

5<sup>th</sup> March 2020

Dear Members of the Bermuda Bar Association (“Bermuda Bar”) and Chartered Professional Accountants of Bermuda (“CPA Bermuda”):

**Re: Changes to the Registration Regime for Barristers and Accountants**

Further to my letter dated 8<sup>th</sup> January 2021 seeking feedback<sup>1</sup> to the fee proposal that:

- (i) all professional firms per the AML/ATF Regulations that do not engage in specified activities (i.e. unregulated) shall pay a registration fee to the Board of \$750.00 (per professional firm, not per lawyer/accountant) per annum; and
- (ii) all professional firms per the AML/ATF Regulations that engage in specified activities (i.e. regulated) will pay a registration fee to the Board of 1% of gross revenue related to those specified activities per annum as declared to the Board upon registration in the preceding year (minimum \$750.00);

I can advise on behalf of the Mutual Advisory Committee (“MAC”)<sup>2</sup> that the fee as proposed will be implemented for this existing registration period pending any rules or byelaw changes to be made by the Bermuda Bar and CPA respectively. The fee shall be a defrayment of costs fee (as permitted in the governing legislation and (re)noted below).

As you will be aware, there is already a \$150.00 re-registration fee payable annually and \$250.00 for initial registrations to the Board<sup>3</sup>. This registration fee will not be in addition to the defrayment of costs fee of 1% of gross revenue from specified activity.

So for example:

- (i) For a firm that does not engage in specified activity and is already registered with the Board, the invoice will reflect the following:

Board re-registration fee:	\$150.00
Defrayment of costs fee:	\$600.00
Total:	\$750.00

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<sup>1</sup> Feedback period ended on 26<sup>th</sup> January 2021

<sup>2</sup> The MAC is established pursuant to section 16 of the Bermuda Bar (Barristers and Accountants AML/ATF Board) Rules 2018 (“the Rules”) and comprises of one member each from the Bar Council, CPA Bermuda, and the Board. The MAC must meet once per quarter, but since September 2020 has met more frequently to discuss the defrayment cost fees

<sup>3</sup> Section 4 of the Rules

(ii) If a firm is a first-time registrant then the invoice will reflect the following:

Board registration fee:	\$250.00
Defrayment of costs fee:	\$500.00
Total:	\$750.00

(iii) If a firm is re-registering and engaging in specified activity and the gross revenue in regards to that specified activity is \$1,000,000.00 in the preceding year then the invoice will reflect the following:

Board re-registration fee:	\$150.00
Defrayment of costs fee:	\$9850.00
Total:	\$10,000.00

By way of reminder and per our letter of 8<sup>th</sup> January 2021, since inception the Board has been funded by way of a fee levied by (i) CPA Bermuda in accordance with section 7A(g) of the Chartered Professional Accountants of Bermuda Act 1973, which says that the CPA Bermuda, in conjunction with the Bar Council may make by-laws respecting the Board, including by-laws

*“...fixing the fees payable by firms to defray the operational costs of the Barristers and Accountants AML/ATF Board and providing for penalties to be assessed against firms who fail to pay such fees, including the suspension, termination or expulsion from CPA Bermuda of members practising with such firms.”*

and (ii) by way of Section 9(ea) of the Bermuda Bar Act 1974 says that the Bar Council may make rules

*“...fixing the fees payable by firms to defray the operational costs of the Barristers and Accountants AML/ATF Board and providing for penalties to be assessed against firms who fail to pay such fees, including the withdrawal of the practising certificates of barristers practising for such firms”*

The defrayment of costs fee will be implemented as appropriate by the CPA Bermuda and Bermuda Bar per the above.

Also by way of **REMINDER**: if firms start commencing work after registration which involves transactions related to specified activities, firms **must** inform the Board of same without delay as per governing legislation.

