

# Green Paper

## Annual Company Fees

13 August 2010

### PURPOSE OF CONSULTATION

The purpose of this consultation is to seek the views of the public on issues relating to the level of annual company fees in Jersey. The consultation seeks to ascertain whether the annual company fee is set at an appropriate total level so that:

1. The States (and accordingly the people of Jersey) receive an appropriate level of benefit from those choosing to incorporate companies in Jersey
2. The level of fee charged is not such as to discourage business from coming to Jersey or setting up business in Jersey.

The Consultation is issued by the Economic Development Department following the Treasury Minister's commitment to the States in December 2009 to review the situation. It is the Treasury Department's role to advise on the appropriate level of fee payable to the States of Jersey and for the Economic Development Minister to lodge Regulations setting the level of fee to be agreed by the States of Jersey under the Companies (Jersey) Law 1991.

This Consultation is issued jointly with the Jersey Financial Services Commission (the Commission) as part of the proposed increase in fees includes an increase in fee charged by the Commission. This also represents the Commission's consultation in respect of the proposed fee increase under Article 201 of the Companies Law.

Respondents are invited to comment by answering the questions set out at the end of the green paper.

## DEADLINE FOR RESPONSES

Friday 24 September 2010

PLEASE SEND RESPONSES TO:

<p>Kevin Lemasney Assistant Director, Performance and Operations Economic Development Department States of Jersey 3<sup>rd</sup> Floor Liberation Place St Helier, Jersey JE1 1BB</p> <p>Telephone: 01534 448861 Facsimile: 01534 448171 e-mail: <a href="mailto:k.lemasney@gov.je">k.lemasney@gov.je</a></p>	<p>Heather Bestwick at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local firms or entities. Her contact details are:</p> <p>Heather Bestwick Jersey Finance Limited 48-50 Esplanade St Helier Jersey JE2 3QB</p> <p>Telephone: 01534 836004 Facsimile: 01534 836001 e-mail: <a href="mailto:Heather.Bestwick@jerseyfinance.je">Heather.Bestwick@jerseyfinance.je</a></p>
---	---

**Public submissions** - Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary etc). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

## 1. Introduction: The Company and Company fees

- 1.1. The company is used globally as the vehicle of choice by many businesses, small and large. It is one of the key entities utilised in Jersey and there are approximately 33,400 companies registered at the Jersey Registry of Companies. The advantages of operating through a company include that it has separate legal personality and perpetual succession.
- 1.2. The Registry has been developing IT systems in recent years in order to provide a more technologically efficient service. The aim of this IT development is to provide more of a service online and to enable the automation of the production of documents. This benefits users by making the Registry more efficient and helps to provide a better service. Such developments do not increase the running costs of the Registry, but can also lead to savings in staff time and cost reductions such as the use of less paper. The proposed JFSC increase of £5 is to cover increased inflationary costs as well as to continue the IT development. For the avoidance of all doubt this £5 increase would be included in the overall proposed increase in company annual fees to £100.
- 1.3. This consultation paper is issued jointly with the Commission in respect of this specific section so that the Commission has consulted in respect of publishing an increased fee under Article 201 of the Companies Law.
- 1.4. Companies incorporated in Jersey are obliged to pay £150 to the Commission annually on filing their annual returns. This fee has not increased since 2003. Since 2008, this sum is made up of two elements:
  - (i) a fee (currently £35) set by the Commission under Article 201(1) of the Companies Law, intended to cover the Commission's administrative costs, which is retained by the Commission and
  - (ii) an additional amount (currently £115) set by the States under Article 201(2) of the Companies (Jersey) Law 1991 and passed on by the Commission to the Treasurer of the States. This element is used to finance general government expenditure.
- 1.5. However, all companies pay one fee of £150 and so this distinction is not significant. For the remainder of this consultation we shall simply refer to Jersey companies being charged an 'annual company fee' of £150.
- 1.6. In addition to this, certain classes of company, known as International Service Entities ("**ISEs**"), satisfy their obligations to Goods and Services Tax ("**GST**") through an annual fee to the Comptroller of Income Tax, currently set at £100 in most cases. Frequently, this fee is in fact paid to the Comptroller by a trust company business administering the company in question, but in most (if not all cases) this cost is passed on to the company in question. Thus the total annual statutory fee for many Jersey companies, and in particular those that qualify as ISEs, is effectively £250.

