



Feedback on Consultation Paper

No. 4 2016

Proposed Fees Under:

- › Registration of Business Names (Jersey) Law 1956;
- › Companies (Jersey) Law 1991;
- › Foundations (Jersey) Law 2009;
- › Incorporated Limited Partnerships (Jersey) Law 2011;
- › Limited Liability Partnerships (Jersey) Law 1997;
- › Limited Partnerships (Jersey) Law 1994;
- › Security Interests (Jersey) Law 2012;
- › Separate Limited Partnerships (Jersey) Law 2011.

Feedback on a consultation on proposals to increase fees.

Consultation Feedback

Please note that terms are defined in the Glossary of Terms.

This paper reports on responses received by the *JFSC* regarding the Consultation Paper.

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Glossary of Terms

<i>AML/CFT</i>	Anti-Money Laundering/Countering the Financing of Terrorism
<i>Commission/JFSC</i>	means the Jersey Financial Services Commission
<i>Commission Law</i>	means the Financial Services Commission (Jersey) Law 1998, as amended
<i>Consultation Paper</i>	means Consultation Paper No. 4 2016: Registry Fees
<i>COBO</i>	means the Control of Borrowing (Jersey) Order 1958, as amended
<i>ICT</i>	Information Communication Technology
<i>Jersey Finance</i>	Jersey Finance Limited
<i>Minister</i>	Chief Minister
<i>Registrar</i>	The registrar referred to in Article 196 of the Companies (Jersey) Law 1991
<i>Registry</i>	Jersey Companies Registry
<i>Registry Laws</i>	The Companies (Jersey) Law 1991; Limited Liability Partnerships (Jersey) Law 1997; Limited Partnerships (Jersey) Law 1994; Incorporated Limited Partnerships (Jersey) Law 2011; Separate Limited Partnerships (Jersey) Law 2011; Foundations (Jersey) Law 2009; and Registration of Business Names (Jersey) Law 1956, all as amended
<i>SBPP</i>	JFSC's Sound Business Practice Policy
<i>TCB</i>	Trust Company Business

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1 Executive Summary

1.1 Overview

- 1.1.1 As a result of the need to replace the *Registry's* current aging ecosystem, some parts of which are now more than seventeen years old, combined with the increased need to tackle sophisticated cyber security, as well as changing international standards and practices requiring new and more up to date registers, the Board of the Commissioners authorised a consultation on the proposed changes to *Registry* fees. The aim of this consultation is to ultimately encourage accurate public and timely information.
- 1.1.2 On 20 May 2016 the *JFSC* issued the Consultation Paper No. 4 2016. The purpose of the *Consultation Paper* was to seek views on proposals to amend and/or increase *Registry* fees as follows:
- 1.1.2.1 An increase in the annual return for companies and the annual administration fee for partnerships (with the exception of Limited Liability Partnerships (“LLPs”)) and foundations from the current fee of £150 to £210 when submitted by paper and £200 (a discount of £10) when submitted by the *Registry* online system. As a result of this, and with the view to standardising annual charges, the *JFSC* also proposed a decrease to the annual declaration for LLPs from £500 to £210 when submitted by paper and £200 (a discount of £10) when submitted by the *Registry* online system.
- 1.1.2.2 The registration of a business name will be required to be renewed every three years.
- 1.1.2.3 Introducing a five tier system for company incorporations with the cost for a processing time of five days being set at £150, £50 less than the current standard two day incorporation cost of £200.
- 1.1.2.4 Late filing fees to be changed so that the longer a filing is overdue, the higher the fee. An added incentive to file on time is that the later filing fee increases are not necessarily linear but may progress in an exponential way. For example: the annual return late fee will progressively increase by £50 a month (less than is currently the case) until the end of June (the date the *Registry* sends out “strike off” notices) at which stage they will increase at £100 per month (more than is currently the case) until the strike off date on the first working day of October of each year. The debt does not automatically extinguish on strike off.
- 1.1.2.5 Some search fees will gradually be reduced so that certain “basic” information will be available free of charge. By way of example, as demonstrated in the appendices attached, certain company, partnership and foundation record searching and monitoring will now be free.
- 1.1.3 The purpose of this paper is to provide feedback on the responses received regarding the *Consultation Paper*.

1.2 Feedback received

- 1.2.1 The consultation period closed on 24 June 2016. Six responses were received by *Jersey Finance*. These responses were generically described to the *JFSC* as being received from a fund services business, a bank, an independent compliance consultant, a trust company, a Trade Association and an accountancy firm. In view of the fact that the Trade Association represents a significant number of registry users, considerable weight has been given to the comments raised by it. In order to address these comments, the *JFSC* has set out its detailed response at Appendix B to this *Consultation Paper*.
- 1.2.2 Section 2 and Appendix B of this Feedback Paper present a summary of the substantive comments received and the *JFSC*'s response, as appropriate, to each.
- 1.2.3 The *JFSC* is grateful to all the respondents for taking the time to consider and comment on the proposals. The final Fees Notices can be found in Appendices C to J.

1.3 Next Steps

- 1.3.1 For the reasons given in this Feedback Paper, the *JFSC* will proceed with the increased fees (noting decreases and certain information to be provided free of charge) as proposed.
- 1.3.2 The Fee Notices have been updated to reflect the increases and will be published on the *JFSC*'s website.
- 1.3.3 With the exception of annual returns/annual administration fees, the fees set out in the attached Fee Notices are **effective from 1 January 2017**. It should be noted that the Government and the *JFSC* are currently working together to determine the amount of revised total annual fee which is returned to Government. Currently, the amount to be paid to Government under Article 201(2) of the Companies (Jersey) Law 1991 is £115 by virtue of the Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008. The Government intends to lodge a *projet* to amend these Regulations for debate and enactment before the end of 2016. The basis for the fees is detailed within the Fee Notices at Appendices C to J:
- › Appendix C – Registration of Business Names (Jersey) Law 1956;
 - › Appendix D – Companies (Jersey) Law 1991;
 - › Appendix E – Foundations (Jersey) Law 2009;
 - › Appendix F – Incorporated Limited Partnerships (Jersey) Law 2011;
 - › Appendix G – Limited Liability Partnerships (Jersey) Law 1997;
 - › Appendix H – Limited Partnerships (Jersey) Law 1994;
 - › Appendix I – Security Interests (Jersey) Law 2012;
 - › Appendix J – Separate Limited Partnerships (Jersey) Law 2011.

