

CONSULTATION PAPER NO. 2 2010

REGISTER OF RECOGNIZED AUDITORS: PROPOSED FEES

Proposed fees under Part 16 of the Companies (Jersey) Law 1991

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper.

Responses should be sent directly to the Commission by 5 March 2010. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the Commission.

Responses should be sent to:

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

GLOSSARY OF TERMS

EU	means the European Union
JSCCA	means the Jersey Association of Chartered and Certified Accountants
Jersey Finance	means Jersey Finance Limited
market traded company	means a Jersey company ¹ whose securities are admitted to trading on a regulated market in the EU
recognized auditor	means an auditor of a market traded company
the AIU	means the UK's Audit Inspection Unit (part of the Financial Reporting Council)
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
the Companies Law	means the Companies (Jersey) Law 1991
the ICAEW	means the Institute of Chartered Accountants in England and Wales
the POB	means the UK's Professional Oversight Board (part of the Financial Reporting Council)
the Register	means the Register of Recognized Auditors (to be maintained by the Commission)
the Regulations	means the Companies (Amendment No. 4) (Jersey) Regulations 2009
the revised Part 16	means the revised Part 16 (Accounts and Audit) that Regulation 4 of the Regulations will insert into the Companies Law
the Statutory Audit Directive	means EU Directive 2006/43/EC
the UK	means the United Kingdom

¹ With some limited exceptions. See the definition of 'market traded company' in Article 102 set out in Regulation 4 of the Regulations

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 The Companies (Amendment No. 4) (Jersey) Regulations 2009 (the “**Regulations**”)² were made by the States on 3 December 2009. The primary reason for the Regulations is to respond to the impact of European Union (“EU”) Directive 2006/43/EC (commonly known as the “**Statutory Audit Directive**”) on local auditors of Jersey companies³ whose securities are admitted to trading on a regulated market in the EU (“**market traded companies**”).
- 1.1.2 Regulation 4 of the Regulations will insert into the Companies (Jersey) Law 1991 (the “**Companies Law**”) a revised Part 16 (Accounts and Audit) (the “**revised Part 16**”). Subject to the approval of the States, Regulation 4 is expected to be brought into force on 5 April 2010.
- 1.1.3 The revised Part 16 provides for the establishment of a registration and oversight regime for auditors of market traded companies. These auditors are referred to as “**recognized auditors**”. The revised Part 16 provides for the Commission to maintain a Register of Recognized Auditors (the “**Register**”).
- 1.1.4 Once Regulation 4 of the Regulations is in force, auditors that wish to audit market traded companies, and who meet the qualification criteria set out in Part 16 to be a recognized auditor, will need to apply to the Commission to be entered on the Register.
- 1.1.5 This consultation paper seeks views on the proposed fees to be levied in connection with the Register.
- 1.1.6 A common form of recognized auditor registration and oversight is being introduced across all of the Crown Dependencies. To ensure a consistent approach, the same fee levels are proposed in Guernsey and the Isle of Man.

1.2 What is proposed and why?

- 1.2.1 Two principal fees are proposed:
- 1.2.1.1 a one-off fee of £1,000 to be paid by an auditor when applying to be entered on the Register; and
- 1.2.1.2 an annual registration fee of £750, payable on each anniversary of the entry of the name of an auditor on the Register.

² A copy can be downloaded from the website of the Jersey Legal Information Board. See <http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce%5chtm%5cROFiles%5cR%26OYear2009%2fR%26O-125-2009.htm>

³ With some limited exceptions. See the definition of ‘market traded company’ in Article 102 set out in Regulation 4 of the Regulations.

- 1.2.2 The purpose of the fees is to cover the costs that the Commission expects to incur in connection with its functions in relation to the Register.
- 1.2.3 In addition to the application and annual registration fees, standard-rate late payment and late filing fees are proposed.

1.3 Who would be affected?

- 1.3.1 The proposals in this consultation paper will affect any auditor intending to make an application for registration with the Commission as a recognized auditor.