#### **Fee invoicing arrangements – Bermuda Bar**

The arrangement agreed with the Bermuda Bar is that the Board will invoice the defrayment of costs fee on behalf of the Bermuda Bar and that the invoices will be sent by the Board to firms at the same time as the Bermuda Bar sends out its own practicing certificate invoices. Firms will pay the Board directly on or before registration so as to reduce the amount of work for the Bermuda Bar in administration and fee

collection. However, the Bermuda Bar and Board will liaise as to payment of the defrayment of costs fee. Until all fees are paid to the Board (both registration and defrayment of costs fees), the Board will not issue registration certificates and the Bermuda Bar shall not issue practicing certificates. Firms will be aware of the defrayment of costs fee to be paid since specified activity revenue information will have already been provided by the firms in the data call preceding the invoice levied by the Board.

#### **Fee invoicing arrangements – CPA Bermuda**

The arrangement agreed with CPA Bermuda is that the Board will invoice the defrayment of costs fee on behalf of CPA Bermuda and that the invoices will be sent by the Board to firms at the same time as sent to the Bermuda Bar members. Firms will pay the Board directly on or before registration to reduce the amount of work for CPA Bermuda in administration and fee collection. Until all fees are paid to the Board (both registration and defrayment of costs fees), the Board will not issue registration certificates. Firms will be aware of the defrayment of costs fee to be paid since specified activity revenue information will have already been provided by the firms in the data call preceding the invoice levied by the Board. The Board will work with CPA Bermuda to ensure there is no double billing for the current period.

#### **Feedback Responses**

Per the Board's request for feedback to the fee proposals shared on 8<sup>th</sup> January 2021, set out at Annex 1 (attached) on an anonymized basis are the submissions received by the Board and shared with MAC (also anonymized). Highlighted in yellow are the replies on behalf of MAC to the feedback. The submissions shared relate strictly to the fee proposal.

#### **Conclusion**

As will be noted from the submissions at Annex 1, the responses were varied without much consistency in responses as to alternative approaches to funding the Board's activities. As such, the MAC remained of the view that the fee proposal should stand.

Numerous comments related to the portal and the nature of regulation generally were received and were outside the scope of the feedback but have been reviewed and noted. The Board will continue to make improvements in its operations based on the comments received.

Thank you very much to those firms who provided written feedback which was invaluable to discussions, analysis and the decision making process.

Yours faithfully



**Michael M. Fahy**  
**Chair of the Board and on behalf of the Mutual Advisory Committee**

## ANNEX 1

### Submission A

Portal commentary, not fee related.

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### Submission B

Requirement for registration commentary, not fee related.

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### Submission C

XYZ Ltd supports the fee proposal set out in the letter from the AML ATF Board to Bar Members as per p. 2 of said letter.

Noted.

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### Submission D

While I understand, the desire to fund the AML/ATF Bard this proposed fee will create another administrative burden on smaller firms that are having to absorb considerable additional costs given the current economic climate. Currently the cost of the general downturn in economic activity and additional expenses incurred trying to protect employment coupled with the raft of new regulations and information request including those from the BMA, RoC reporting/economic substance, Department of Statistics (which now threatens you if you do not fill out endless questionnaires on time) is having a disproportionately more negative impact on smaller firms.

The fee will replace the one formerly levied by the Bermuda Association and CPA and for a majority of firms, the new fee will be less than before. The Board was previously funded by way of an MOU between the CPA and Bar Association (the Board was not a party to the MOU) which expired some time ago. A number of fee structures were considered including:

- (a) charging a registration fee per individual barrister/accountant (regardless of whether they engage in specified activity);
- (b) charging a fee as a percentage of overall gross revenue of each regulated firm;
- (c) charging a fee per specified activity transaction of regulated firms;
- (d) charging under a new MOU.

The MAC did not believe any of these were workable or equitable.

The idea that we are now expected to analyse individual files to calculate a 1% revenue figure for specific activities is another costly administrative burden and most probably will require matters to be split into various components to avoid any miscalculation or overpayments. In order to do this the IT and software will need to be reconfigured to run accurate reports, management review of the reports and adjustments for write downs, AR, bad debt etc will need to be made. I would anticipate just the internal cost of codifying the information during the year, ongoing fee earner and management reviews and then preparing a final report with accounting, management and attorney sign off would be well in excess of \$15,000 (conservative).

As part of the Board's annual Data Call, all firms were already required to supply certain financial data which includes income from Specified Activities on which the Board will calculate the fee to be charged to each firm. Accordingly, no further administrative burden will be placed on firms.