2 Summary of Responses

2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received in response to the *Consultation Paper*. While not every comment received is individually listed, this section contains summaries of the most commonly made and the *JFSC*'s response to those comments.
- 2.1.2 The *Consultation Paper* asked one question, as set out below in paragraph 2.2.1.

2.2 Question at paragraph 8.1 of Consultation Paper No. 4 2016

- 2.2.1 "Do you agree with the proposed options and the proposed fee levels? If not, please suggest alternative fee levels and explain why the alternative fee level has been suggested."
- 2.2.2 Feedback was broadly supportive, with the exception of the Trade Association which has questioned in some depth the fee increases. In order to address these concerns, the Commission has attached a detailed response to this Consultation Paper (Appendix B) which outlines the Trade Association's initial concerns as well as the *JFSC*'s response to such concerns. These concerns have now been addressed and explained. The *JFSC* emphasises that the main reason for introducing the changes to registry fees is due to unprecedented demand to maintain data security whilst also ensuring good governance and transparency is maintained by Jersey registered entities. The *JFSC* notes in particular that no objections were received to the user pays model. The Fund Services Business ("FSB") in particular commented that;

"we particularly welcome the broad range of options available for company incorporations, the lower charges being proposed for the registration of Limited Partnerships and the introduction of out of hours work by prior agreement."

JFSC response:

- 2.2.3 The *JFSC* welcomes industry's general acceptance of the proposed options and fee increases. The *JFSC* would like to add that the *Registry* is offering a number of free services, as outlined in the *Consultation Paper*, and it is committed to providing an excellent service. Our international obligations are becoming more and more onerous, especially as it relates to having up to date and accurate beneficial ownership information. To protect this sensitive information, the *Registry* needs to ensure that appropriate investments are made in our people, our infrastructure and IT systems. This is ultimately to the benefit of all islanders as the *Registry* acts not only as the first line of defence in respect of anti-money laundering and countering the financing of terrorism ("AML/CFT") requirements for local residents who wish to incorporate, but also as a second line of defence for those entities incorporating via a trust company business ("TCB"). In order to generate the necessary income to maintain this excellent service, the *Registry* has sought to apply across the board the user pays model.

2.3 Other Questions raised by respondents

- 2.3.1 The FSB raised two further questions:
- a. If the Registry do not succeed in processing incorporations or registrations within the timing levels stipulated in the proposed fee notices, will there be any kind of rebate to the submitting business?;
- and
- b. Are any of the faster incorporation and registration services going to continue to be withheld from entities subject to the Registry Sound Business Practice Policy (“SBBP”)?

JFSC response:

- 2.3.2 The *JFSC* welcomes the opportunity to address the questions raised. With regard to the first question raised at 2.3.1, the Registry already offers a refund to the premium paid for a fast track incorporation if the time limits are not complied with. However, this does not apply if insufficient information has been provided or the activity of the incorporating company (or any of its affiliates or subsidiaries or associated entities) is a sensitive activity falling within Tables 1 or 2 of the Sound Business Practice Policy (“SBBP”).
- 2.3.3 With regard to the second question raised at 2.3.1, where an entity is subject to the *SBPP*, the *Registry* cannot guarantee a fast track service. In the economic and reputational interests of the Island, the *JFSC* must obtain all necessary information and ensure that appropriate risk assessments have been conducted upon “take-on”, as well as ensuring that continuous monitoring is in place post-incorporation, especially so where the activity falls within Tables 1 or 2 of the SBBP (together “the Tables”). There are many forms of vehicles registered in Jersey, ranging from mining in AML/CFT Handbook Appendix D2 listed jurisdictions to entities that operate in the pharmaceutical sphere providing essential research services to fight life threatening diseases. Continuous monitoring is essential to safeguard the Island’s reputation internationally. Accordingly, there may well be activities that are not listed in the Tables but which may, if conducted by a Jersey entity or its subsidiary, affiliate or associated entity, have the potential to damage Jersey’s reputation. When an activity is deemed to pose such a risk, the consequence will most likely be a delay in the processing of that application in accordance with the Registry Processing Statement and/or result in additional conditions being placed by the *JFSC* on the entity being incorporated. In circumstances where the *Registrar* is of the opinion that the formation of the company would not be in the public interest, the *Registrar* will refer the application to the court in accordance with Article 8(1) of the Companies (Jersey) Law 1991.
- 2.3.4 One respondent had reservations in respect of the submission of the annual returns and that it was considered unfair to charge £10 extra for those who do not submit online.

JFSC response:

2.3.5 The JFSC submits that in fact the annual return fee has increased to £210 and that a reduction of £10 is offered to encourage users to utilise, where possible, the online service. It is acknowledged that only a single return can be submitted online at present, but the Registry is in the process of developing an appropriate infrastructure (subject to necessary legislative changes) which will allow for bulk filing. Indeed, the Registry acknowledges that in many circumstances the annual return is in fact an unnecessary administrative burden and that year on year there is little if any change to the information submitted. With this in mind, the Registry is moving to a process of recording information upon change (with an annual validation process that will simply verify the information already on file) and in this regard the Registry is working closely with Government to push through legislative amendments that would permit not only bulk filing but indeed a move away from the annual return requirement. For the avoidance of any doubt, the annual fee obligation shall be retained.