2 CONSULTATION

2.1 Basis for consultation

- 2.1.1 The Commission has issued this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998 (the "**Commission Law**"), as amended, under which the Commission "*may, in connection with the carrying out of its functions - ...consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*".
- 2.1.2 In addition, Article 15(3) of the Commission Law, as amended, requires that before the Commission may introduce and publish any fee, "*...the Commission must first publish a report that must include -*
- (a) *details of the duty or power for or in respect of which the fee is to be determined;*
 - (b) *details of the proposed fee;*
 - (c) *a request for comments on the level of the proposed fee; and*
 - (d) *a date, that is at least 28 days after the publication of the report, before which those comments may be made to the Commission."*
- 2.1.3 The Commission considers that this consultation paper may be taken to constitute such a report as required by the Commission Law.

2.2 Arbitration mechanism

- 2.2.1 The Commission's consultation process on the setting of fee levels is designed to encourage a consensual approach by clearly articulating the rationale for a proposed fee level. Notwithstanding this, the Commission Law provides for an arbitration mechanism to be invoked should agreement not be reached.
- 2.2.2 Article 15(4) of the Commission Law provides that where the Commission has been unable to agree a fee level with a body that is representative of the interests of those who would be required to pay the fee (which the Commission regards as the Jersey Society of Chartered and Certified Accountants ("**JSCCA**")), the Commission must request the Bailiff to appoint a panel of Jurats to arbitrate.

2.3 Responding to the consultation

- 2.3.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.3.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.3.2.1 prioritise comments and to indicate their relative importance; and

2.3.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3.3 Comments should be provided by no later than 5 March 2010.

2.4 Next steps

2.4.1 Subject to support for the proposed fees being forthcoming, the Commission intends to issue a Fees Notice as set out in Appendix B.

3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

3.2.1.1 the supervision and development of financial services provided in or from within Jersey;

3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

3.2.1.3 preparing and submitting to the Minister for Economic Development recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;

3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –

- as are required or authorised by or under any enactment, or
- as the States may, by Regulations, transfer; and

3.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.

3.3 Guiding principles

3.3.1 The Commission's guiding principles require it to have particular regard to:

3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;

3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

3.3.1.3 the best economic interests of Jersey; and

3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 PROPOSED FEES

4.1 Overview

- 4.1.1 The Regulations were made by the States on 3 December 2009. The primary reason for the Regulations is to respond to the impact of the Statutory Audit Directive on local auditors of market traded companies. (More information on the background to the Regulations can be found in the Commission's Consultation Paper No. 1 of 2009, and the subsequent Feedback Paper, both of which are available from the Commission's website.)
- 4.1.2 Regulation 4 of the Regulations will insert into the Companies Law a revised Part 16 (Accounts and Audit). Subject to the approval of the States, Regulation 4 is expected to be brought into force on 5 April 2010.
- 4.1.3 The revised Part 16 provides for the establishment of a registration and oversight regime for recognized auditors. The revised Part 16 provides for the Commission to maintain the Register.
- 4.1.4 Once Regulation 4 of the Regulations is in force, auditors that wish to audit market traded companies, and who meet the qualification criteria set out in Part 16 to be a recognized auditor, will need to apply to the Commission to be entered on the Register.
- 4.1.5 This consultation paper seeks views on the proposed fees to be levied in connection with the Register. Proposed fees have been set in the expectation that only Big 4 audit firms⁴ will apply to be entered on the Register.
- 4.1.6 The Jersey Society of Chartered and Certified Accountants ("JSCCA") was advised of the proposed application and annual registration fee levels in October 2009 and has raised no objection to them.
- 4.1.7 The Commission's approach to setting these fees is that the "user should pay". Accordingly, the fee levels proposed herein are designed to avoid any cross-subsidisation by raising sufficient funds from auditors to cover the costs that the Commission expects to incur in connection with its functions in relation to the Register.
- 4.1.8 A common form of recognized auditor registration and oversight is being introduced across all of the Crown Dependencies. To ensure a consistent approach, the same fee levels are proposed in Guernsey and the Isle of Man.

⁴ i.e. Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers.