It would be more sensible for smaller firms to make a fixed payment until the entire codification matter description exercise has been completed so everything can be implemented at once. I would suggest a fixed fee of \$1250 for firms of 5 lawyers or less and/or gross turnover of up to \$1.5M.

This was analysed and would not change the new model significantly.

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#### **Submission E**

We are not in favour of the proposal as we are a small Regulated firm and we do not have a large team to provide administrative support, and compliance is already a very costly overhead. The proposed approach would see an increase in our administrative expenses given our property and corporate transactions which are in scope as specified activities and the proposal would require accounting and administrative work to calculate fees owing.

As part of the Board's annual Data Call, all firms are required to supply certain financial data which includes income from Specified Activities on which the Board will calculate the fee to be charged to each firm. Accordingly, no further administrative burden will be placed on firms.

This approach will mean we simply cannot compete with the larger firms as it will become too costly to do so. It would also mean that there would be risks involved if, for example, there were administrative errors in the calculations.

Perhaps the 1% of gross revenue could apply to those Regulated firms who carry on per annum specified activities in excess of a substantial threshold, for example \$500,000.

This was analysed and the change would affect one firm.

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#### Submission F

"the smaller the entity the lower the fee should be if not regulated" "should distinguish between non regulated & regulated fees"

This is the case under the new fee arrangement.

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#### Submission G

If our understanding is correct, the proposal is that all professional firms that engage in specified activities will pay a registration fee for 2021 to the Board of 1% of gross revenue related to those specified activities for the calendar year 2020 as declared to the Board upon registration. If we were to take the figure for XYZ Ltd gross revenue from specified activities for 2019 provided on 2020's registration with the Board by way of example, such fees were \$XXm, meaning that our registration fee would be \$XX,XXX. If our 2020 financial performance is of a roughly equivalent level, should our analysis be correct, that would leave XYZ Ltd paying a registration fee for 2021 of around \$XX,XXX.

Whilst we can appreciate the need for some uplift in the level of fees, such a gargantuan increase in our fees under the new method of calculation goes far beyond what we consider reasonable or acceptable.

The proposed new fee will support the Board as directed by the Proceeds of Crime (AMLATF) Regulations 2008, specifically in supervision of 'Specified Activities' and accordingly it is believed that a fee based on revenue from Specified Activities is more equitable. Historically, the fees charged by the Bermuda Bar were charged at a fixed rate per qualified lawyer, regardless of whether that individual or firm was involved in Specified Activities.

Our biggest concern with this proposed method of charging fees is that it is a tax on a significant portion of our revenue and is wholly disproportionate to the risks involved in the matters in question. This is just not an equitable system of calculation. In our view, a fairer system would be to charge a flat fee per specified matter, as we do ourselves to recover part of the compliance costs.

**A flat fee would burden the smallest firms, transacting only smaller transactions, disproportionately.**

That way, the number of specified matters would be used as a guide, and not the fees recovered. Many of our specified matters are local real estate transactions, where the AML/ATF risks are low, but the fees generated, given the value of real estate in Bermuda and the Bermuda Bar scale of fees applied, are high (due to title opinions and other real estate related risk factors).

We note that, for small firms which practise almost exclusively local real estate, these fees could be crippling. The Board's proposed revised level of fees will inevitably be passed on as a transaction cost for real estate transactions, which will have the undesired effect of further increasing the cost of such transactions in Bermuda.

**A flat fee would burden the smallest firms, transacting only smaller transactions, disproportionately**

Going further, the Board could also consider charging a range of fees per matter based on the risk rating per matter, again much as we do as a fin-n. Whilst you do not currently have insight into each professional firm's risk ratings per client matter, the Board could require each firm to provide that level of detail annually and assess a fee per matter according to risk rating.

**A risk rating fee basis, would involve a considerable administrative burden to both firms and the Board thereby increasing costs of the Board.**

The Board could require firms to adhere to a simple "low, medium, high" risk rating. We would suggest that the medium band fee should be higher than the median point between low and high fees to discourage firms from pushing high risk matters into the lower "medium" category to take advantage of a much reduced fee.