2.3.6 The Bank queried the logistics of the payment mechanism.

JFSC response:

2.3.7 The JFSC confirms that BACS for annual returns and administration fees have been made available since November 2015 and credit/debit payments since March 2000.

2.3.8 The independent compliance consultant acknowledged that they would only be affected by the proposed changes in relation to Business Names and challenged that the fee increase “from £15 to £25, for what simply could be a change of address and which is a simple task with the aid of IT, [is] expensive.”

2.3.9 The independent compliance consultant also noted that while they were supportive of the concept to introduce a three year cycle to re-register business names, they felt that greater consideration should be given to the increased administrative burden it will place on small businesses, even with the future introduction of an online portal:

“While we are hesitant to specify an alternative figure without the benefit of viewing the JFSC’s full cost analysis, our initial counter proposal would be £15 every three years and/or for the JFSC to consider the introduction of a fee scale based perhaps on either the number of employees, turnover, or a business’s gross profit. By adopting such an approach, we believe this would greatly assist with addressing the present imbalance between say a financial services business and a non-financial services sole trader, such as a locally based painter and decorator (or even a consultant).”

JFSC response:

2.3.10 With reference to the point raised in 2.3.8 and 2.3.9, the Registry needs to ensure that the current Business Names register is not being used as a form of a trademark/copyright register. It has become apparent that a number of business names have remained on our register indefinitely. Accordingly, we deem it necessary to place a renewal requirement on businesses, subject to appropriate legislative changes, noting that it will add an administrative burden to small business. With this in mind, and in order to facilitate this process, the Registry are committed to sending reminders three months before the renewal date is due. From an administrative perspective, we do not see the proposal of offering a fee scale based on either the

number of employees, turnover or a business gross profit as workable. The *Registry* simply does not have the resources to be able to ensure that this scale is in fact being adhered to and would have to heavily rely upon industry. It is also considered that any fee scale based system would be expensive to develop and operate with the costs being passed back to the user, defeating the purpose of the system. Accordingly, the *Registry* is of the view that this is an unworkable solution.

- 2.3.11 The trust company queried if a facility will be provided for bulk payment of annual return fees which can be utilised by *TCBs*.

JFSC response:

- 2.3.12 The *Registry* confirms that it is working towards facilitating a bulk payment for annual return fees which can be utilised by *TCBs*.

- 2.3.13 One respondent felt the proposed fee increases appeared “reasonable” for the following reasons:

Static Fee: The *Registry* fees have remained unchanged for a number of years, noting that proposed annual return fee is less than the rate of inflation over the time period.

Five Tier System for Incorporation: “In any services business, the fee charged should be reflective of the effort and risk associated with the service. Incorporations with reduced turnaround times require increased effort and man power to service the request.” An increased fee is “also synonymous with the voluntary nature of the service i.e. it is the choice of the incorporator to expedite matters and as such the increased cost of the service reflects this choice”. The respondent was particularly pleased to see the introduction of a flexible but high fee for those urgent out of hours’ incorporations as this sends out a powerful message to the international market of our responsiveness and commercialism.”

- 2.3.14 The same respondent also raised the following issues:

Future fee increases: “The paper is silent on the position of fees going forward and it would be helpful if there was clarity given that future increases will be stapled to inflation, or a proportion of inflation to give businesses more certainty over future trends.” The respondent accepted that it will not be possible to provide certainty over a period of more than three years, but noted that an “indication of intention would be useful”.

Efficiencies: “While it is clear that there is an unprecedented amount for the *JFSC* and *Registry* to do”, they urged that operational efficiencies continue to be sought “to avoid continuous rises in fees. There is clearly significant restructuring underway in the *JFSC* and this is to be applauded, but given the pace of change and relentless new international regulations being released, continual innovation of operating practices will be required.”

JFSC response:

- 2.3.15 Turning to the comments made in 2.3.13 above, the *Registry* welcomes this acknowledgment that the annual return is below inflation for the period and confirms it remains committed to providing a flexible approach to the range of services offered to allow the Island to meet international expectations and standards and be a jurisdiction of choice.

2.3.16 With respect to concerns raised in 2.3.14 above, the *Registry* notes the request for greater clarity as it relates to future fee increases and as outlined in Appendix B, in general terms, it is anticipated that fees will be reviewed every three years. In relation to efficiencies, the *Registry* shares the respondent's desire to be innovative and will endeavour to seek efficiencies, but as acknowledged by the respondent, the *Registry* faces unprecedented increasing demands on its resources. However, one should keep in mind that the *Registry* is extremely efficient, irrespective of the fact that only a very small team operate it day to day. We operate nine registers with a team of 11 full time employees. The *Registry* has also won international awards on the basis that even with a small team the *Registry* can balance the ease of doing business with the increasing registry regulatory burden. The timeframe targets (such as the two hour incorporation and the potential agreed faster ad hoc services) combined with the use of the Registry Dash Boards already in place, ensures continued efficiency is maintained.

2.3.17 We refer the respondent to the Registry's 8 principles of operation:

1. Customer centric processes.
2. Simple and cost effective Registry compliance.
3. Transparent and consistent policies, processes and systems.
4. All Registry services available online.
5. Standardisation and continuous development of policies, processes and systems.
6. Tell us once and avoid duplication.
7. Easy access to public information.
8. A high performing Registry, acting in the public interest.

2.3.18 The Trade Association made a number of observations and raised a number of questions. In order to clearly address each of these questions, the *JFSC* has set out its response to these questions in Appendix B.

JFSC response

2.3.19 In summary, the *JFSC* welcomes the additional observations regarding the pressures now facing the *Registry*. The *Registry* has for some years, to its credit, managed the increases in registry services, the regulatory burden while balancing the ease of doing business and system development within the *Registry's* existing resources. The observations above, highlight the recent unprecedented change in the registry world, which has required the *Registry* to reassess its resources and deliverables. As part of this reassessment, the *JFSC* and the Government have been discussing the *Registry's* future resourcing needs. These discussions have not yet been concluded, however, it is expected that a new fee sharing agreement will be in place by the end of 2016. Legislation will also need to be amended to reflect the new pressures placed on the *Registry*.

