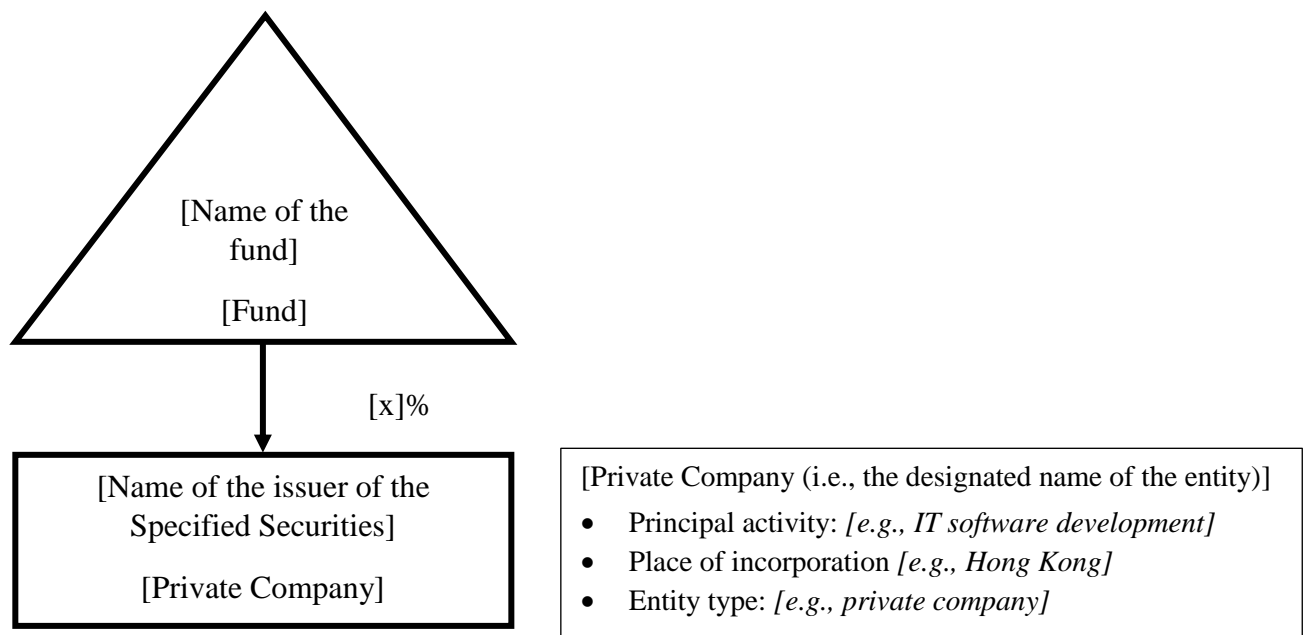
Diagram 2

Ownership structures between [name of the fund] and [name of the issuer of the Specified Securities] as at [date] (i.e., the date of last disposal of the Specified Securities, or the date of declaration of carried interest, whichever is earlier)

Where the issuer is a Private Company

Description of the Specified Securities: *[e.g., 100% of the issued shares of issuer]*

Acquisition Date: *[e.g., 10 March 2020]*



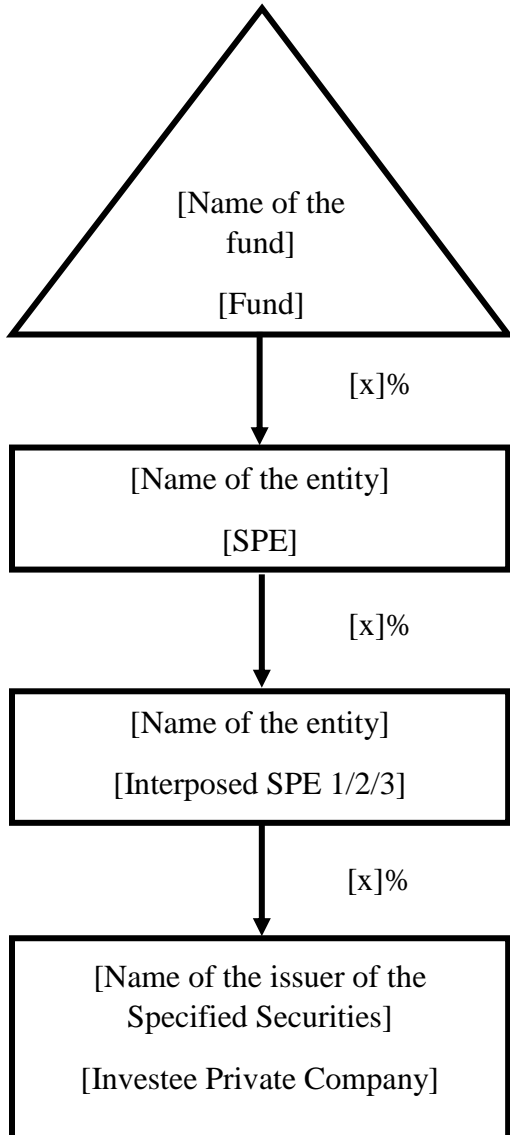
⁷ Unless otherwise defined in this Annex, capitalised terms used in this Annex have the same meanings given to them in the Inland Revenue Ordinance or the Guideline on Auditor’s Report for Application for Certification of Funds Issued by the Monetary Authority for Funds and their Investment Managers (including Annex 1) as appropriate.

