

CONSULTATION PAPER ON CHANGES TO THE ENFORCEMENT FRAMEWORK FOR LATE PROVISION OF INFORMATION TO THE REGISTRY

About this consultation

This consultation paper has been issued by the Office of the Registrar. It relates to proposed changes to the enforcement framework around the provision of information which must be provided to the Guernsey Registry by all legal persons incorporated in Guernsey. Following consideration of the responses to this paper, the Registrar intends to submit proposals to the Committee for Economic Development so that it can consider implementing regulatory changes to the way in which late provision of information to the Registry is sanctioned. There are two main changes to the enforcement framework that are proposed. These are:

- an increase in the rates of administrative fees payable, in some cases, for late filing of information;
- the introduction of civil penalties for the late filing of the annual validation.

The Registrar welcomes views on each of these matters and on any other issues relevant to the proposals in this consultation.

How to submit comments to the consultation

If you have any comments you wish to submit to this consultation, please submit them to the following email address by 30th June 2020:

Email: enquiries@guernseyregistry.com

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Introduction

1. There is increasing concern globally about the potential abuse of legal persons to facilitate economic crime, money laundering, terrorist financing and financing of the weapons of mass destruction. Transparency of the legal persons that are created in a jurisdiction is therefore increasingly important in evaluations of compliance with international standards in this area. These standards include the Financial Action Task Force (FATF) Recommendations, anti-corruption conventions enacted by the OECD and the UN, and measures relating to tax evasion such as the OECD Global Forum on Exchange of Information for Tax Purposes Standards, covering the Exchange of Information on Request and, more recently, the Automatic Exchange of Financial Account Information (often referred to as the Common Reporting Standard, or CRS), and the EU/OECD Economic Substance Requirements. Guernsey is committed to complying with all of these standards, and to demonstrating that it does so.
2. The legal persons that may be incorporated under Guernsey legislation are companies, limited partnerships with legal personality, foundations and limited liability partnerships. As the holder of centralized details on all these types of legal person, the Guernsey Registry is the most important source of information on legal persons within the jurisdiction. It is essential that the details held by the Guernsey Registry should be accurate and updated on a timely basis. While this applies to all forms of legal person, for ease of reading this document outlines the legal requirements applicable to companies, which are by far the most commonly incorporated legal persons in Guernsey.
3. Legislation requires two types of information to be provided to the Registry after a company is established. The first is confirmation and details of changes to information already provided within a specified period after the change (e.g. a change of director). This type of information is described here for ease of reference as updating information. The second is an annual statement, known as an annual validation, specifying information pertinent to the company at a specified point in time. Both are subject to the payment of fees for filing the information, and also for fees for failure to provide the information in the required time period or at all. These fees, which are described here for ease of reference as standard fees and late filing fees respectively, are administrative in nature and automatically applicable at rates set out in regulations. There is room for improvement in the timeliness of provision of both updating information and information under the annual validation, and in some cases there has been a total failure to provide information.

4. It is imperative that information is provided by all legal persons promptly. This is because:
 - (a) the provision of information and the timing of provision is specified in legislation; it is therefore a statutory requirement [penalties];
 - (b) much of the information received by the Registry is made public and therefore the public, and private and third sector entities using the data, must be able to rely on the accuracy of it;
 - (c) authorities in Guernsey and in other jurisdictions using public and non-public data held by the Registry to meet their statutory responsibilities must be able to rely on the accuracy of it;
 - (d) while the onus is on companies and their administrators and resident agents to ensure the Registry's data is accurate, nevertheless the Registry has a responsibility to seek to ensure compliance by third parties with statutory time frames and the accuracy of its databases;
 - (e) the promptness of provision of information and the accuracy of data held by the Registry (and what the Registry is doing to address any shortfalls) will be considered in international evaluations or other independent reviews for which transparency of basic and beneficial ownership information is relevant.
5. To date the Registry has adopted various measures, including outreach to stakeholders, to emphasise the importance of timely provision of information. However, it is clear that additional steps should now be taken.
6. On a few occasions trust and corporate service providers (TCSPs) have indicated that annual validations will be provided after the statutory deadline as they are awaiting payment by their customers. For the avoidance of doubt, the Registry does not regard this as an appropriate reason for late submission of information. The system of AVs is long established, the statutory deadlines are clear, and if prior submission of payment by customers is important to particular TCSPs arrangements should be put in place to achieve this.
7. It is recognised internationally that, in order to ensure information held about legal persons is accurate and up to date, authorities must apply measures to dissuade late filing of this information by legal persons. Further, there is increasing international focus on a risk based approach to oversight and enforcement measures. These measures are required not only to be dissuasive, but also proportionate and effective. In the context of the Guernsey framework as outlined above, this means measures applicable to late filing of both the annual validation and of updating information.
8. As part of Guernsey's commitment to the global fight against economic crime, money laundering, terrorist financing and financing of the weapons of mass