2.4 Summary of additional comments

2.4.1 One respondent was supportive of the increase in fees for the reasons articulated in the *Consultation Paper*, but considered that further weight should be given to the following matters which will result in the *JFSC* requiring additional resource in one form or another:

- › Increased global transparency;
- › MONEYVAL;
- › Expediting requests;
- › Security of Information;
- › Cost of doing business; and
- › Technology.

- 2.4.2 *Increased global transparency:* “Over the last few years, various measures have been introduced by supranational bodies such as G20 and the EU amongst others which have resulted in a growing amount of information being shared across borders....”. The respondent notes that measures include the need to automatically update beneficial ownership information and that the increase in transparency “places an additional and substantial burden on the existing infrastructure of the *JFSC*, which is of benefit to the wider Financial Services community in Jersey. The agreement with the UK¹ to respond to beneficial ownership requests in a rapid manner [within one hour for urgent requests – a service to be provided 24/7] will require the *JFSC* and *Registry* to accommodate accordingly and will help to ensure that Jersey can continue to operate in its current markets.”
- 2.4.3 *MONEYVAL:* The respondent noted that ‘MONEYVAL’s’² recent report notes that Jersey has a “mature and sophisticated regime for tackling money laundering and terrorism. This positive result is mainly due to the hard work of the relevant Island agencies, including and arguably coordinated by the *JFSC*.” The respondent argues that to “ensure Jersey remains a jurisdiction with a desire for zero tolerance towards financial crime, investment is required to ensure that the *JFSC*’s infrastructure continues to meet the challenges it faces. This is critical to our international persona and reputation, and assists when Jersey businesses market their services as a leading international finance centre to the wider world, and particularly to expanding markets such as the Middle East and Africa.”
- 2.4.4 *Expediting requests:* The respondent noted that the *JFSC* provides mutual assistance to requests from law enforcement agencies and others and as there is “an ever increasing amount of requests, funding to further develop the *JFSC*’s infrastructure could be used to expediently resolve these requests, having a positive impact on Jersey’s reputation.”
- 2.4.5 *Security of information:* The respondent draws attention to the fact that the “data held within the registry is a prime target for hackers from a variety of backgrounds, and will remain so in future years.” Accordingly, there is a requirement for “substantial investment in people and systems” and “key infrastructure for the benefit of the wider community and the intention to invest further in cybersecurity measures will ensure that Jersey remains to be seen as a secure location.”
- 2.4.6 *Cost of doing business:* There was an acknowledgment that developing the *JFSC*’s technology infrastructure will increase the financial burden on Jersey regulated entities in the short term but that “may be outweighed by the long term effect of reducing the administrative burden [on these entities] and improve the interface with the Jersey Registrar by introducing an automated process end to end. Therefore, there is a clear acknowledgment that this electronic interface should reduce time costs for regulated businesses, mitigating the potential fee increase.”

- 2.4.7 *Technology*: The respondent was supportive of the inclusion of technology as a positive contribution to the *Consultation Paper* and it considers that it is “imperative that the [JFSC’s] commitment to digitisation and investment continues.”

2.5 Next Steps

- 2.5.1 In summary, the *Registry* has received 5 out of 6 positive responses to the *Consultation Paper*, which on balance supports proceeding with the revised fees. It is clear that many of the challenges highlighted by some of the respondents require investment to develop the *Registry’s* IT infrastructure and the income that will be generated as a result of the fees being increased, will allow the investment necessary to ensure that Jersey remains a competitive jurisdiction that can continue to operate in its current markets. Accordingly, the *Registry* will proceed with the fees as set out in the Fee Notices attached as Appendices C – J.
- 2.5.2 The effective date of the Fee Notices is the 1 January 2017.

¹ Exchange of Notes between the Government of the United Kingdom and the Government of Jersey in respect of the sharing of beneficial ownership information dated April 2016.

² The Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Appendix A - List of respondents to this Consultation Paper

- › Fund Services Business
- › Bank
- › Independent Compliance Consultant
- › Trust Company
- › Trade Association
- › Accountancy Firm

Appendix B – Response from the Trade Association

One respondent, a Trade Association, made a number of comments and sought more detail and data from the *JFSC* and was generally critical of the proposals outlined in the *Consultation Paper*.

The *JFSC* has set out its detailed response to the Trade Association below.

No.	Response	JFSC Response	Action (where appropriate)
1.	<p>The Trade Association felt it was not clear what proportion of fees paid into the Registry is used for funding the operation of the Registry and what proportion is destined for the JFSC; noting that it felt the proposed fee increases are substantial and in some instances represent multiples of the existing fees.</p> <p>The Trade Association requested that the JFSC should provide a detailed breakdown of income and expenses associated with the operation of the Registry to include inter alia, the amount of fee income generated in excess of operating costs, details of where the excess has been booked or otherwise utilised and, where Registry profit has been allocated to the JFSC and whether it has been attached to specific cost centres.</p> <p>Moreover, the respondent considered that the Consultation Paper should have described the organisational relationship between the JFSC and the Registry, outlining staff, administrative and IT resources and questioned the incentive for the Registry to act efficiently.</p>	<p>The <i>Registry</i> is an integral part of the <i>JFSC</i> and is not viewed separately. Indeed, the <i>Registry</i> is an integral and vital part of the <i>JFSC's</i> supervisory function. The <i>Registry</i> and the <i>JFSC</i> operate in a wholly integrated manner. Although in law, the <i>Registrar</i> and the <i>JFSC</i> have separate roles and responsibilities, this does not prevent the two functions from operating in conjunction with each other thereby benefiting from the efficiencies gained by shared services and the ability to share information in furtherance of the <i>JFSCs</i> guiding principles. As gatekeeper, the <i>Registry</i> is able to provide critical information to the <i>JFSC</i>, enabling the <i>JFSC</i> and the Island to identify reputational risks and fulfil international responsibilities effectively. To reflect this vital and integral status of the <i>Registry</i> within the <i>JFSC</i>, <i>Registry</i> interests are represented by the Director General, Chief Operating Officer and the Director of Registry at Executive level, who amongst their other responsibilities, have to also consider and work for the <i>Registry</i> interest within the overall <i>JFSC</i> as part of the integrated operating model the <i>JFSC</i> follows. Accordingly, a clear separation of costs is not possible and in answer to the Trade Association's question as to cost allocation, this is not currently undertaken to the levels requested, as this is considered largely academic and would require resource which is currently utilised elsewhere in the <i>JFSC</i>.</p> <p>It is important to note that the <i>Registry</i> by its very nature consumes more <i>ICT</i> resource than perhaps any other area of the <i>JFSC</i>. What is clear is that increasing costs</p>	<p>The <i>JFSC</i> takes its financial reporting responsibility seriously. The <i>JFSC's</i> Annual Report contains its audited financial statements and notes. Under its statutory establishment by the <i>Commission Law</i>, the Annual Report is required to be presented to the States Assembly every year. Each year a review is undertaken inside the <i>JFSC</i> to ensure the notes to the financial statements are in accordance with accountancy transparency standards.</p>