⁸ Actual names of the entities should be provided to the Practitioner but such names will be redacted in the Ownership Structures Diagrams attached to the auditor’s report. The identity of each entity (e.g., the fund, SPE, Interposed SPE, Private Company or Investee Private Company (as the case may be)) and the percentage of participation interest or equity interest in each entity should also be provided to the Practitioner.

Where the issuer is an Investee Private Company

Description of the Specified Securities: [/]

Acquisition Date: [/]



[SPE (i.e., the designated name of the entity)]

- Principal activity: [/]
- Place of incorporation: [/]
- Entity type: [/]

[Interposed SPE 1/2/3 (i.e., the designated name of the entity)]

- Principal activity: [/]
- Place of incorporation: [/]
- Entity type: [/]

[Investee Private Company (i.e., the designated name of the entity)]

- Principal activity: [/]
- Place of incorporation: [/]
- Entity type: [/]

Annex 3⁹

Written representations¹⁰

The following illustrates written representations that Practitioners might obtain as part of the agreed-upon procedures. Practitioners may request additional written representations from the responsible party of the engaging party as they may consider necessary.

[Date]

Attention to: [name of the Practitioner]

This representation is provided in connection with your preparation of the auditor's report with respect to the matters set out in Annex 1 to the [Guideline on Auditor's Report for Application for Certification of Funds Issued by the Monetary Authority for Funds and their Investment Managers](#) on which the agreed-upon procedures are performed in relation to [name of the fund] for the purpose of [name of the fund]'s application for certification as set out in the [Guideline on Certification of Funds Issued by the Monetary Authority under Schedule 16D to the Inland Revenue Ordinance \(Cap. 112\)](#).

We, on behalf of [the engaging party], confirm that, *[to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves]*:

1. Private company

[Actual name of the entity], denoted as [SPE] in the Ownership Structures Diagrams,⁸ was not allowed to issue any invitation to the public to subscribe any of its shares or debentures at least one point in time during the Holding Period.

2. Audited financial statements

[Actual name of the entity], denoted as [SPE] in the Ownership Structures Diagrams,⁸ has prepared the audited financial statements for the year ended [Declaration Year end date] and / or [year end date of the year preceding the Declaration Year] but the principal activity of the entity was not stated in the audited financial statements for the year ended [Declaration Year end date] and / or [year end date of the year preceding the Declaration Year].

OR

⁹ Unless otherwise defined in this Annex, capitalised terms used in this Annex have the same meanings given to them in the Inland Revenue Ordinance or the Guideline on Auditor's Report for Application for Certification of Funds Issued by the Monetary Authority for Funds and their Investment Managers (including Annex 1 and 2) as appropriate.

¹⁰ Written representations should state the actual name of the entity and the entity's designated name (e.g., SPE, Interposed SPE, Private Company or Investee Private Company (as the case may be)) as referred to in the Ownership Structures Diagrams. The representations should include sections 1 to 3 for each entity in the Ownership Structures Diagrams where appropriate. A separate representation statement should be prepared for each entity (e.g., if both the SPE and the Interposed SPE are not required to prepare audited financial statements, two separate representation statements should be prepared for the SPE and the Interposed SPE). However, the responsible party of the engaging party may provide one representation letter covering all the relevant entities.

[*Actual name of the entity*], denoted as [SPE] in the Ownership Structures Diagrams,⁸ was exempted from audit pursuant to [*specify the overseas legislation*] and did not prepare audited financial statements for the financial year ended [Declaration Year end date] and [year end date of the year preceding the Declaration Year].

OR

[*Actual name of the entity*], denoted as [SPE] in the Ownership Structures Diagrams,⁸ was not exempted from audit by law but did not prepare audited financial statements for the financial years ended [Declaration Year end date] and [year end date of the year preceding the Declaration Year].

OR

[*Actual name of the entity*], denoted as [SPE] in the Ownership Structures diagrams,⁸ has prepared audited financial statements for the year ended [Declaration Year end date] and / or [year end date of the year preceding the Declaration Year] but such audited financial statements were not made available to us [reason for not being able to obtain the audited financial statements].

3. Principal activity

The principal activity of [*actual name of the entity*], denoted as [SPE] in the Ownership Structures Diagrams,⁸ was [principal activity of the entity] during the financial year ended [Declaration Year end date].

[Signatory of the responsible party]
[Name of the responsible party]
[Position held in the engaging party]
[Name of the engaging party]