- 1.7. In this consultation paper references to the annual company fee refers to the £150 paid by all Jersey incorporated companies. The combined annual company fee and ISE fee, totalling £250 and paid by many Jersey resident companies, is referred to as the total statutory fee.
- 1.8. Jersey banks, trust companies and other service providers, such as lawyers and accountants, derive significant revenues from their clients who use companies incorporated here, which in turn leads to job creation and tax receipts for the States and so provides economic benefit to the Island in addition to the annual company fee.
- 1.9. This consultation seeks to ascertain whether the annual company fee is set at an appropriate total level so that (a) the States (and accordingly the people of Jersey) receive an appropriate level of benefit from those choosing to incorporate companies in Jersey and (b) the level of fee charged is not such as to discourage business from coming to Jersey or setting up business in Jersey. Respondents are invited to comment on these issues by answering the questions set out at the end of the paper.

## 2. Comparison exercise

- 2.1. An independent comparison exercise has been conducted, comparing company fees charged in Jersey with those in potential competitor jurisdictions. Respondents are invited to give their views as to which jurisdictions may be considered to be key competitors in relation to company incorporations. Our initial view is that key competitors would include the Isle of Man, Guernsey, the British Virgin Islands and the Cayman Islands.
- 2.2. The results of the review are summarised in the following table:

<b>Total comparable annual company fees</b>					
	<b>Annual company return fee</b>	<b>Other annual fees</b>	<b>Total annual fees</b>	<b>Variation from Jersey</b>	
	£	£	£	£	
<b><u>Key competitors</u></b>					
Cayman	485		485	+235	i
BVI	400		400	+150	ii
Isle of Man	360		360	+110	
<b>Jersey</b>	<b>150</b>	<b>100</b>	<b>250</b>	<b>+0</b>	<b>iii</b>
Guernsey – non financial services	250		250	+0	iv
Guernsey – financial services	500		500	+250	v
<b><u>Other jurisdictions</u></b>					
Bermuda	1,325		1,325	+1,075	vi
Panama	65	195	260	+10	vii
Luxembourg	135		135	-115	
Gibraltar	45		45	-205	
Hong Kong	39		39	-211	
Ireland	35		35	-215	
Singapore	0		0	-250	
Switzerland	0		0	-250	

### Notes

- i Using the scale for exempted and "ordinary non-resident" companies. Exempted companies are most commonly used for international holding vehicles as they have the option to apply for tax exemption certificates guaranteeing them against the introduction of corporate taxes for up to 30 years. The scale for ordinary companies starts at £245.
- ii This fee applies to companies with a share capital of less than \$50,000 and which are not prohibited from issuing bearer shares. The annual fee for companies with the same restrictions on their share capital but which are prohibited from issuing bearer shares is £230.
- iii Other fees are ISE fees.
- iv This is the fee for non-financial services companies.
- v The fee in Guernsey for companies within the financial services sector and administered by financial services entities is £500 per annum with limited exceptions.
- vi These are the fees for exempted and overseas companies. The scale for local companies starts at £430.
- vii Other fees is the annual corporate tax of £195 (£160 in the company's first year).

**Public submissions** - Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary etc). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

- 2.3. For the purposes of this review, a fee was taken to be a sum payable to any statutory authority which is not calculated by reference to the level of profitability or activity undertaken by the company. Administration costs were not included, nor were costs associated with complying with company law requirements such as the preparation of accounts. For the avoidance of doubt, corporate taxes were outside the scope of this review, apart from Panama's minimum annual tax as this is payable by every company regardless of levels of income and as such has many of the characteristics of a fee. Although all of these aspects impact on location decision, in the event of a level playing field the cost of incorporating a company can be relevant.
- 2.4. The table shows that Jersey's annual company fees in comparison to, the Isle of Man, Guernsey, the British Virgin Islands and the Cayman Islands (considered to be key competitors for this purpose), are at the bottom of the range. This is a result of recent significant fee increases in several of these jurisdictions.
- 2.5. In order to ascertain the potential for increasing company annual company fees in Jersey, a comparison is made between Jersey's fees and those in the other Crown Dependencies. While fees in the British Virgin Islands and the Cayman Islands are slightly higher, it is difficult to directly compare the effect of an increase in fees in Jersey with these jurisdictions when there are other relevant costs and regulatory differences which are understood to be a significant influence in the decision where to locate business.
- 2.6. There would therefore seem to be some scope to increase Jersey company fees without a significant loss of competitive position. However, if Jersey increased its fees without considering the position in the Isle of Man and Guernsey, there would be a risk that business would be lost, given that the jurisdictions are closely linked in the minds of many investors and costs directly compared when deciding where to locate business.
- 2.7. As noted in 1.6, it is important to note that many companies in Jersey pay total annual statutory fees of £250.

