

**CONSULTATION PAPER
NO. 13 2009**

**FOUNDATIONS (JERSEY) LAW 2009
ANNUAL ADMINISTRATION FEE**

ISSUED 13 NOVEMBER 2009

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Robert Kirby at Jersey Finance Limited (“**Jersey Finance**”) is co-ordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 13 December 2009.

Responses should be sent to:

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Alternatively, responses may be sent directly to Julian Lamb at the Commission by 13 December 2009. 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. The Commission contact is:

Julian Lamb

Director, Registry

Jersey Financial Services Commission

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St Helier

Jersey

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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.

CONTENTS

Contents	4
1 CONSULTATION	5
1.1 Basis for consultation.....	5
1.2 Who will be affected by the proposed changes	5
1.3 Responding to the consultation	5
2 THE COMMISSION	6
2.1 Overview	6
2.2 Commission's functions	6
2.3 Guiding principles	6
3 PROPOSALS	7
3.1 Overview	7
3.2 Foundation Fees	7
4 SUMMARY OF QUESTIONS	8
Appendix A	9
List of representative bodies who have been sent this consultation paper.	9
Appendix B	10
Draft Foundation Fees Notice.....	10

1 CONSULTATION

1.1 Basis for consultation

- 1.1.1 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*”.
- 1.1.2 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*”
- 1.1.3 The Commission considers that this consultation paper may be taken to constitute such a report as required by the Commission Law.

1.2 Who will be affected by the proposed changes

- 1.2.1 The proposals of this consultation paper will affect all persons wishing to form or administer Jersey foundations under the Financial Services (Jersey) Law 1998 and any person accessing information on Jersey foundations that is held by the Registry.

1.3 Responding to the consultation

- 1.3.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper and its likely impact on persons accessing company information held in Jersey and those intending to register for the foundations class of trust company business. 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.
- 1.3.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 1.3.2.1 prioritise comments and to indicate their relative importance; and
 - 1.3.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 1.3.3 Comments should be provided by no later than 13 December 2009.

2 THE COMMISSION

2.1 Overview

- 2.1.1 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.
- 2.1.2 In addition, the Commission has appointed the Director General as the registrar of companies pursuant to Article 196 of the Companies (Jersey) Law 1991 (the “Companies Law”).

2.2 Commission’s functions

- 2.2.1 The Commission Law prescribes that the Commission shall be responsible for:
- 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 2.2.1.2 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;
 - 2.2.1.3 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;
 - 2.2.1.4 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
 - 2.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 The Commission’s guiding principles require it to have particular regard to:
- 2.3.1.1 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;
 - 2.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 2.3.1.3 the best economic interests of Jersey; and
 - 2.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

3 PROPOSALS

3.1 Overview

- 3.1.1 The Foundations (Jersey) Law 2009 (the “**Foundations Law**”) was adopted by the States of Jersey (the “**States**”) on the 22 October 2008. This consultation paper is being issued as a result of the Law being sanctioned by the UK Privy Council on 10 June 2009 and being registered by the Royal Court on 19 June 2009.
- 3.1.2 Broad agreement from Industry has been obtained via the Foundations Working Group that fees for foundations incorporated under the Foundations Law should track, where similarities exist, those currently set for companies incorporated under the Companies Law (“**Jersey companies**”).