No.	Response	JFSC Response	Action (where appropriate)
		<p>associated with cyber security are primarily due to the services provided by the <i>Registry</i>. The new challenges faced by international demands with regard to <i>AML/CFT</i> and for ultimate beneficial ownership reporting, which are tasks that are acknowledged as being “unprecedented” by one respondent, are also costs which can be directly attributed to the <i>Registry</i>. As detailed in the <i>JFSC’s</i> response to paragraph 2.3.16, one should keep in mind that our <i>Registry</i> is extremely efficient, irrespective of the fact that only a very small team operate it day to day. We operate nine registers with a team of 11 full time employees. The <i>Registry</i> has also won international awards on the basis that even with a small team the <i>Registry</i> can balance the ease of doing business with the increasing registry regulatory burden. The targets (such as the two hour incorporation and the potential agreed faster ad hoc services) and Registry Dash Boards already in place ensure continued efficiency without the loss of effectiveness.</p> <p>The <i>Consultation Paper</i> proposes both increases and decreases, reflecting the fact that some fees have not been increased for many years and the need to make sure that the <i>Registry</i> provides accurate and timely information. Taken as a whole, these fee changes are largely income neutral.</p> <p>The annual return increase is less than the inflationary rate for that period. Any increase in income due to the amendment to the annual return fee is largely matched</p>	

No.	Response	JFSC Response	Action (where appropriate)
		<p>by cyber security and beneficial ownership costs as well as government lead registry initiatives.</p> <p>It is outside the remit of the <i>Registry</i> to comment on any funds that the Government utilises from the <i>Registry</i>. In accordance with Article 1 of the Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008, £115 of every annual return fee is diverted to the Government. Questions relating to how this income is spent should be directed to the Government since this falls outside the <i>JFSC</i>'s remit. As is noted in the response to the Consultation Paper, the Government intends to lodge a <i>projet</i> for debate and enactment by the States Assembly amending the Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008 before the end of 2016 to reflect any new division of the revised annual fee.</p> <p>In summary, the <i>Registry</i> clearly sits within the <i>JFSC</i>. Specific details of staff are set out in a structure chart on the <i>JFSC</i> website. The <i>Registry</i> is clearly able to benefit from the use of <i>JFSC</i> specialised IT staff as and when necessary. In order to provide an online portal for the <i>Registry</i> users, we have engaged consultants to build a modern and cost effective portal that will make the process of all functions relating to company administration and functioning as easy as possible.</p> <p>Our staff are committed to providing excellent service delivery and have for years provided out of hours services, responding proactively to assist practitioners.</p>	

No.	Response	JFSC Response	Action (where appropriate)
		<p>This service will now come at a pre-agreed cost, acknowledging the effort and commitment of the <i>Registry</i> staff.</p> <p>There is no question that the <i>Registry</i> has no incentive to run as efficiently as possible. We refer the respondent to the <i>Registry's</i> 8 principles of operation set out in the <i>JFSC's</i> response to paragraph 2.3.17.</p> <p>In addition, the <i>Registry</i> operates on a Dash Board basis applying the 8 principles of the <i>Registry</i> at every stage of the process; ensuring customer centric processes and cost effective compliance whilst complying with time limits for incorporations. The <i>Registry</i> also performs a six eye verification process for all incorporations including fast tracks. Practitioners are generally aware of the pressures faced by staff, who have provided guidance and assistance to industry to comply with the new <i>AML/CFT</i> requirements (such as the three tier test) whilst helping manage risk – the <i>Registry</i> de facto acting as the Island's gatekeeper.</p>	
2.	<p>The Trade Association also queried under what authority and in what capacity the Registry operates the Trademark Register.</p>	<p>Trademarks historically had always been part of the <i>Registry</i>. When the <i>JFSC</i> was formed in 1998, the Trademark Register was not transferred with all the other product laws. As the process of choosing an entity name requires checking the Jersey Trademark Register it seemed sensible that all registerable information should be held in the same place.</p>	<p>Miscellaneous legislation changes to the Trademark legislation are being progressed by the appropriate Government departments.</p>