In our experience, the majority of specified matters being conducted in Bermuda are low risk, and the amount of specified matters which are categorised as high risk are of a much smaller amount. If the fee for conducting high risk matters was sufficiently large, it would not only dissuade firms from taking on high risk legal work without a clear justification for doing so — such as it being part of an existing major client relationship, or a sufficiently large transaction that the registration fee could be passed on as a transaction cost — but also ensure that the larger firms, with the expertise and financial wherewithal, not to mention the appropriate compliance function, would be those most likely to be prepared to undertake such work. This should reduce the chances of smaller firms, less able and suited to doing so, taking on high risk matters, thereby potentially exposing the jurisdiction to an AML/ATF risk which could significantly damage the jurisdiction's hard earned reputation as a premier offshore financial centre. This would be a "win-win" situation, seeing an increase in the registration fees paid to the Board compared

to previous years, as well as managing the level of AML/ATF risk which professional firms in Bermuda are prepared to take as part of conducting their practices.

Such a fee system would involve subjectivity and further administrative burden and entities possibly playing with risk ratings etc. notwithstanding the commentary provided.

All firms are currently obliged under the Regulations to Risk Rate all business and decide whether the business under consideration, fits within their risk appetite.

Whatever the nature of calculation, and level, of increased fees payable which is eventually settled upon, as a member of the Bermuda Bar Association bound by section 9 of the Bermuda Bar Act 1974 to contribute to the funding of the Board, we would welcome details of the increased operational costs which have necessitated this major revision in the way in which the Board is funded, and the uses to which our fees will be put going forward. It would go some way to assuaging some of the concerns which the members of the profession may have to any proposed fee increase if there was transparency as to the Board's expenditure each year, by means of the disclosure of an annual budget at the start of the year and the circulation of year-end financial results.

The budget is circulated to both the CPA and Bar Council professional for approval pursuant to the legislation governing the Board. The respective professional bodies have elected members representing their membership that approve the Board's budget.

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## Submission H

We certainly welcome the move to reduce the annual registration fee for members. Overall we see this as a positive move. In reviewing the proposal there are two key concerns that we would like to bring to the Board's attention:

Funding should be tied to budget – the budget of the Board has always been the starting point for the level of fees paid by its contributing members. Why is it that the proposal for a new funding regime is not more closely tied to the budget of the Board?

It is. The starting point in the fee exercise was to utilize the approved budget of 2021/2022 which was not substantially different from 2020/2021.

Based on our modest calculations the levy of an annual registration fee of \$750.00 (for non-regulated members) plus 1% percent of gross revenue related to specified activities (for regulated members) would net the Board an annual surplus when compared to its operating budget. It will also most certainly result in the majority of funding falling on the shoulders of a handful of members (law and accounting), is this intentional and predicted by the Board/MAC? Is it proposed that the Board become a "for profit" regulator? Did the Board and MAC consider a tiered approach to funding based on (i) budget, (ii) the number of employees employed in regulated activities and (iii) revenue generated by regulated firms? If so, why was this deemed to be unacceptable? The current funding proposal may see some members pay

more per annum for registration than a Class 4 Insurer would pay the BMA for its annual registration fee, does the Board see this as an equitable result?

The Board is a statutory entity and therefore 'not for profit'. The Board currently carries minimal surplus which the Board considers appropriate in order for the Board to ensure long term stability. Future fees can be adjusted depending on available surplus with agreement from the CPA and Bar Council. Fees levied in other areas were also considered and the MAC was of the view that the fees are proportionate and fair.

In the administration of the new regime it appears that accountants will be treated differently to lawyers in that the CPA will invoice its members directly whilst the Board will invoice attorneys directly through the Bermuda Bar. Is this intentional?

Yes.

We would expect the Board to issue invoices directly to its constituent members without using the CPA or Bermuda Bar as a conduit. Is there a reason that this particular administration process has been selected?

Yes. The legislation says the professional bodies are able to levy fees to pay for the Board's activities. The Board will levy the fee on behalf of the Bar Association and is open to levying the fee on behalf of the CPA as well.

