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Guernsey Association of Trustees

GAT response to the GFSC 2023 Fees Consultation – submitted on 14/09/22

Overall Increase in Fees

Do you have any comments on the overall proposed fee increase?

General comments:

We do not support the overall proposed fee increase of 9% and do not consider that the reasons given in the Consultation Paper justify this level of increase. GAT considers that an overall fee increase of 2.5% to 3% would be more appropriate.

An overall fee increase of 9% is difficult to justify taking into account (i) the surplus identified in the Commission's 2021 financial statements of c.£14 million, and (ii) profits of nearly £500,000 in 2021. We question the Commission's justification for maintaining reserves at this level whilst increasing fees in the manner outlined in the Consultation Paper.

Detailed comments:

Rate of inflation:

• Inflation in Guernsey is at 7% so it is not appropriate to use the UK's inflation rate of 9% as justification for a fee increase at this level.

• The mixture of RPI and RPIX in paragraph 4.1.6 does not make useful comparable figures.

Staff resources:

• An overall increase in the level of fees of 9% is not in line with what industry is able to offer in terms of pay rises. KPMG's 'Guernsey Fiduciary Industry Survey 2021' issued in March 2022 suggested many businesses were expecting less than 5% revenue growth so a 9% increase is unrealistic. Typically, industry is offering below RPI, even at the larger firms (we are aware that at least one of the large firms is offering as low as 1% this year).

• An increase at this level for the purposes of retaining and recruiting skilled staff will put pressure on industry to make similar increases, at a time when costs have already increased due to increasing compliance obligations (AML/CFT, GDPR, FATCA, cybersecurity etc.) – ultimately the clients will need to cover the additional costs which makes it difficult for Guernsey's finance sector to remain competitive on pricing.

• Recruitment is generally difficult across all sectors in the current climate and industry faces similar challenges to the Commission in respect of the retention and recruitment of skilled staff. However, it is not open to industry to simply increase its fees and thereby increase salaries – again, it needs to remain competitive with other jurisdictions so needs to use other incentives to attract and retain staff, e.g. differentiating factors, performance-related bonuses, flexible working practices etc. The Consultation Paper does not explain what other measures the Commission is taking to retain and recruit skilled staff – what alternatives to an increase in fees have been considered or tested?

• The Commission’s argument that it needs to increase salaries to attract and retain staff in a competitive financial services market is flawed as pay rises across the board will self-perpetuate. Industry may in turn be forced to increase pay rises to remain attractive to those whom the Commission may be seeking to recruit from industry.

• The bullet points at paragraph 4.1.7 (Staff Resources) are not unique to the Commission – industry faces similar challenges, noting that some firms are able to offer higher salaries than others – and may not necessarily be the only causes of the Commission’s staff turnover. What steps have been taken to identify the causes of high staff turnover? Have any other causes been identified?

• The fiduciary sector comprises a wide range of types of businesses, from very small, owner-managed firms to large, private equity owned firms – the businesses in this sector are therefore not on an equal-footing when it comes to offering salaries and many of them have to rely on other incentives to attract and retain staff.

• The Commission’s comment about staff sub-inflationary pay rises for 8 years is ambiguous – were there no rises in other years, or were the other rises greater than inflation?

• We do not agree with the Commission’s reference to the financial services market being “unusually competitive” (in paragraph 4.1.10). In our experience, the market has been this way for many years now.

The Costs of Regulation:

• In paragraph 4.1.12, the Commission refers to fees being contained “only” by cost discipline. Industry also faces challenges associated with the increasing costs of regulation, including legal costs, but has always been disciplined about costs rather than simply increasing fees in line with inflation. Industry has also had to work smarter to remain competitive with other jurisdictions. The Consultation Paper does not explain whether the Commission has also been working smarter and more efficiently to manage its increasing responsibilities – what efficiencies and other cost savings could be introduced before increasing fees?

• Following on from the point above, increasing responsibilities do not “need” to be reflected by increasing fees. The statement at the end of paragraph 4.1.12 is not backed up with empirical evidence that the increased responsibilities justify a 9% increase. Also, have the Commission’s responsibilities increased equally across all sectors of the finance industry? Is it appropriate to apply 9% across industry and, if so, on what basis?

<u>Proposed Fees for Lending, Credit and Finance Firms</u>

Do you have any comments on the design of the proposed fee structure for the Credit and Finance regime?

We welcome the regulation of this sector through the Credit and Finance regime (please see our responses to the Commission’s Consultation Paper on that regime). We believe that this regime will considerably increase protection for consumers and could lead to opportunities for Guernsey’s finance sector, particularly in the VASPs space.

Generally, GAT does not have any comments on the overall fee structure for this regime. However, GAT is concerned that the level of fees proposed for VASPs is far too high and will mean Guernsey is unable to compete with other jurisdictions in this sector.

We consider that the fees proposed for VASPs should be comparable to:

> (a) for VASPs (Exchanges and Stablecoin Issuers) those charged for an investment exchange £78,005 annual fee) or a bank (£44,195 application fee) and for VASPs (Non-Exchanges) those charged for licensees in the investment sector carrying out activities such as custody, administration and dealing (£2,780 application fee); and

(b) other competitor jurisdictions (e.g. the BVI and Bermuda where we understand fees are in the tens of thousands of dollars, and nowhere near the proposed £150,000).

Please could the Commission provide an explanation for setting the fees for VASPs at such a disproportionately high level.

Please could the Commission also clarify whether applicants for VASP licences may be charged for both the application fee and annual fee (£300,000 in total) during the first year as this is not clear.

Application Fees – PCC / ICC Incorporation Consent Requests

Do you have any comments on the proposed £500 fee for applications consent to incorporate requests for non-regulated any PCC or ICC structures?

GAT does not have any comments on this proposal

Fee for Prospectus Registration not part of a fund application

Do you have any comments on the proposed £500 fee for review of a prospectus registration not connected to a wider registered fund application?

GAT does not have any comments on this proposal.

Fast Track Fees for Additional Elements to Open-Ended Funds

Do you have any comments on the proposed extension of the £500 fast track fee to include additions to an open-ended fast track fund?

GAT does not have any comments on this proposal.

Amending the Returns in Scope of Late Filing Penalties

Do you have any comments on the additional returns proposed to be included within the scope of the Late Filing Penalty regime?

GAT does not have any comments on these proposals.

Inaccurate Filing Penalties

Do you have any comments on the proposed Inaccurate Filing Penalty regime?

GAT does not agree with the arguments for introducing this new penalty regime. Our members work very hard on, and invest considerable resources into, collecting and organising data for their returns and endeavour to complete the returns accurately. In our experience, where inaccuracies or issues have been identified in completed returns, this is due to unclear or ambiguous wording in questions in the return.

A better approach, to ensure returns are accurately completed as required by the Commission, would be for the Commission to publish clearer guidance on completion of returns. This would be particularly helpful in respect of those questions where the Commission has previously been asked for clarity or which have been answered inaccurately in a significant proportion of returns in the past, as this would indicate that there is an issue with the wording in those questions.