No.	Response	JFSC Response	Action (where appropriate)
		<p>The current Trademark system (including all scanned images and thus an enhanced search function) is hosted on the <i>Registry</i> platform. It is planned that a legislative change will soon follow to ensure that the Registrar of Companies is also the Registrar of Trademarks. In the meantime, the Judicial Greffe remains the registrar. Accordingly, until such time as there is a legislative change in this regard, the <i>Registry</i> is simply hosting the data on behalf of the Judicial Greffe.</p>	
3.	<p>The Trade Association queried the extent to which fees paid to the Registry exceed the cost of operating the Registry.</p>	<p>The <i>Registry</i> forms an integral part of the <i>JFSC</i>. Indeed, the Registrar of Companies under the Companies Jersey Law, 1991 is also the Director General of the Commission (the Deputy Registrar is the Director of Registry). Each application for an incorporation will receive the approval from the Director of Registry (or an authorised delegate) acting in his/her capacity as Deputy Registrar as well as a Director of the Commission.</p>	
4.	<p>The Trade Association queried at Section 5.2.1 of the Consultation Paper, which international standards are being applied in the provision of free services, e.g. whether these are AML/CFT standards.</p>	<p>This is the practice and trend that many of the <i>Registry's</i> counterparts are moving towards, taking the UK Companies House, New Zealand and Luxembourg as leading examples. MONEYVAL during its assessment of the Island focused heavily on what information was available for free and for a charge respectively; emphasising a preference for information to be freely accessible allowing for greater transparency whilst also encouraging good governance. The FATF, in Interpretative Note to 2012 FATF Recommendation 24</p>	

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		<p>has developed the concept of ‘basic information’ held in a central registry of a jurisdiction. The FATF has also endorsed the preference that ‘basic information’ should be publically available for free from a jurisdiction’s central registry.</p>	
5.	<p>The Trade Association considers “that access to Registry data should remain free for those who are active users of the services provided, such as service providers who are required to register entities and pay a registration fee to the Registry. We consider that access by third parties should continue to incur a fee for access to Registry data and this would seem more consistent with the “user pays” concept promoted at 5.2.1.”</p>	<p>The <i>Registry</i> disagrees with the suggestion that third parties pay a fee for access. Firstly, it would be complicated to make this distinction from an IT perspective and secondly this would go against the recommendation of MONEYVAL and the direction of travel by the FATF to provide free information to as many as possible; increasing transparency as well as good governance. In addition the observation places less emphasis on the non <i>TCB</i> administered Jersey companies which amount to approximately 8,000+ companies.</p> <p>What is proposed is that as new value added services (for example providing a service to issue electronically certified documents for which the user will be willing to pay) come online, traditional basic searches will become free.</p>	
6.	<p>The Trade Association also felt it was unclear why the maintenance and development of the current registers (and future registers) could not be managed and funded in the same way as those “successfully achieved since 1999”.</p>	<p>The <i>Registry</i> has maintained headcount despite the fact that the role of the <i>Registry</i> has changed dramatically since 1999. There were three registers in 1999, now there are nine. The systems designed for three registers are now seriously passed their expected economic life</p>	

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		<p>span. Any new registry ecosystem will not be based on the past, new technology and user expectation (mobile access and Application Programme interfaces) require different management and funding. Our officers now perform a compliance/gatekeeper function since the <i>Registry</i> is not only the first line of defence for Jersey residents but also a second line of defence for incorporations via Trust Company Businesses for <i>AML/CFT</i> related matters; the driver being to protect the integrity of the Island and the financial services sector. By way of example, the <i>Registry</i> has prevented sanction breaches, insisted on greater levels of risk assessments to be undertaken and questioned the activities of certain beneficial owners. Accordingly, as previously stated, our maintenance and development going forward cannot be managed and funded in the same way as the maintenance and developments which have been successfully achieved since 1999.</p>	
7.	<p>The Trade Association questioned “what specific investments in Registry infrastructure are required so that the registries, “meet the needs of the 21st century”? What level of investment needs to be made, and over what period of time will that investment be spread?”</p>	<p>The <i>Registry</i> is developing a new registry ecosystem which will be scalable and is being designed in such a way that any new register will be cheaper, easier and faster to develop. The expected economic life span of any <i>Registry</i> system is between seven and ten years depending on the speed of technology development. The <i>Registry</i> is in the process of e- enabling all filing requirements. Indeed we are moving away from an annual return submission, this being replaced with an annual validation and a requirement to inform the <i>Registry</i>, via the portal, of amendments within 21 days of being made aware of the change. The annual</p>	

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		<p>validation will simply be a physical verification exercise of the information retained by the <i>Registry</i>. The annual fee (an annual administration fee similar to what is required for a Jersey partnership and foundation) will also be retained. The <i>Registry</i>, despite only operating with 11 employees and maintaining business as usual is now at the stage of reviewing the specification documents for the portal. The aim being for full e-enablement to be finalised by Q4 2017. The level of investment to achieve this is significant but necessary. Whilst some of the investment has come from reserves previously built up by the <i>Registry</i> to maintain the registry infrastructure, the intention going forward is to create sustainable pattern of investment to ensure the registry remains fit for purpose.</p>	
8.	<p>A query was also raised as to the fee sharing agreement between Government and the JFSC. "Reference without further specifics, to a 'fee sharing arrangement' between government and the Commission suggests that some part of the increased fees will be allocated outside the JFSC and are not related to the operation of the Registry. It would be helpful to know what these other, non-Registry, operating costs are, and what portion of revenues are likely to be subject to the fee-sharing agreement".</p>	<p>The <i>JFSC</i> is unable to comment in respect of the fee sharing arrangement other than to state that this arrangement is set out in legislation i.e. Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008. As is noted in the response to the <i>Consultation Paper</i>, the Government intends to lodge a <i>projet</i> for debate and enactment by the States Assembly amending the Companies (Annual Returns – Additional Charge) (Jersey) Regulations 2008 before the end of 2016 to reflect any new division of the revised annual fee.</p> <p>The <i>Consultation Paper</i> is clear that any proposed increase in income is to be used primarily to cover costs</p>	<p>The <i>Registry</i> is progressing discussions with the Government on the appropriate fee share arrangement. The fee sharing arrangement and any required legislation change will be completed before the 31 December 2016.</p>