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## Submission I

### Comments based on scope of "specified activities".

The definitions of "financial or real property transactions concerning" "specified activities" in subsections 49(4) and (5) of the Proceeds of Crime Act 1997 are not 100% clear and – given the penalties for non-compliance - we have adopted a practice of erring on the side of caution (taking an inclusive approach to the meaning of the terms in classifying our work as specified activities, even at the risk that some matters, which may not in fact be specified activities, are (voluntarily) treated by us as such).

However, we do consider that there is scope for argument that much of our work currently classified by us as specified activities (and therefore contributing to our reported fees for specified activities in 2019 and 2020) may not strictly speaking be within scope. If the process of classification is to form the basis for calculation of our registration fee, we would respectfully request that we have the opportunity to make representations to the Board regarding this matter, with a view to persuading the Board that some of our reported fees can and should be disregarded in the calculation our registration fee.

The legislation governs what is a specified activity and firms must govern themselves accordingly.

### Supplemental registration payment

Secondly, we had understood that all firms had already paid towards their AML/ATF Board registration for 2021 as part of the fees charged by Bar Council for practising certificates. If that is correct, could the Board explain why we are charged twice for the same process?

This is not correct. CPA has levied a fee. The Bar Association has not, given the consultation process.

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#### Submission J

It is both fair and reasonable that a lesser registration fee be imposed upon unregulated sole proprietorships than the fee imposed upon unregulated law firms with multiple fee earners. I respectfully propose a fee for unregulated sole proprietorships which is 25% less than the proposed fee of \$750 for unregulated firms with multiple lawyers (i.e. \$525).

This is essentially the case given the breakdown between the registration fee and defrayment of costs fee. In fact the overall fee is less than what unregulated entities pay now.

Rest of submission was in regards to Fit and Proper Persons certificates and was noted.

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#### Submission K

The fee proposal which you outline on page 2 of your letter is not acceptable for the following reasons:

The Bar AML fees, as a matter of fairness should be based on a reasonable budget, not on the revenue of the firms. A budget is the sensible way to ascertain the appropriate funding. We note that during the recent financial year the budget is in excess of \$750,000 over three times the budget for financial year ending March 2017 of approximately \$230,000- a very significant increase on any view.

The Board is a statutory entity and therefore 'not for profit'. The Board currently carries minimal surplus which the Board considers appropriate in order for the Board to ensure long term stability. Future fees can be adjusted depending on available surplus with agreement from the CPA and Bar Council. Fees levied in other areas were also considered and the MAC was of the view that the fees are proportionate and fair. The budget is circulated to both the CPA and Bar Council professional for approval pursuant to the legislation governing the Board. The respective professional bodies have elected members representing their membership that approve the budget. The starting point in the fee exercise was to utilize the approved budget of 2021/2022 which was not substantially different from 2020/2021

Under the current legal framework, in particular pursuant to s 25 D of the Bermuda Bar Act 1974, the AML / ATF Board is required to submit a budget of its expenditure on operations for the financial year, in such detail as the Bar Council and Board of CPA Bermuda may require. As we understand it, the Bar Council

have yet to see any budget for the upcoming financial year, let alone one that would justify claiming 1% of the revenue of the registered law firms.

The 2021/2022 Budget was approved by MAC as appropriate.

The AML / ATF Board has no power to determine how the Bar assesses fees on its members; this responsibility lies the Bermuda Bar and its members and the Accountants through CPA Bermuda.

This is correct and this was outlined in the letter of 8<sup>th</sup> January 2021 already.

We fundamentally disagree with the proposed approach. There is no logical connection between the revenue generated by the firms and the amount of time and effort involved in regulating the firms. (For example, if the firms have a bad year and revenue decreases, the scope of work involved in regulating the firms will not decrease or change . Low revenue firms might occupy as much or more regulatory time as high revenue firms.

Firms undertaking more specified activity require more supervision. The new fee will support the Board as directed by the Proceeds of Crime (AMLATF) Regulations 2008, specifically in supervision of 'Specified Activities' and accordingly it is believed that a fee based on revenue from Specified Activities is more equitable. Historically, the fees charged by the Bermuda Bar were charged at a fixed rate per qualified lawyer, regardless of whether that individual or firm was involved in Specified Activities.

