



**Jersey Financial
Services Commission**

Consultation Paper

No. 9 2016

Financial Services (Jersey) Law 1998: Trust Company Business Fees

A consultation on proposals to increase fees.

Issued: 26 September 2016

Consultation Paper

The Jersey Financial Services Commission (JFSC) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 28 October 2016.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 28 October 2016. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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It is the policy of the JFSC to make the content of all responses available for public inspection unless specifically requested otherwise.

It is the policy of Jersey Finance Limited (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.) This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

AIFMD	Alternative Investment Fund Managers Directive
JFSC / Commission	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
ESMA	European Securities and Markets Authority
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Council of Europe)
TCB	Trust Company Business

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1 Consultation

1.1 Basis for consultation

- 1.1.1 The JFSC is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (Commission Law), under which the JFSC “*may, in connection with the carrying out of its functions... consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.
- 1.1.2 In addition, Article 15(3) of the Commission Law, requires that before the JFSC may introduce and publish any fee “*...the Commission must first publish a report that must include:*
- (a) details of the duty or power for or in respect of which the fee is to be determined;*
 - (b) details of the proposed fee;*
 - (ba) details of the extent (if any) to which any penalties received have reduced the level of fee that would otherwise have been proposed;*
 - (c) a request for comments on the level of the proposed fee; and*
 - (d) a date, that is at least 28 days after the publication of the report, before which those comments may be made to the JFSC”.*
- 1.1.3 The JFSC considers that this consultation paper constitutes such a report as required by the JFSC Law.

1.2 Who will be affected by the proposed changes?

- 1.2.1 These amendments will affect all persons registered under the Financial Services (Jersey) Law 1998 to conduct trust company business (TCB), and persons that are issued with a registration certificate on or after 1 January 2017.

1.3 Responding to the consultation

- 1.3.1 The JFSC invites comments, in writing, from interested parties on the content of this consultation paper and its likely impact on registered TCBS.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 28 October 2016.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice. If agreed, the fees will be payable by 31 January 2017, and a late payment penalty will be due if the annual registration fees are not paid with a value date by 28 February 2017. Please note that the annual fees are charged based on employee numbers at 1 January 2017 so registered persons should retain this information.

2 The JFSC

2.1 Overview

- 2.1.1 The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.
- 2.1.2 Article 15(2) of the Commission Law provides that fees set by the JFSC are to be retained and must, together with any other income:
 - 2.1.2.1 raise sufficient income to meet the JFSC's liabilities;
 - 2.1.2.2 cover the JFSC's expenses; and
 - 2.1.2.3 provide a reserve for the JFSC of such amount as it considers necessary.

2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
 - 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 2.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 2.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 2.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - 2.2.1.4.1 as are required or authorised by or under any enactment, or
 - 2.2.1.4.2 as the States may, by Regulations, transfer; and
 - 2.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 Article 7 of the Commission Law provides that in exercising its functions the JFSC may take into account any appropriate matter, but that it shall have particular regard to:
 - 2.3.1.1 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;
 - 2.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

2.3.1.3 the best economic interests of Jersey; and

2.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

3 Proposals

3.1 Proposed fee increase

- 3.1.1 The JFSC proposes to increase fee rates and the fee cap for TCBs by 4% for 2017.
- 3.1.2 No penalties have been received which would reduce these fees.
- 3.1.3 The proposed fees notice reflecting the proposals can be found in Appendix B.
- 3.1.4 As in 2016, fees will be administered via TCBs' myJFSC portal accounts. Firms will receive an email prompt to either notify them that an invoice is awaiting payment, or that they need to submit employee number data so that an invoice can be generated. The JFSC's bank details for payments are provided within the portal – cheques will not be accepted.

3.2 Background

- 3.2.1 This consultation sets out the fees the JFSC proposes to charge TCBs for the 2017 fee period and also gives an indication of likely fee increases for the sector for subsequent years. The JFSC set out its general approach to its regulatory fees as a whole for the near future in consultation paper 2, published in April this year (available at <http://www.jerseyfsc.org/pdf/Consultation-Paper-No-2-2016-FSB-CIF-COBO-Fees.pdf>).
- 3.2.2 To assist readers, the following paragraphs reproduce, unchanged, sections 3.3.2 to 3.6.4 of consultation paper 2. Footnotes are used to indicate any updates; the summary income and expenditure table has not been updated. Section 3.6 then sets out what this means for TCB fee rates.
- 3.2.3 Last year we issued a paper which consulted on possible changes to the way the Commission charges and collect fees, but not their quantum. This was [Consultation Paper No. 10 2015: Funding Review](http://www.jerseyfsc.org/pdf/Consultation-Paper-No-10-2015-Funding-Review.pdf) (available at <http://www.jerseyfsc.org/pdf/Consultation-Paper-No-10-2015-Funding-Review.pdf>). Subject to consideration of the feedback we received on that consultation¹, it is intended that any changes to the way in which we charge fees will commence from 1 January 2018. If any of those changes have a knock-on effect on the amount of money we need to collect from the fund² sector, then the indicative figures given in this paper for future fee periods will be adjusted accordingly (and we will continue to consult as usual on any actual future changes in fees).
- 3.2.4 The Commission's recent financial performance can be summarised as follows:
 - 3.2.4.1 in 2014, the Commission's income and expenditure were in balance, but absent an exceptional Enforcement cost recovery there would have been a deficit of £958,000 (after restatement due to FRS102);