No.	Response	JFSC Response	Action (where appropriate)
		<p>for developing the new <i>Registry</i> platform, core systems and their continued maintenance as well as developing new registers and maintaining cyber security whilst ensuring customer education is provided.</p>	
8a.	<p>The Trade Association commented that “[a]n exponential late fee penalty structure, while sounding sensible in the abstract, fails to recognise the reality that lateness generally arises from failures by clients to provide the filing service providers with information or funds in a timely fashion. Whilst penalties do provide an incentive to an extent, they quite often fall to be absorbed by the service providers rather than the clients. The introduction of “exponentially rising” late fees is very unlikely to achieve its stated goal of incentivising change of behaviour. Instead, it will merely penalise and reduce the profits of service providers, unhelpfully disrupt their attempts to market the Island’s registry services and discourage multi-jurisdictional service providers from using the Jersey registry over competitor jurisdictions.”</p>	<p>The <i>Registry</i> fails to see how an escalating late filing system would “merely penalise and reduce profits of service providers”. By imposing these escalating fines, the <i>Registry</i> is simply encouraging good practice and good governance. This goes to the heart of transparency and the accuracy of information on the register which is what the <i>Registry</i> is primarily seeking to achieve. In relation to demonstrating that our requirements are robust to those examining our regime externally (i.e. MONEYVAL) the ability to deter non-filing by virtue of penalties is an important deterrent and a good demonstration of the effectiveness of our regime. The penalties proposed are less onerous in comparison to other jurisdictions.</p>	<p>The <i>Registry</i> will update the <i>Registry’s</i> Statement to detail how it will deal with requests for involving difficulties with filing public company accounts.</p>
9.	<p>A suggestion was made by the Trade Association that “[a]n alternative, and perhaps more palatable option, would be to consider a small surcharge to the registration fee, ring fenced to provide a fund for striking off recalcitrant companies at the appropriate stage without</p>	<p>The <i>Registry</i> does not consider it a fair solution to simply increase registration fees and ring fence a fund to deal with penalties. This would be wholly ineffective and unworkable. Moreover, it is unfair for those that maintain good governance to subsidise those that do not.</p>	

No.	Response	JFSC Response	Action (where appropriate)
	<p>further charge. This would also circumvent the not uncommon problem of service providers finding themselves insufficiently resourced by their client (or former client) to pay outstanding registry fees and any costs associated with strike-off. Exponentially increasing penalty fees will achieve absolutely nothing in such a situation other than the alienation of registry-users and increased difficulties should there later be found to be a need to reinstate the company.”</p>		
10.	<p>The Trade Association is seeking greater clarity on the Registry’s intentions outlined at 6.4.3 of the Consultation Paper. “Much greater clarity is required on the Registry’s intentions here. For example, COBO consents are so frequently requested at the time on incorporation that, for all intents and purposes, charging for such issuance would be a further increase in the incorporation fees. In considering changes to incorporation fees, businesses need more clarity on potential changes to other fees as well and this simply has not been provided here. We would expect the Registry to publish figures regarding the number of COBO consents issued and thus the financial implications of any potential charge.”</p>	<p>The <i>JFSC</i> stated in Consultation Paper No, 10 2015: Funding Review that consideration is being given to discrete charges for the issuance of COBO consents. For the avoidance of doubt, this review will not be considering Article 2 consents which the <i>JFSC</i> believes are adequately covered in the setup costs already stated. Although raised again in this <i>Consultation Paper</i>, we appreciate that some clarity is required as to <i>Registry</i> fee cycle. In general terms, it is anticipated that fees will be reviewed every three years.</p>	<p>The <i>Registry</i> will be consulting separately on discrete charges with regard to <i>COBO</i> and the General Provision’s (Jersey) Order 2002</p>
11.	<p>The Trade Association also stated “We have taken some time to consider the Consultation Paper’s appendices and note certain concerns below:</p>		

No.	Response	JFSC Response	Action (where appropriate)
	<ul style="list-style-type: none"> › Receipt of special resolution or agreement (Page 22, item 4) is to double from £25 to £50. › Delivery of accounts (Page 23, item 11) is to be increased by 400% and the associated penalties for late filing of accounts are to be increased by 1,000% 	<p>It should be noted that there is no fee for the filing of a special resolution so long as the resolution is filed within 21 days required by law. The increased fee relates to documents filed late. The current fees came into force on 31 March 1992, a significant period where no change has been made. In addition, it is arguable whether the new £50 late filing fee is high enough to provide the incentive to file on time. However, the <i>Registry</i> is aware of a small number of genuine cases where late filing could not be avoided. The proposed fee therefore reflects a proportionate and balanced increase to reflect on the one hand the genuine reason for delay and on the other, the poor administration of a company’s affairs. To deter continued poor administration the late filing fee for resolutions filed more than 60 days after a resolution has been passed is now set at £100.</p> <p>Firstly it is important to note that the requirement to file accounts relates to public companies only. The new fee reflects the stature of the company status (PLC’s) and current filing processes. The process for filing accounts has changed dramatically over the years, no longer just a method of placing the accounts on the company file and making them available to be searched. We are now checking financial statements, looking particularly for qualified audit reports and whether a company requires a recognized auditor. In addition, if a recognized auditor is required, the stated auditor must be registered with the <i>JFSC</i> as recognized.</p>	