### **3. Flat or tiered structures for company fees**

- 3.1. There are two types of structures for company fees. Jersey currently has a flat rate of company fees (although the ISE fee does add an extra tier to the structure in certain circumstances). This flat structure is one of the advantages of Jersey's fee system. Because fees are charged at a flat rate they are easy to ascertain and provide certainty to businesses of the applicable rate.
- 3.2. Some other jurisdictions do not have a flat rate of fees. Guernsey for example has a tiered system of fees. More complex tiered structures can lead to debate by companies as to the correct applicable level of fees. This surrounding uncertainty can lead to potential losses in fees collected as well as increased administration costs.
- 3.3. If Jersey were to increase company fees, it is thought that it would be beneficial to maintain the advantages of the current flat rate system. Therefore, it is proposed that any increase should remain within a flat structure rather than moving to a complicated tiered structure.

### **4. Comparison between impact of increasing the annual company fee and increasing the ISE fee**

- 4.1. If the decision is made to increase the total level of annual statutory fees, then the question arises as to whether that increase should take effect by increasing the annual return fee or by increasing the fee for ISE status under the GST Law.
- 4.2. Although there is substantial overlap between companies incorporated in Jersey (of which there are around 33,400) and entities subject to the basic ISE fee (of which there are around 33,000), these groups are not identical. Jersey companies with no international element to their business (as is the case for many local businesses) do not qualify ISE status and accordingly will not pay this fee, but will instead collect or pay GST on the normal basis. Such companies pay only the £150 annual company fee. On the other hand, ISE status also applies to entities which are not companies, such as foundations and partnerships. In some cases, such as partnerships, this may be the only annual fee payable.
- 4.3. Different levels of ISE fee are paid by different classes of company, ranging from £100 to more than £30,000. A separate review of the level and structure of ISE fees is currently underway as part of the Fiscal Strategy Review and it is therefore recommended that ISE fees should remain level until those reviews are completed.

## 5. Amount of potential increase in the Annual Company Fee

- 5.1. Companies in Jersey pay a lower rate of annual company fee than many of our key competitors – the other Crown Dependencies, the British Virgin Islands and the Cayman Islands (see 2.3 above).
- 5.2. The annual return fee has not increased in Jersey since January 2003. If fees had been increased in line with inflation the annual company fee would currently be approximately £200 (using the Statistics Unit's inflation calculator). However, it is beneficial to business and the administrator of fees that this fee stays at the same level for a length of time rather than being increased on an annual basis. This provides certainty as to the level of annual company fee and does not result in costly inefficiencies through companies paying the incorrect amount. If the consultation responses indicate that an increase to £250 now, which is greater than it would be if the rate of inflation applied, would not result in the loss of business Government would commit to retaining that level of fees for at least 3 years and not seek an annual inflationary increase.
- 5.3. Comparing our fees with our closest neighbour, the annual company fees payable by companies in Jersey (which are not ISEs) are between £100 to £250 less in Jersey than in Guernsey, with the financial services entities and those administered by financial services entities paying £500 per year.
- 5.4. In the Isle of Man the annual return fees payable by companies are set at £360 for all companies. This is a higher amount than companies pay in Jersey even taking into consideration the ISE fee.
- 5.5. It is understood that as a general rule, other costs and regulatory differences are not so significantly different in the other Crown Dependencies that they would lead to business relocating in these jurisdictions providing company fees remain competitive.
- 5.6. Therefore, considering the amount of fees levied in the other Crown Dependencies, there would seem to be the potential to increase Jersey annual company fees. It appears from the data analysed that an increase of £100 in the rate of annual return fees applicable to all Jersey companies may be possible without a significant change in Jersey's internationally competitive position.
- 5.7. If such an increase was implemented in Jersey, the new fee of £250 (excluding ISE fees) would match the current base fee in Guernsey of £250. The total fee for ISE companies would be £350 which would be close to the level applicable in the Isle of Man (£360). For internationally competitive reasons, it is not recommended that the total annual return fees payable by any company increase the level applicable in the Isle of Man.
- 5.8. A further consideration relating to the level of company fees is the effect on local trading businesses. The issue is whether an increase in fees would reduce the competitiveness of local trading companies so that an increase would be counterproductive. Further relevant factors include the cost of the fees relative to the general costs of conducting business, and whether the benefits of incorporation are proportional to the costs incurred.