destruction, it is therefore proposed to modify the financial sanctions that will be applied to Guernsey Registered legal persons, to increase their effectiveness and robustness. In the case of updating information, this will mean an increase in the value of the current late filing fees, which will continue to apply automatically. However, in the case of late filing of the annual validation, since this is a one off, fixed annual event of which all companies are aware and for which they should be prepared, it is proposed that civil penalties should be introduced. These will replace the late filing fee currently applicable to the annual validation. Care will be taken in ensuring that all fees and penalties are proportionate. Further details of the proposed amendments are set out below.

9. In the course of reviewing the annual validation process, it has been decided to amend the ways in which companies are categorised. This may mean that the rate of fees payable has changed for certain companies. The current rates for standard fees and late filing fees are set out in the fee schedule included as Appendix 1. The proposed new rates are set out in the revised schedule included as Appendix 2. As explained above, in the case of late filing of the annual validation these will be applied as civil penalties instead of late filing fees.
10. As part of Guernsey's risk based approach to tackling financial crime, the rates that apply to each category of company will depend upon that category's risk profile. For this purpose, legal persons will be categorised as follows:
 - Category 1: companies licensed, authorised or registered by the GFSC (excluding protected cell companies (PCCs), incorporated cell companies (ICCs) and incorporated cells (ICs));
 - Category 2: excluding PCCs, ICCs and ICs, secondary GFSC licensees under the Regulation of Fiduciaries Law; these are companies created by lead/primary licensees (i.e. parties in category 1), in order to provide services as part of their business offering such as corporate directorship or company secretarial services, or to support the activity of the lead licensee;
 - Category 3: PCCs, ICCs and ICs;
 - Category 4: charities/non-profit organisations (collectively, NPOs);
 - Category 5: companies not included in any of the previous categories where the resident agent holds a fiduciary licence from the GFSC or where a GFSC licensee is involved in the on-going administration or management of the company. In essence, these companies are what are currently described as financial product companies;
 - Category 6: other than GCRA-regulated companies (see category 7 below), companies not included in any of the previous categories. In essence, these companies are what are currently described as non-regulated companies or "non-reg";

- Category 7: GCRA-regulated companies, irrespective of whether or not they might otherwise fall under one of the previous categories.

Amendments to late filing fees for updating information

11. The fee for late filing will rise from £2 to £5 per day, and will be capped at £150 for legal persons in categories 4 and 6. For those in other categories, the fee will not be capped.

Introduction of civil penalties for late filing of the annual validation

12. As explained above, it is proposed that the current fees payable for late filing of the annual validation will be removed and replaced by civil penalties. For the sake of clarity, it is also proposed that the maximum penalty the Registrar will seek in such cases will be included in the regulations enforcing the framework.
13. There will be an initial penalty of £250 to be paid if the annual validation is late by up to one week, a subsequent penalty of £500 to be paid after one week, and a subsequent penalty of £1000 to be paid after one month. If the annual validation has not been filed after two months, the matter will be referred to the Royal Court.

Amendments to standard fees for the filing of the annual validation

14. For categories 1 and 7, the fee will be £1000. For categories 2 and 5, the fee will be £500. For category 3, the fee will be £750 with a further fee for each individual cell. For category 4, the fee will be £100, and for category 6, it will be £250.
15. A wider review of fees payable to the registry was originally planned for 2020. However, this has been postponed owing to the current Covid-19 pandemic, and will now take place at a later time.