4.2 Application fee

- 4.2.1 Article 111(1)(b) in the revised Part 16 provides for a fee to be paid by an auditor who makes an application to the Commission to be entered on the Register.
- 4.2.2 The Commission is proposing that a one-off non-refundable application fee of £1,000 is levied.
- 4.2.3 This level of fee is designed to cover the cost to the Commission of undertaking the necessary assessment and background checks to ensure that the auditor is suitable to be entered on the Register. Where necessary, this will include independent verification of the application information provided. This would be done, for example, by the Commission liaising with relevant professional bodies (in most instances, the Institute of Chartered Accountants in England and Wales (the “ICAEW”)).
- 4.2.4 In particular, the Commission will need to be satisfied that the auditor is competent to act as a recognized auditor. (Article 111(2) in the revised Part 16 provides that the Commission may refuse to register an auditor if it is satisfied that the auditor is not competent to act as a recognized auditor.)
- 4.2.4.1 Are you content with the proposed application fee of £1,000? If you are not, please give your reasons.**

4.3 Annual registration fee

- 4.3.1 The Commission proposes to levy a non-refundable annual fee, pursuant to Article 111(18) in the revised Part 16, on auditors that are entered on the Register.
- 4.3.2 The proposed level for this annual fee is £750.
- 4.3.3 The fee would be payable on each anniversary of the entry of the name of the auditor on the Register. (For the avoidance of doubt, although an annual fee will be payable, an auditor will not need to re-register each year.)
- 4.3.4 This level of fee is designed to cover the cost to the Commission of undertaking the maintenance of, and ensuring public access to, the Register. In addition, the fee should cover the work of the Commission in liaising with the ICAEW in order to determine whether it is appropriate for an auditor to remain on the Register. (The ICAEW will be supervising recognized auditors for compliance with ICAEW rules (approved by the Commission) that will govern the conduct of recognized auditors when auditing market traded companies.)
- 4.3.5 A recognized auditor that pays the annual registration fee late would be liable to pay a ‘late payment fee’ of 5% of the amount unpaid for each complete month or part thereof that the annual fee remains unpaid. This (standard) late payment fee is designed to cover the additional administrative costs that the Commission would incur.

- 4.3.5.1 Are you content with the proposed annual registration fee of £750? If you are not, please give your reasons.**
- 4.3.5.2 Are you content with the proposed fee for the late payment of registration fees? If you are not, please give your reasons.**

4.4 Late filing fees

- 4.4.1 The Commission proposes to levy a late filing fee pursuant to Article 111(18) in the revised Part 16.
- 4.4.2 The proposed level for this fee is £100 for each complete month or part thereof that a document remains unfiled or undelivered by a recognized auditor (unless the Commission has agreed to late delivery).
- 4.4.3 This late filing fee would apply to the written annual confirmation that a recognized auditor will be required to submit to the Commission to confirm that its entry on the Register remains correct. (See Article 4 of the proposed Companies (Audit) (Jersey) Order 201- set out in the Commission's Consultation Paper No. 1 of 2010.)
- 4.4.3.1 Are you content with the proposed late filing fee of £100 for each complete month or part thereof that a document remains unfiled or undelivered? If you are not, please give your reasons.**

4.5 Review of fee levels

- 4.5.1 The Commission plans to review the fee levels in 2011 in the light of experience.
- 4.5.2 This will not be an 'upward-only' review and accordingly, if the indications are that the Commission need raise less money to cover its costs the fee levels would be adjusted accordingly.

4.6 ICAEW fees

- 4.6.1 In addition to the Commission's fees, the ICAEW is proposing to charge a 2010 fee of £500, which would be payable by an audit firm upon successful registration in Jersey as a recognized auditor. (The fee would be payable per registration in a Crown Dependency. So where, for example, a firm is registered in Jersey and Guernsey, the ICAEW fee would be £1,000.)
- 4.6.2 This £500 fee is below what a United Kingdom ("UK") registered auditor (of a similar size to the Jersey firms that are likely to register as recognized auditors) would pay. The reason for this is that in 2010 the ICAEW anticipates that its primary activity will be collecting data from each firm so that it can scope the level of work required to carry out on-site inspections from 2011 or 2012 onwards. (To meet the equivalence criteria set in the Statutory Audit Directive each recognized auditor will have to be inspected at least once every three years.)

