

REPORT TO: CILEX REGULATION BOARD

FOR: DECISION

DATE: 2 MAY 2018

REPORT TITLE: ENTITY SUPERVISION FEES

SUBMITTED BY: David Pope, Entity Authorisation and Client Protection Manager

PURPOSE OF REPORT:

- 1 This paper seeks formal approval to set an additional fee for amendment to Entity Authorisations where a new area of law is authorised.
- 2 This paper also seeks formal approval to set fees to cover the costs of approving and supervising specified unregulated firms for compliance with the requirements of the Money Laundering Regulations 2017.

ENTITY APPLICATION AMENDMENT FEES

BACKGROUND:

- 3 The entity application fee covers the assessment of all Approved Manager and Compliance Manager applications made at the time of initial entity application.
- 4 When an additional or replacement application is received for a person to become
 - an Approved Manager, or
 - a Compliance Manager for either practice management or accounts management,

then there is an assessment fee of £80.

- 5 If the application is to become a Compliance Manager for both practice management and accounts management then the fee is £160.

ISSUES FOR CONSIDERATION:

- 6 Receipt of a recent application has highlighted that whilst we could charge a fee for the assessment and approval of the Approved Manager, we were not able to cover the costs of the additional authorisation provided to the entity for the new area of law.
- 7 Whilst the numbers of instances of an additional authorisation being provided are likely to be in single figures, we are required to provide a formal authorisation decision, update the Concept database and issue an additional certificate to the firm.

- 8 We have taken the opportunity to review the time and cost for each additional application as follows:

Additional Application	Time (hours)	Current fee	Proposed fee
Approved Manager	2	£80	£80
Compliance Manager (one of practice/accounts management)	5	£80	£120
Compliance Manager (both areas)	7	£160	£160
Entity Authorised for new area of law	2	-	£80

- 9 We are recommending that a fee of £80 is charged to cover the costs of additional authorisations for a firm, as well as increasing the Compliance Manager fees to £120 and £160 to provide full cost recovery.

ANTI-MONEY LAUNDERING (AML) SUPERVISION FEES

BACKGROUND:

- 10 The implementation of the Money Laundering Regulations 2017 has meant that there is much greater focus on the activities of the AML supervisors. This has included the setting up of an oversight regulator, the Office for Professional Body Anti Money Laundering Supervisors (OPBAS), domiciled within the Financial Conduct Authority. CILEx, as the AML supervisor, delegates the responsibility for supervision and enforcement to CILEx Regulation.
- 11 Historically, CILEx Regulation has taken the position that our supervision has always been focused on our Authorised Entities, rather than other CILEx members working unregulated in their own firms.
- 12 However the definition within the Regulations is that 'independent legal professional' means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning –
- a) the buying and selling of real property or business entities;
 - b) the managing of client money, securities or other assets;
 - c) the opening or management of bank, savings or securities accounts;
 - d) the organisation of contributions necessary for the creation, operation or management of companies; or
 - e) the creation, operation or management of trusts, companies, foundations or similar structures,

And, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

- 13 We have wanted to gain clarity on the reach of our supervision and have met with HM Treasury and OPBAS to clarify the position as regards those unregulated firms that our members run or are involved in. We have also discussed and agreed our approach with CILEx.
- 14 It has been accepted that our supervision cannot extend to corporate entities which CILEx members may own or be involved in the ownership or management of, but are not Authorised Entities or corporate members of CILEx. If a member runs a firm in their own personal name as a sole trader, and the scope of its work falls under the Regulations, then we will supervise that member for AML compliance.
- 15 This is a position we will set out in our assessment of our supervised population as required under the Regulations.
- 16 We are aware that there are a large number of unregulated firms that come under the Regulations that will not have access to a supervisor and this risk has been raised with HM Treasury. It is not our intention to offer to extend our supervision to these firms.
- 17 This paper seeks formal approval to set fees to cover the costs of approving and supervising specified unregulated firms for compliance with the requirements of the Money Laundering Regulations 2017.

ISSUES FOR CONSIDERATION:

- 18 The only other supervisor who looks after an unregulated sector is HM Revenue & Customs and they have the following fee structure:
 - Application fee - £100.
 - Premises registration fee - £130 for each premise worked from.
 - Fit and proper test fee -£100 per person.
 - Approval test of key staff for relevant criminal convictions -£40 per person.
 - Annual renewal fee - £130 for each of the premises worked from.

Fees are non-refundable.

An individual working from home running their own firm would pay £330 in year one and £130 per annum after.

- 19 The numbers we anticipate being included for supervision in addition to our Authorised Entities is low (less than 50). We are raising the requirement for our members to be aware of the requirements to be supervised with regular communications.
- 20 We believe the additional supervision work for these unregulated firms would include ensuring that:
 - Their details have been added to our register;
 - The firm has appropriate policies in place;
 - The firm is complying with Customer Due Diligence requirements;
 - The firm has the necessary assessments of risk in place;

- The firm has an Money Laundering Reporting Officer;
- The firm is included in any communications on risk & compliance for AML;
- Criminality check (including basic Disclosure & Barring Service (DBS) check) carried out for individual.

21 At this stage it is difficult to assess the time requirement for this work but we are proposing 3/4 hours per application with full cost recovery. However, as we are only going to see individuals seeking supervision, we are proposing a fee structure as follows:

- Application Fee £150 (individual to pay an online DBS fee £26)
- Renewal Fee £100

RECOMMENDATIONS:

- The Board is asked to approve the setting of an additional entity authorisation amendment fee of £80 for each new area of law for which a firm is authorised after the first application and to amend the fees for assessing a new Compliance Manager to £120 for either practice management or accounts management and £160 for both management areas to provide full cost recovery.
- The Board is asked to approve the setting of a new Anti-Money Laundering Supervision fee of £150 to fully cover the cost of application and £100 on renewal for supervising specific unregulated firms for compliance with the Money Laundering Regulations 2017.