Other forms of legal person

16. Limited partnerships with legal personality, foundations and limited liability partnerships are subject to requirements to provide information that broadly correspond to those outlined above in relation to companies. It is proposed that changes will be made to the requirements applicable to these other forms of legal person in line with those proposed for companies, modified as necessary to reflect the different features of these legal persons and the legislation applicable to them.

APPENDIX 1

COMPANY FEE SCHEDULE

(1) SERVICE IN RESPECT OF WHICH FEE PAYABLE	(2) FEE	(3) NOTES
Annual Validation		<p><i>These notes are only for the purposes of general guidance and are without prejudice to any provision of, or liability arising under, the Law or these regulations</i></p>
<p>(1) Non-Regulation Companies, that is to say, companies the resident agent of which is, in accordance with section 484(1)(a) of the Law, an individual, resident in Guernsey, who is a director of the company and who is not –</p> <ul style="list-style-type: none"> (a) the holder of a personal fiduciary licence (except where he is acting as director in the circumstances specified in section 3(1)(d) of the Fiduciaries Law), (b) acting as director of the company in the course of his duties as a director, manager, partner of (as the case may be) employee of a Commission Regulated Management Company (entry 4a of this Schedule), or a company which falls within subparagraphs (b), (c) or (d) of entry (2), or (c) acting as director of the company in contravention of the Fiduciaries Law 	£250	<p>Includes:</p> <p>Local trading companies (excluding finance/fiduciary institutions). i.e. those engaged in commerce and industry on the Island</p>
(2) Financial Product Companies, that is to say,	£500	

<p>(a) companies the resident agent of which is –</p> <p>(i) in accordance with section 484(1)(a) of the Law, an individual, resident in Guernsey, who is a director of the company and who is either the holder of a personal fiduciary licence (except where he is acting as director in the circumstances specified in section 3(1)(d) of the Fiduciaries Law) or is acting as director of the company in the course of his duties as a director, manager, partner or (as the case may be) employee of a Commission Regulated Management Company entry 4a of this Schedule), or a company which falls within subparagraphs (b), (c) or (d) of entry (2),</p> <p>(ii) in accordance with section 484(1)(b) of the Law, a corporate service provider (that is, the holder of a full fiduciary licence), or</p>		
<p>(iii) acting as director of the company in contravention of the Fiduciaries Law,</p> <p>(b) Licenced insurers under the Insurance Business (Bailiwick of Guernsey) Law, 2002,</p> <p>(c) Open-ended or closed ended investment schemes, which are authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law 1987,</p>		

<p>(d) Joint Licensee Companies, that is to say, companies which have submitted a joint application to the Commission for a full fiduciary licence within the meaning of the Financial Services Commission (Fees) Regulations, 2013 within which application they are not nominated as the lead applicant.</p> <p>However, save as provide in subparagraphs (b), (c) and (d) of this entry (2) a company which is a "licensee" within the meaning of section 11B(3) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1997 (a person who holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws) is not a Financial Product Company for the purposes of these regulations.</p>		
<p>(3) Incorporated Cell and Protected Cell Companies</p>	<p>£750 In addition: £100 per incorporated cell; £10 per protected cell.</p>	
<p>(4a) Commission Regulated Management Companies, that is to say, a company which is a "licensee" within the meaning of section 11B(3) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (a person who holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws) save for –</p> <p>(i) companies included in entry 2 "Financial Product Companies" above, and</p>	<p>£1000</p>	<p>Applies, save as provided in entry (4a) "Commission Regulation Management Companies", to all GFSC licensed entities holding licences under:</p> <p>The Banking Supervision (Bailiwick of Guernsey) Law 1994;</p>