3.2 Annual Administration Fee for Foundations

- 3.2.1 Following an earlier consultation, the fees for foundations became effective on 17 July 2009, with the exception of the annual administration fee described in 3.2.4 below.
- 3.2.2 The proposed schedule of fees for foundations, which is appended to this consultation paper as the draft Foundation Fees Notice (Appendix B), provides details of the existing fees for foundations (Items 1 to 9) and the proposed annual administration fee for foundations, including late payment fees (Item 10).
- 3.2.3 As noted in 3.1.2 as far as possible, where similarities exist, the fees proposed are in line with those currently in place for Jersey companies.
- 3.2.4 Article 37(1) of the Foundations Law provides that the Commission may publish an annual administration fee and Article 37(3) provides that the annual administration fee must be accompanied by such additional amount as the States may determine by regulation. This is a similar provision to that relating to the annual return fee payable by Jersey companies.
- 3.2.5 It is proposed to use the power under Article 15(6) of the Commission Law to charge a late payment fees in relation to the annual administration fee for foundations. This is similar to the late filing fees payable in relation to the annual return by Jersey Companies.
- 3.2.6 The annual administration fee for foundations will become due from 1 January 2010.
- 3.2.7 **Do you agree with the proposal that the annual administration fee for foundations should be aligned with the annual return fee for Jersey companies?**

4 SUMMARY OF QUESTIONS

REFERENCE

QUESTION

- 3.2.7 Do you agree with the proposal that the annual administration fee for foundations should be aligned with the annual return fee for Jersey companies?

APPENDIX A

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

- Jersey Finance Limited
- Registry User Group
- Foundations Working Group

APPENDIX B

Draft Foundation Fees Notice

JERSEY FINANCIAL SERVICES COMMISSION

FOUNDATION FEES

Published in accordance with

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

Articles 2, 37, 40 and 56 of the Foundations (Jersey) Law 2009 as amended

Commencement date

The fees set out in this notice are effective from 1 January 2010.

Interpretation

In this notice –

“Commission Law” means the Financial Services Commission (Jersey) Law 1998 as amended

“Law” means the Foundations (Jersey) Law 2009.

“Continuance Regulation” means the Foundations (Continuance) (Jersey) Regulations 2009.

“Mergers Regulation” means the Foundations (Mergers) (Jersey) Regulations 2009.

Item	Article(s) of the Law	Function of Registrar	Fee
1	2(3)(b)	Receipt of documents on an application to form a foundation, issue a registration number and enter in the register the name of the foundation.	£200
		“Fast-track” incorporation service to form a foundation, in addition to the fee of £200 payable upon receipt of documents on an application to form a foundation.	£200
		“Reserved” incorporation service to form a foundation, in addition to the fee payable upon receipt of documents on an application to form a foundation.	£40
2	40(3)	For making the register available for inspection: Postal search.	£10
		For each copy of a document or other record provided by the registrar pursuant to an application under Article 40 of the Law and printed by the Companies Registry.	£5
		For each copy of a document or other record provided by the registrar pursuant to an application under Article 40 of the Law and viewed without printing from a terminal within the Companies Registry.	No Fee

Item	Article(s) of the Law	Function of Registrar	Fee
		For each copy of a document or other record provided by the registrar pursuant to an application under Article 40 of the Law via the Companies registry online search facility.	£2
3	40(4)	For each certificate issued by the registrar under Article 40(4) of the Law.	£15
4	56 Continuance Regulation 6(2)(b)	Application for incorporation of a company ¹ as a foundation.	£500
5	56 Continuance Regulation 16(2)(b)	Application for incorporation of a recognized entity as a foundation.	£500
6	56 Continuance Regulation 26(2)(a)	Application by a foundation for permission for the foundation to be established or incorporated as a recognized entity.	£500
7	56 Mergers Regulation 5(3)(a)	Application to registrar to merge foundations (merger of foundations).	£500
8	56 Mergers Regulation 14(4)(a)	Application to registrar to implement merger agreement (merger of a foundation with a body corporate to continue as a foundation).	£500
9	56 Mergers Regulation 23(4)(a)	Application to registrar to implement merger agreement (merger of a foundation with a body corporate to continue as a body corporate).	£500
10	37(1)	Annual administration fee for a foundation (includes an amount determined by the States).	£150
	Commission Law 15(6)	Plus (a) where the annual administration fee for a foundation is paid after the end of February in the year in which it is due but before the end of April of that year; or (b) where the annual administration fee for a foundation is paid after the end of April in that year.	£100 £200

¹ As defined in Article 1 of the Continuance Regulation.