- 4.6.3 The fees that the ICAEW levies in the UK also include an amount to cover the inspection work of the Audit Inspection Unit⁵ (the “**AIU**”) (covering certain FTSE-listed companies) and the oversight work of the Professional Oversight Board⁶ (the “**POB**”). In effect, the ICAEW acts as a fee collection agent for those bodies. Neither the AIU nor the POB anticipate having to levy a fee for 2010 but would do so for 2011 onwards. Accordingly, the ICAEW fee for 2011 onwards would reflect those two bodies’ fees. The ICAEW’s charging cycle is calendar year, so the 2011 fee would be levied on 1 January thereof.
- 4.6.4 What this will mean is that the ICAEW fee for 2011 onwards will be higher than the £500 fee in 2010. At this stage, the ICAEW is unable to say by how much (until it has scoped the level of work required to carry out on-site inspections, as referred to in 4.6.2). But the ICAEW has indicated that an audit firm could get an idea of likely approximate levels by looking at what UK registered auditors currently pay. For further details see:

http://www.icaew.com/index.cfm/route/168686/icaew_ga/Members/Practice/Audit/Application_forms_and_fees/Audit_registration_fee_scale_2010/pdf).

⁵ Part of the UK’s Financial Reporting Council.

⁶ Part of the UK’s Financial Reporting Council.

5 COST BENEFIT ANALYSIS

5.1 Costs

- 5.1.1 Costs to auditors of market traded companies that are associated with the proposals set out in this paper are self-evident and will add to the cost of a recognized auditor doing business in Jersey.
- 5.1.2 The fee levels proposed herein are designed to only cover the costs that the Commission expects to incur in connection with its functions in relation to the Register.

5.2 Benefits

- 5.2.1 If the Commission is unable to raise sufficient funds to properly resource its functions in connection with the Register it would be likely to prejudice an assessment by the European Commission of the equivalence of the proposed recognized auditor oversight regime with that established by the Statutory Audit Directive. If the Island is not deemed to have an equivalent regime, auditors of Jersey market traded companies are likely to incur additional costs and inconvenience in having to: (i) apply for registration in each EU Member State in which it acts as an auditor to a Jersey company whose securities are admitted to trading on a regulated market; and (ii) be subject to systems of oversight, quality assurance, investigation and penalties in each Member State in which it is registered.

6 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
4.2.4.1	Are you content with the proposed application fee of £1,000? If you are not, please give your reasons.
4.3.5.1	Are you content with the proposed annual registration fee of £750? If you are not, please give your reasons.
4.3.5.2	Are you content with the proposed fee for the late payment of registration fees? If you are not, please give your reasons.
4.4.3.1	Are you content with the proposed late filing fee of £100 for each complete month or part thereof that a document remains unfiled or undelivered? If you are not, please give your reasons.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

- JSCCA
- Jersey Finance Limited

APPENDIX B

Draft Fees Notice



JERSEY FINANCIAL SERVICES COMMISSION

RECOGNIZED AUDITOR FEES

Notice published in accordance with

Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended

Articles 111(1)(b) and 111(18) of the Companies (Jersey) Law 1991, as amended

Commencement date

The fees set out in this notice are effective from [5 April 2010].

Interpretation

In this notice -

“Commission” means the Jersey Financial Services Commission;

“Companies Law” means the Companies (Jersey) Law 1991;

“recognized auditor” has the meaning ascribed to it in Article 102 of the Companies Law;

“Register of Recognized Auditors” has the meaning ascribed to it in Article 102 of the Companies Law.

Application fee - Article 111(1)(b) of the Companies Law

The fee to accompany an application for registration as a recognized auditor shall be £1,000.

Registration fee - Article 111(18) of the Companies Law

A recognized auditor shall pay a registration fee of £750 on each anniversary of the entry of the name of the auditor on the Register of Recognized Auditors.

(The Commission would suggest that payment for this fee accompanies the annual confirmation a recognized auditor is required to submit to the Commission by virtue of Article 4 of the Companies (Audit) (Jersey) Order 201-.)⁷

⁷ See the Commission’s Consultation Paper No. 1 of 2010 regarding this proposed Order.

Late payment of registration fees - Article 111(18) of the Companies Law

If a recognized auditor fails to pay the whole or any part of a registration fee on or before the date it becomes due the recognized auditor shall be liable to pay an additional late payment fee of 5% of the amount unpaid for each complete month or part thereof it remains unpaid.

Late filing fees - Article 111(18) of the Companies Law

If a recognized auditor fails to file or deliver any document to the Commission under the provisions of the Companies Law or under any provisions of any Order issued in accordance with the Companies Law on or before the date that the document becomes due, the recognized auditor shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the recognized auditor has given the Commission prior written notice of the reasons for the late filing or delivery of a document and the Commission has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