<p>(ii) companies registered under the registration of Non Regulated Financial Services Businesses Law, 2008.</p>		<p>The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2002;</p> <p>The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;</p> <p>The Protection of Investors (Bailiwick of Guernsey) Law, 1987.</p>
<p>(4b) Guernsey Competition Regulatory Authority (GCRA) Licensed Companies, that is to say companies which are licensees of the GCRA under –</p> <p>(a) The Electricity (Guernsey) Law, 2001,</p> <p>(b) The Post Office (Bailiwick of Guernsey) Law, 2001, or</p> <p>(c) The Telecommunications (Bailiwick of Guernsey) Law, 2001.</p>	<p>£1000</p>	<p>Applies to:</p> <p>Licensed telecoms companies;</p> <p>Guernsey Post;</p> <p>Guernsey Electricity</p>
<p>(5) Non Profit Organisations, that is to say a company registered on the register of non profit organisations under The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 and which is not a Guernsey Registered Charity under th Law, to which no annual validation fee applies.</p>	<p>£100</p>	<p>No free applies to Guernsey registered charities.</p>
<p>(6) Other Corporate Bodies, that is to say, a company which is not included in any other entry in this part of this Schedule ("Annual Validation")</p>	<p>£500</p>	<p>Includes:</p> <p>Resident Agent Exempt companies</p>

Late filing fee – annual validation (including validation for each ICC cell)	£100 per calendar month or part thereof	The fee is per company or cell, and will be applied on the 1 st February and thereafter every calendar year
Incorporation		
Standard Company Incorporation	£100	Company incorporated within 24 hours.
Rapid Company Incorporation	£350	Company incorporated within 2 hours.
Special Company Incorporation	£750	Company incorporated within 15 minutes (certain restrictions apply).
Incorporated Cell Registration	£100	Incorporated within 24 hours.
Company name Reservation	£25	Per company name.
Changes to Company Particulars		
Change of Name	£25	
Registration of an alternative name in a non-Roman script	£25	
Application for restoration to the Register of Companies	£1500	This fee is in addition to all outstanding annual validation fees, etc, which would have been payable to the company if it had not be dissolved, except for the late filing fee – annual validation, which is excluded.
Application to Registrar for amalgamation	£1000	
Application for the issue of a certificate of conversation, transfer or subsumption.	£100	
Migration In (Application for registration of overseas company as a Guernsey company)	£100	Companies supervised by the GFSC must

		have prior GFSC consent.
Migration Out (Application to transfer registration to another jurisdiction)	£1500	
Company Document filing		
Change of Registered Office Address	£10 (electronic filing) £20 (document filed by post or hand delivered)	
Change of Directors	£10 (electronic filing) £20 (document filed by post or hand delivered)	
Special, Waiver and Unanimous Resolutions	£10 (electronic filing) £20 (document filed by post or hand delivered)	Per resolution, not per document.
Change of Memorandum of Incorporation	£50	
Change of Articles of Incorporation	£50	
Other document filing	£10 (electronic filing) £20 (document filed by post or hand delivered)	Per document.
Late document filing fee	£2 per day, capped at £50 for Non-Regulated Companies, Guernsey Registered Charities and not for profit Organisations, and capped at £100 for all other companies.	Charged each calendar day after filing deadline date.

Copies of Company Documents		
Document filings (including memorandum or articles of incorporation)	£2 (electronic version) £12 (certified version)	Per document.
Request for a copy of the entire Company File	Fee advised on application, capped at £100	Applicable relevant fee dependent upon the number, and type, of documents within the file.
Requests for Statements of the Register and copy Certificates		
Statements of the Register	£10 (electronic version) £25 (certified version)	
Certificate of Good Standing	£10 (electronic version) £25 (certified version)	
Copy Certificates	£10 (electronic version) £25 (certified version)	
Miscellaneous Charges		
Exceptional charges	£300 per hour per member of staff	This fee applies where a request, in the reasonable opinion of the Registrar, will result in excessive work volumes and/or is a burden upon registry resources. The application of the exceptional charges will be advised in advance of any work being undertaken by the Registry.

