

**CONSULTATION PAPER  
NO. 3 2013**

**PROPOSED FEES UNDER THE  
SECURITY INTERESTS  
(JERSEY) LAW 2012**

ISSUED 4 June 2013



# CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Heather Bestwick 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 1 July 2013.

Responses should be sent to:

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Alternatively, responses may be sent directly to Julian Lamb at the Commission by 1 July 2013. 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**

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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

Jersey Finance	means Jersey Finance Limited.
the Commission	means the Jersey Financial Services Commission.
the Commission Law	means the Financial Services Commission (Jersey) Law 1998.
the Minister	means the Minister for Economic Development.
the SI(J)L	means the Security Interests (Jersey) Law 2012.
the SIR	means the Securities Interest Register: a publically searchable online register of securities interests hosted by the Commission.

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# 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**”), 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 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 set out in this consultation paper will affect all users of the Jersey Security Interests Register set up in accordance with the Security Interests (Jersey) Law 2012, the general public and any person accessing information 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 security interests information held in Jersey. 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 responses refer to costs, to quantify those costs.
- 1.3.3 Comments should be provided by no later than 1 July 2013.

## 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 Registrar of Companies shall be the Registrar of Security Interests pursuant to Article 60 of the Security Interests (Jersey) Law 2012.

### 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 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 Summary of the Security Interests (Jersey) Law 2012 (the “SI(J)L”)

- 3.1.1 The central objective of the SI(J)L is to provide Jersey with a simplified, modern, efficient legal regime for the creation, perfection, priority, transfer and enforcement of consensual security interests in intangible movables and their proceeds. In due course, it is envisaged that the SI(J)L will be amended to allow it to also apply to tangible movables.
- 3.1.2 The SI(J)L is designed to give Jersey one of the most up-to-date legal regimes in this field and thereby enhance Jersey’s attractiveness both to local and to foreign investors. The SI(J)L will also cover, for the purposes of perfection and priority only, outright assignments of receivables, that is, assignments made otherwise than by way of security.
- 3.1.3 The overriding aim is to facilitate the creation and protection of security interests and assignments with the minimum of formality and to lay down priority rules that meet the reasonable expectations of the business community. A number of provisions reflect, in a simplified form, the approach adopted throughout the United States; Canada and New Zealand and, most recently, Australia.
- 3.1.4 In addition, much assistance has been derived from the English Law Commission’s two reports, *Company Security Interests: A Consultative Report* and *Company Security Interests* insofar as these relate to intangibles.
- 3.1.5 The principal features of the SI(J)L are the following:
  - 3.1.5.1 A unified concept of security interest which accommodates not only security by possession and title transfer but also hypothec (charge).
  - 3.1.5.2 The ability to ensure the creation of a security interest in present and future intangibles with the minimum of formality through a single agreement.
  - 3.1.5.3 Provision for a modern electronic filing system in which registrations may be effected and searches made on a computer-to-computer basis without human intervention, and which is based on notice-filing rather than transaction filing.
  - 3.1.5.4 Perfection by control, as an alternative to registration, for security interests in deposit accounts and investment securities.
  - 3.1.5.5 A set of priority rules, including protection against general insolvency creditors, which respond to the reasonable expectations of the market.
  - 3.1.5.6 A range of efficient, easily exercisable default remedies, but with

safeguards for the grantor of the security interest.

- 3.1.6 Respondents should be aware that draft Regulations have been lodged for debate by the States that amend parts of the SI(J)L. These Regulations are entitled the draft Security Interests (Amendment of Law) (Jersey) Regulations 201-. A link to the proposition for debate can be found at <http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.061-2013.pdf>.
- 3.1.7 Critical to the Law will be the new system of registration outlined below.

## 3.2 Registration under the SI(J)L

- 3.2.1 The Securities Interest Register (the “SIR”) will be a publically searchable online register of securities interests hosted by the Commission. The SIR will contain financing statements, financing change statements and such other matter as is required by the SI(J)L to be entered or registered.
- 3.2.2 The registration system will be wholly automated, so that registrations may be effected, searches made and search certificates issued online without the need for human intervention by the Registry. Experience with registration systems in the United States, Canada and New Zealand shows that a highly efficient system can be operated at low cost.
- 3.2.3 The registration system will be based on the concept of notice-filing as opposed to transaction-filing. Notice-filing has advantages. It does not involve the filing of a copy of the security agreement, which takes up data storage space, makes it difficult to record the precise time of registration and in any event, does not convey information as to the debtor’s current indebtedness. Instead, the secured party or intending secured party registers a financing statement stating that it has acquired or intends to acquire a security interest in an identified item of collateral or a given description of collateral.
- 3.2.4 The function of the financing statement is to give notice to third parties of basic information, such as the existence of the security agreement, the identity of the parties and a description of the items or classes of collateral.
- 3.2.5 Online registration enables the system to record the precise time registration takes effect. A third party wishing to have more information, for example, the amount outstanding under the security agreement, should seek this from the secured party or the grantor. If the security interest is not over all the intangible movable property, or all the movable property, of the grantor, the secured party can be required by the grantor, to provide a copy of the security agreement, a statement in writing of the indebtedness and an itemised list of intangible movable property indicating which items are collateral under the security agreement.
- 3.2.6 When the SI(J)L comes into force it is intended that the Minister will make an Order under Article 92 setting out the procedures, requirements and other matters, in respect of the SIR and its operation.