No.	Response	JFSC Response	Action (where appropriate)
	<ul style="list-style-type: none"> <li data-bbox="280 730 848 975">› Manual certificates of good standing (Page 25, item 1) are to double, from £50 to £100. We note that certificates issued via the Registry’s online facility are to remain at £30 but we would highlight that many counterparties will <i>only</i> accept the manually prepared certificates. <li data-bbox="280 1114 848 1358">› Ad hoc service (Page 26, item 4) appears to have no supporting discussion. It is unclear what services are potentially in scope of this charge, which appears to be increasing from nil to a <i>minimum</i> of £1,000; a figure which appears somewhat arbitrary and designed to ward off legitimate enquires for assistance 	<p data-bbox="873 276 1538 660">Jersey public companies generally fall into four categories: listed, funds, SPV’s or holding companies. The importance of filing financial statements on time for these categories cannot be understated. In particular, international assessors have highlighted the importance of SPV accounts being publically available in a timely manner. Given the stature and function of Jersey’s public companies we deem it appropriate and reasonable to set the late filing fee for a company which files more than 18 months after the financial period to which the accounts relate at £1,000.</p> <p data-bbox="873 730 1538 1043">The increased fee reflects the real cost of paper and manual processing. Hard copy manually prepared certificates of good standing (200 - 300 a year) consume significant resource including director or above authorisation (signing). The reality is that if all costs are taken into account it is unlikely that the proposed fee increase would cover the cost of production. The current automated certificate (3,000+ per year) significantly subsidises the manual process.</p> <p data-bbox="873 1114 1538 1388">The <i>Registry</i> is openly stating that it is looking to provide improved value added services. <i>Registry</i> users over the years have requested ad hoc services which have been provided by the <i>Registry</i> where able and costed accordingly. Where ad hoc requests, valued at under £1,000, are received, the <i>Registry</i> will continue to deal with each request on a case by case basis and in accordance with Article 201(1) of the Companies</p>	

No.	Response	JFSC Response	Action (where appropriate)
	<p>(though it is impossible to comment without understanding what it covers).</p> <p>› The Trade Association asserted that “this highlights again the lack of insight provided to potential users of the Registry and respondents to the Consultation Paper. The Registry must have service flow statistics for the terms in question and, in proposing new fees, must have modelled the impact of the changes on its financial position. These figures need to be published if respondents are to understand the need for fee changes.”</p>	<p>(Jersey) Law 1991. Usually, if not onerous, we will not charge for the service provided. For more significant requests, the <i>Registry</i> will now put the process on a more formal basis and has thus published a) that it is willing to provide ad hoc services and b) that a charge will be made. In order to maintain consistency (to avoid different <i>Registry</i> officers negotiating ad hoc terms) the <i>Registry</i> will be producing and publishing guidance both internally and externally in respect of this service before it is enforced.</p> <p>Whilst there have been some increases in fees, there have also been decreases elsewhere; take for example LLP fees. Indeed in some instances there are no charges whatsoever. Introducing a five day incorporation process has in fact lead to a decrease in fees. We are surprised that this is being questioned and refer the respondent to our response at point 1 of this Appendix B.</p>	
12.	<p>It was also noted that “Over and above all of this, we note (at 2.1.2) that the JFSC considers the Consultation Paper constitutes a report under Article 15(3) of the <i>Commission Law</i>. Regrettably, however, there is no indication as to which (and whether the) fee increases in the Schedule fall within Article 15(4)(b) and whether, if they are</p>	<p>The <i>Registry</i> maintains its position that (save for penalties) the fee increases are largely in line with RPI given that the last fee amendments were made in 2003 and therefore Article 15(4)(b) of the Financial Services Commission (Jersey) Law, 1998 (the “<i>Commission Law</i>”) is satisfied. With regard to penalties applied for late filing, we draw attention to penalties imposed in other jurisdictions, in particular in the UK by Companies House</p>	<p>Fee notices to be published are in accordance with Article 15 of the <i>Commission Law</i>.</p>

No.	Response	JFSC Response	Action (where appropriate)
	not agreed, the procedure in that Article will need to be invoked.”	<p>where a late filing of accounts by a public limited company for over six months attracts a penalty of £7,500. For the avoidance of any doubt, the failure to file annual returns or accounts in England and Wales is a criminal offence which can result in directors being fined personally in the criminal courts. Any criminal proceedings taken as a result of non-filing of annual returns or accounts in England and Wales is separate from and in addition to any late filing penalty imposed against the company for filing accounts late.</p> <p>Article 15(4) of the <i>Commission Law</i> states that: “If, by that date or any later date agreed by the Commission, a body that the Commission is satisfied is representative of the interests of those who would be required to pay the fee, is unable to agree with the Commission -</p> <ul style="list-style-type: none"> a) ... b) an increase in an existing fee where the percentage increase in the fee is greater than the percentage increase in the RPI since the fee last took effect in accordance with paragraph (5), the Commission must request the Bailiff to appoint 3 Jurats to consider if the fee proposed by the Commission is unreasonable having regard to all the circumstances of the case and, in particular, the requirement of paragraph (2).” 	

No.	Response	JFSC Response	Action (where appropriate)
		<p>Given that the increases are largely in line with RPI, the <i>Commission</i> is of the view that Article 15(4)(b) of the <i>Commission Law</i> is not applicable.</p>	
13.	<p>The Trade Association is of the view that “a supplementary Consultation Paper will need to be prepared and issued outlining in detail the business case for the fee increases and predicted fees that are likely to be collected as a result. A statement of Government’s present intentions in relation to the tax element of the annual return fee, and the mechanism for determining that element, would also be welcome. The individual items discussed amongst the sub-committee should also be addressed. Armed with the information it needs, industry will be in a position to provide its views and its consent, as may be the case, under Article 15 [of the <i>Commission Law</i>]. Until then, it is difficult to see how any informed consent can be provided such as would satisfy the Commission’s statutory requirements under Article 15.”</p>	<p>The <i>Registry</i> notes the concerns of the Trade Association and a request for a supplementary consultation paper. It is the <i>Registry’s</i> position that this will not add any value. The business case has been clearly made for the fee increases and decreases. The <i>Registry</i> now operates nine registers; not only on incorporation but maintains information during the life cycle of an entity. It also gathers information in respect of new business, ensuring that service providers are indeed complying with regulatory <i>AML/CFT</i> requirements. The role of the <i>Registry</i> has changed dramatically and <i>Registry</i> Officers are de-facto compliance officers and a key front line defence in maintaining the Island’s economic reputation.</p>	