APPENDIX 2

COMPANY FEE SCHEDULE (REVISED)

(1) SERVICE IN RESPECT OF WHICH FEE/PENALTY PAYABLE	(2) FEE/PENALTY	(3) NOTES <i>These notes are only for the purposes of general guidance and are without prejudice to any provision of, or liability arising under, the Law or these regulations</i>
Annual Validation		
Category 1: companies licensed, authorised or registered by the GFSC (excluding protected cell companies (PCCs), incorporated cell companies (ICCs) and incorporated cells (ICs));	£1000	
Category 2: excluding PCCs, ICCS and ICs, secondary GFSC licensees under the Regulation of Fiduciaries Law; these are companies created by lead/primary licensees (i.e. parties in category 1), in order to provide services as part of their business offering such as corporate directorship or company secretarial services, or to support the activity of the lead licensee;	£500	
Category 3: PCCs, ICCs and ICs;	£750 In addition: £100 per incorporated cell; £50 per protected cell.	
Category 4: charities/non-profit organisations (collectively, NPOs);	£100	No fee applies to Guernsey registered charities.
Category 5: companies not included in any of the previous categories where the resident agent holds a fiduciary licence from the GFSC or where a GFSC licensee is involved in the on-going administration	£500	

or management of the company. In essence, these companies are what are currently described as financial product companies;		
Category 6: other than GCRA-regulated companies (see category 7 below), companies not included in any of the previous categories. In essence, these companies are what are currently described as non-regulated companies or “non-regs”;	£250	
Category 7: GCRA-regulated companies, irrespective of whether or not they might otherwise fall under one of the previous categories.	£1000	Applies to: Licensed telecoms companies; Guernsey Post; Guernsey Electricity
Civil penalties for late filing of annual validation (including validation for each ICC cell)	£250 after one week; £500 after one month; £1000 after two months and notification to the Royal Court	The penalty is per company or cell, and will be applied on the 1 st March and thereafter
Incorporation		
Standard Company Incorporation	£100	Company incorporated within 24 hours.
Rapid Company Incorporation	£350	Company incorporated within 2 hours.
Special Company Incorporation	£750	Company incorporated within 15 minutes (certain restrictions apply).
Incorporated Cell Registration	£100	Incorporated within 24 hours.
Company name Reservation	£25	Per company name.
Changes to Company Particulars		
Change of Name	£25	

Registration of an alternative name in a non-Roman script	£25	
Application for restoration to the Register of Companies	£1500	This fee is in addition to all outstanding annual validation fees, etc, which would have been payable to the company if it had not be dissolved, except for civil penalties for the late filing of the annual validation, which is excluded.
Application to Registrar for amalgamation	£1000	
Application for the issue of a certificate of conversation, transfer or subsumption.	£100	
Migration In (Application for registration of overseas company as a Guernsey company)	£100	Companies supervised by the GFSC must have prior GFSC consent.
Migration Out (Application to transfer registration to another jurisdiction)	£1500	
Company Document filing		
Change of Registered Office Address	£10 (electronic filing) £20 (document filed by post or hand delivered)	
Change of Directors	£10 (electronic filing) £20 (document filed by post or hand delivered)	
Special, Waiver and Unanimous Resolutions	£10 (electronic filing) £20 (document filed by post or hand delivered)	Per resolution, not per document.
Change of Memorandum of Incorporation	£50	

Change of Articles of Incorporation	£50	
Other document filing	£10 (electronic filing) £20 (document filed by post or hand delivered)	Per document.
Fees for late document filing	£5 per day, capped at £125 for Non- Regulated Companies, Guernsey Registered Charities and not for profit Organisations, and capped at £250 for all other companies.	Charged each calendar day after filing deadline date.
Copies of Company Documents		
Document filings (including memorandum or articles of incorporation)	£2 (electronic version) £12 (certified version)	Per document.
Request for a copy of the entire Company File	Fee advised on application, capped at £100	Applicable relevant fee dependent upon the number, and type, of documents within the file.
Requests for Statements of the Register and copy Certificates		
Statements of the Register	£10 (electronic version) £25 (certified version)	
Certificate of Good Standing	£10 (electronic version) £25 (certified version)	
Copy Certificates	£10	

	(electronic version) £25 (certified version)	
Miscellaneous Charges		
Exceptional charges	£300 per hour per member of staff	This fee applies where a request, in the reasonable opinion of the Registrar, will result in excessive work volumes and/or is a burden upon registry resources. The application of the exceptional charges will be advised in advance of any work being undertaken by the Registry.