- 5.9. Should an increase to £250 be implemented, it is considered that the base level of fee should be fixed for a length of time in order to provide certainty to local businesses. This consultation paper seeks to determine whether the fee should in future be linked to inflation or whether it should be fixed for a certain number of years.
- 5.10. Paragraph 1.4 stated that the company fee is divided into two parts and included a fee set by the Commission under Article 201(1) of the Companies Law, intended to cover the Commission's administrative costs. Following communication with the Commission, it is proposed that the necessary increase in the administrative levy should be included in the overall proposed increase of £100 (i.e. there will be no separate increase by the Commission).

## **6. Recommendations**

6.1 It is recommended that:

- an increase is made to the Jersey company annual return fee from £150 to £250.
- any increase in company fees should retain a flat fee structure.
- the ISE fee should not increase while other reviews are ongoing.
- the total annual fees payable by Jersey companies including the ISE fee should not exceed those payable in the Isle of Man (currently £360 per year).
- should the proposed rise be implemented the Jersey government should commit to keeping the base fee at £250 for at least 3 years.

## **QUESTIONS FOR RESPONDENTS**

1. What is the likely impact on Jersey as a place to do business of an increase in the level of annual company fee?
2. What is the likely internationally competitive impact of an increase in the total level of Jersey annual statutory fees?
3. What are the advantages and/or disadvantages of keeping a flat system of Jersey company fees?
4. Do respondents agree that the increase in annual statutory fees should be by increasing the annual company fee and that the ISE fee should remain unchanged until such time as the other reviews of taxation and ISE fees are completed?
5. Do respondents agree that the company annual fee should not exceed the base fee (for non financial services companies) charged by Guernsey (£250)?
6. Do respondents agree that total annual statutory fees (a combination of annual company fees and the £100 ISE fee) should not exceed the amount charged by the Isle of Man (£360)?
7. If an increase were to be implemented, would an above inflationary increase now be acceptable if the Government committed to fix that rate for a period of say 3 years?
8. Are there any alternative proposals that should be considered by Government?

## How to respond

The deadline for responses is **24 September 2010**.

All respondents should indicate the capacity in which they are responding (i.e. as an individual, company, representative body).

If you are responding as a company or representative body, please indicate the nature of your business and/or your clients' business.

Representative bodies should identify on behalf of who they are responding and the methodology they used to gather responses.

***Please send your responses and any additional comments to:***

<p>Kevin Lemasney Strategy Development Manager Economic Development Department States of Jersey 3<sup>rd</sup> Floor Liberation Place St Helier, Jersey JE1 1BB</p> <p>Telephone: 01534 448861 Facsimile: 01534 448171 e-mail: <a href="mailto:k.lemasney@gov.je">k.lemasney@gov.je</a></p>	<p>Heather Bestwick at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local firms or entities. Her contact details are:</p> <p>Heather Bestwick Jersey Finance Limited 48-50 Esplanade St Helier Jersey JE2 3QB</p> <p>Telephone: 01534 836004 Facsimile: 01534 836001 e-mail: <a href="mailto:Heather.Bestwick@jerseyfinance.je">Heather.Bestwick@jerseyfinance.je</a></p> <p>It is the policy of Jersey Finance to make individual responses it receives available to the Economic Development Department upon request, unless a respondent specifically requests otherwise.</p>
---	--

**Public submissions** - Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary etc). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.