We believe that the current system for meeting the budget within the Bermuda Bar is broadly fair in that it is based on the number of lawyers at the Bar.

Historically, the fees charged by the Bermuda Bar were charged at a fixed rate per qualified lawyer, regardless of whether that individual or firm was involved in Specified Activities. The Bar Council made it clear to the Board and the CPA that this was unacceptable and was too burdensome on entities that were small and/or did not engage in specified activity.

We are open to a wider discussion and consultation on establishing a fair and equitable funding model but without a budget (or any financial data) it is difficult to provide meaningful feedback at this stage.

The Budget is approved by the Bar Council and CPA whose members are elected by their respective members.

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#### Submission L

After having reviewed the information forwarded from the Bermuda Bar Association regarding the above subject. I believe that if the business is regulated then there should be consideration of the relationship between cost and benefit of what's being done by the business ie: if the business has more exposure, then a higher fee should be paid.

If the business is a solo practice or small to medium and does not do regulated work then perhaps a minimum threshold fee should be charged accordingly. This is a fairer approach to deciding fees. Perhaps

in line with how persons in the UK and Bermuda have to file their tax returns ie: filling out what band their business falls into, and the percentage rate is then applied. Perhaps a similar arrangement could be done by using bands to pay fees. Don't think businesses should disclose their actual revenue information.

It is proposed that a fee based on revenue from Specified Activities is more equitable. Historically, the fees charged by the Bermuda Bar were charged at a fixed rate per qualified lawyer, regardless of whether that individual or firm was involved in Specified Activities.

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### Submission M (Group Submission of small law firms)

Government should provide a grant or finance this Professional Board Supervision because it is a National objective not a Professional objective, although the legislation provides for the self-regulating professional to pay for the administration of the AMLATF Supervision of the Professions where there is inherent vulnerabilities of risk of AML-ATF. The formation of the Board was an initiative for the Government, wherein the Bermuda Bar should be the Supervisor of its own Members relating to AML ATF as it does for any other kind of Supervision.

Supervision in Bermuda, a majority of which is carried out by the Bermuda Monetary Authority, is funded substantially by fees levied on Banking, Finance and Insurance entities under supervision. In addition the Board was created since the CPA and Bar wanted to be self-regulating. Board members are appointed by the CPA and Bar from their own members per the legislation.

Why should there be additional or higher fee be incurred by Regulated Law firms? There is no logical reason, or reflection of risk-based allocation of the cost of administering. The Higher and Highest Risk Assessment must be on the Firms that have international branches and Associates listed on the Bar Practising List. They practice on behalf of and for external clients (external to Bermuda that is). It is those companies that cause the greatest risk of AML-ATF. The small local professional firms are hard pressed to get an international transaction but rather are dealing with domestic small business or domestic property whereby the risk of AML-ATF is low. For example, the churning of property sales is noted as a risk of AML however because our housing prices are so high to pay cash and turn around quickly simply flushing illegal funding or financing terrorist financing is highly unlikely and more probably not likely. And further, does not have ANY impact on the 'off-shore' concerns of the foreign influencers of our Governing & Regulatory Regimes.

This is outside the scope of the consultation. The Board is a creation of statute and follows the legislation.

A Small Firm, [defined is a law firm with 1 to 5 or 5 or fewer practicing attorneys and deriving less than, \$350,000 net revenue] will be forced to practice only in family and criminal law – unregulated practice areas. The cost of practicing in any other practice area becomes too great, just a few or even one transaction with the cost of providing data call to pay a 1% fee (at least initially, but likely to gradually

increase over-time) is prohibitive. The sentiment of the small and micro-firms is that their requirements to continue to operate in this economic environment is overlooked and therefore decisions fail to be reflected considering the negative impact.

Fees have decreased for most law firms under this new fee arrangement.

The Small and Micro law firms [having one or two attorneys and an administrator] will simply not exist or will provide only limited services to the domestic clients, will result in the legal service and justice is only accessible only to the wealthy or the poor (legal aid) and overseas clients. Only the few large firms will offer the specified activities as they would have the critical volume to break-even and overall exceed costs incurred to adhere to business and AML-ATF regulatory requirements for these services: which may or may not be high risk.