### 3.3 Fees comparison

3.3.1 Although the research (Appendix B) for the fee comparisons for Canada and New Zealand was conducted during June 2011, a sense check conducted during April 2013 indicated that the findings of the 2011 research were still valid. Comparisons were re-assessed for the jurisdictions of Nova Scotia, Manitoba and New Zealand. Where Nova Scotia showed a 5.8% increase, however Manitoba showed no increase. New Zealand had changed to a flat fee which is based on a registration of five years.

### 3.4 Proposed Fees

3.4.1 The Draft Fee Schedule for using the SIR; based on the proposed fee table is set out at Appendix C.

3.4.2 **Do you agree with the proposed SIR fee levels? If not please suggest alternative fee levels.**

# Appendix A

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

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

# Appendix B - Fees comparison

Security Interests (Jersey) Law 2012- fee scales																
Analysis of fees by Country (Including Province or Territory) with a similar secure transaction system																
Canada																
Canadian \$ converted to GBP (GB £1 = CAD \$ 1.62)																
	Alberta	British Columbia	Manitoba	New Brunswick	Newfoundland & Labrador	Northwest Territories	Nova Scotia	Nunavut Territory	Ontario	Prince Edward Island	Quebec	Saskatchewan	Yukon Territories	Mean average		
Period/Instance																
Registrations	1-25 years	Initial fee	-	-	-	14.20	12.35	6.17	15.04	6.17	-	14.81	16.67	-	4.63	11.25
		Plus for each year of the period	1.23	3.09	6.17	4.94	4.32	3.09	5.25	3.09	4.94	4.32	1.85	6.17	0.62	3.78
	Infinity	246.91	308.64	308.64	308.64	308.64	246.91	352.89	246.91	308.64	308.64	-	308.64	-	295.83	
Renew a registration	1-25 years	Plus for each year of the period	1.23	3.09	6.17	4.94	4.32	3.09	5.25	3.09	4.94	4.32	1.85	6.17	0.62	3.78
	Infinity	246.91	308.64	308.64	308.64	308.64	246.91	352.89	246.91	308.64	308.64	-	308.64	-	295.83	
Discharge a registration																
Amend registration																
Effect a global change of multiple registrations																
Search the registry																
	1.85	4.32	4.94	5.56	6.17	3.09	4.96	3.09	4.94	4.94	4.94	3.70	4.63	4.39		
New Zealand																
NZ\$ converted to GBP (£1 = NZD 2.09)																
Period/Instance																
Registrations	1-25 years	Initial fee	-													
		Plus for each year of the period	1.47													
	Infinity	n/a														
Renew a registration	1-25 years	Plus for each year of the period	1.47													
	Infinity	n/a														
Discharge a registration																
Amend registration																
Effect a global change of multiple registrations																
Search the registry																
			0.50													
Jersey (Fees for consultation)																
£																
Period/Instance																
Registrations	1-25 years	Initial fee	-													
		Plus for each year of the period	8.00													
	More than 25 years (no concept of Infinity filing under Jersey Law)	250.00														
Renew a registration	1-25 years	Plus for each year of the period	8.00													
	More than 25 years (no concept of Infinity filing under Jersey Law)	250.00														
Discharge a registration																
Amend registration																
Effect a global change of multiple registrations																
Search the registry																
File a Change Demand Notice with the registrar (by grantor/assignor)																
			25.00													

# Appendix C - Draft Fee Schedule



## Jersey Financial Services Commission

### NOTICE OF FEES

Published in accordance with: **Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended**

Payable by or in relation to: **THE SECURITY INTERESTS REGISTER**

Pursuant to: **Article 90 of the Security Interests (Jersey) Law 2012; and Article 15(6) of the Financial Services Commission (Jersey) Law 1998, as amended**

#### Commencement date

The fees set out in this notice are effective from 1 October 2013.

#### Fees

The following fees are payable to the Registrar for using the Security Interests Register:

	Period/Instance	£
(a) Registration	1-25 years For each year of the period	8.00
	More than 25 years (no concept of Infinity filing under Jersey Law)	250.00
(b) Renew a registration	1-25 years For each year of the period	8.00
	More than 25 years (no concept of Infinity filing under Jersey Law)	250.00
(c) Discharge a registration		-
(d) Amend registration - other than change of expiry date.		8.00
Amend registration expiry date - follow registration fee scales.		See registration fee scales
(e) Effect a global change of multiple registrations - other than change of expiry date.		100.00
(f) Search the Security Interests Register		4.00
(g) File a Change Demand Notice with the registrar (by grantor/assignor)		25.00

**Notes:**

**(a) Registrations**

The fee for registering a financing statement for a limited period - £8.00 per year payable on registration.  
For registering a financing statement for more than twenty-five (25) years - £250.00 payable on registration.

**(b) Renew a registration**

The fee for registering a financing change statement to renew a registration for a limited period - for each year £8.00 per year payable on registration.

For registering a financing change statement to renew a registration for more than twenty-five (25) years - £250.00.

**(c) Discharge**

For registering a discharge statement - nil.

**(d) Amend**

For registering a financing change statement to effect a change in a registration other than a change in expiry date of the registration - £8.00.

For registering a financing change statement to effect a change in expiry date of the registration for a limited period - £8.00 per year payable on registration.

For registering a financing change statement to effect a change in expiry date of the registration for more than 25 years - £250.00 payable on registration.

**(e) Global change**

For registering a financing change statement to effect a global change in the secured party information (excluding the expiry date of registration)- £100.

**(f) Search**

For conducting a search and transmitting the search result electronically - £4.00

**(g) Demand Statement**

For filing a demand statement with the Registrar - £25.00.

**Fees for other services:**

For the certification of a financing statement filed on the Security Interests Register - £50.00.