As the new fee is to be charged at 1% of Gross Revenue from Specified Activities and therefore proportionate to that income there is no 'break even point.'

Another expressed concern is a Percentage based Fee and particularly on Gross Revenue. It really is a tax on specified services. There is objection to using a percentage because by simply increasing the rate any given year can be impactful on the breakeven state of a small and micro firm. Further, the fee structure enables the large firms to do predatory pricing because it advantages them to do so. The large firms may afford the reduction in prices (to save on % fee) yet based on the sheer volume of work the impact will not hurt their margins. It is anticipated that more work will go to the big firms because several small firms will refrain from doing the specified activities or will be forced to close business. The client will now have limited choice of attorneys that will do any specified activities.

As the proposed new fee is to be charged at 1% of Gross Revenue from Specified Activities and therefore proportionate to that income there is no 'break even point'

If a percentage fee remains, the fee should only be administered on true value of the service which is the revenue after the cost of doing the service taken out first, so that there is more equitable fee penalty for doing the specified activities in practice: based on the margin of the service. The ultimate issue is the fee being a percentage-based fee is a sale tax. This increase is likely to be passed unto the client by the small or micro fee earner, who also has the greater costs structure. As an explanation, the large firms have much greater cycles of revenue generations because of the number of fee earners AND they have better economics of scale for costs (expenses shared over the greater number attorneys.)

Such a fee system would involve subjectivity and further administrative burden. As part of the Board's Annual Data Call, all firms are required to supply certain financial data which includes income from Specified Activities on which the Board will calculate the fee to be charged to each firm. Accordingly, no further administrative burden will be placed on firms.

If the Barristers must pay a cost for the Supervisor a Flat fee per firm is acceptable and if necessary the Government may subsidize.

A flat fee would burden the smallest firms, transacting only smaller transactions, disproportionately

The entire regulatory regime of the two professions for AML-ATF need to be reconsidered. The Supervisory responsibilities of AML-ATF should be absorbed into each professional body to have oversight. Afterall, they are self-regulating professions.

The Board was created at the request of the professional bodies

These past three years: the AML-ATF fees were double the amount of the Professional fees for all practicing Barristers AND the Barristers were paying far more (I believe between 77% - 67% more than) the Accountants for the administration costs of the AML-ATF Board.

Budget is significant for the size of the Sector's being supervised: \$1400 per practicing lawyer (485) whether RPF or not within 68 firms; And CPA \$1900 per partner (58) within 21 firms. BERMUDA has invested heavily in the Supervision of the risks of AML/CFT/ATF.

This is the nature of being in a regulated sector. The Board currently has a Supervisor and Assistant Supervisor (both part-time), and one full-time technical officer/office manager who are compensated. The Board members are not compensated (save for the Chair). The budget of the Board is approved by the CPA and Bar Council and is reasonable under the circumstances.

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#### Submission N

In Scope Activities: clarification is required around the in-scope activities that are subject to the Board regulations. It has been requested that the Board provide specific guidance notes on what is in and out of scope. The recommended fee levy is 1% of specified activities, without having clear guidance on what is defined as a specified activity. As this is used to calculate the fee there is a risk that registrants include activities that should may be in scope in and vice versa.

The legislation governs this.

Remainder of submission is not fee related.

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#### Submission O

I am writing to provide feedback to the fee proposal on behalf of XYZ Limited. In short, we are in support of the fee proposal as out lined in the letter of January 8, 2021, including the increase to our fee from last year if in fact the fee for the year is approved at the proposed \$750.

We recognize the importance of the AML/ATF board's function as well as the need to cover costs and we support that so long as the fees are and continue to be reasonable and relative to the amount of time and

cost required to supervise entities vs. those who are registrants not subject to supervision such as XYZ. Given the number of responses it seems you have received, I can only assume at least some of those responses do not support the proposed fee structure, so we felt it important to note we are in support of the proposal and feel it would be unfair to change the current proposed structure if it would result in proportionally more cost being passed on to entities who are simply registrants not engaging in specified activities or requiring actual supervision.

Thank you in advance for your time and should you wish to discuss further, please feel free to contact me.

**Noted.**

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**END**