¹ We have now published our feedback (available at <http://www.jerseyfsc.org/pdf/Feedback-Paper-to-CP-No-10-2015-Funding-Review.pdf>).

² As stated, we have reproduced the text from consultation paper 2 unchanged. Please read "TCB" for "fund".

- 3.2.4.2 in 2015, the Commission made a loss of around £639,000³;
- 3.2.4.3 while the impact of enforcement and litigation costs make forecasting uncertain, our Business Plan for 2016 predicts a loss of £379,000 for the year.
- 3.2.5 Because the Commission holds reserves, these losses have been able to be accommodated, but that position is not sustainable - and indeed as well as bringing the Commission's annual finances back into balance, the reserves need to be rebuilt to appropriate levels over a reasonable period of time. The Commission has previously signalled its intention to increase fees, including for example at our 2016 Business Plan presentation.

3.3 JFSC financial position

- 3.3.1 The table below shows a summary of the Commission's actual and forecast income and expenditure for the period from 2014 to 2019⁴. Of course, any such projections include a degree of uncertainty and the actual experience could be materially different.
- 3.3.2 The Commission's current policy on reserves is to hold an amount equal to six months of expenses plus the annual average of the last five years' investigation and litigation costs. Based on the forecast above, this would require a reserve level of some £8.4m by 2019.
- 3.3.3 As can be seen, the forecast shows that, if fees from regulated entities increase to some £13m by 2019, reserves will still be lower than the amount required by the reserves policy. As the forecast is for annual surpluses by that time, however, the Commission believes that it can extend the period by which it gets to its target reserves figure.
- 3.3.4 The costs incurred by the Commission are a combination of recurring and non-recurring. They include:
- 3.3.4.1 investment in a "change programme", covering technology and people, to create efficiencies for businesses in interacting with the Commission, and to allow the Commission to better demonstrate its effectiveness in international assessments, to facilitate and maintain market access for Jersey businesses;
 - 3.3.4.2 increased depreciation costs from the capital investment linked to the change programme;
 - 3.3.4.3 the need to recruit, maintain and train effective regulatory staff in a competitive market environment; and
 - 3.3.4.4 the increasing demands placed on the Commission in terms of reacting to regulatory policy developments internationally (including the EU).

³ This text was written before our annual financial statements were approved by the Commission Board. The final deficit for 2015 was £644,000.

⁴ As stated, we have reproduced the text from consultation paper 2 unchanged. The table has not been updated.

3.4 Summary of the JFSC's actual and forecast income and expenditure for the period from 2014 to 2019

	Restated	Actual	Budget	Forecast	Forecast	Forecast
	2014	2015	2016	2017	2018	2019
	£'000	£'000	£'000	£'000	£'000	£'000
Regulatory income						
Regulatory fee income	10,717	11,281	11,353	11,942	12,500	13,000
Registry fee income	3,039	3,362	3,327	3,660	3,750	3,850
Total regulatory income	13,756	14,643	14,680	15,602	16,250	16,850
Other income	83	87	80	76	90	110
Total income	13,839	14,730	14,760	15,678	16,340	16,960
Expenses						
Staff costs	(10,445)	(11,003)	(10,608)	(11,138)	(11,500)	(11,800)
Computer systems	(832)	(873)	(1,070)	(990)	(1,000)	(1,000)
Depreciation of tangible fixed assets	(487)	(437)	(459)	(519)	(580)	(640)
Premises costs	(798)	(741)	(736)	(757)	(770)	(780)
Other operating expenses	(1,380)	(1,764)	(1,666)	(1,402)	(1,350)	(1,300)
Total expenses	(13,942)	(14,818)	(14,539)	(14,806)	(15,200)	(15,520)
Investigation & Litigation (Net of recoveries)	145	(551)	(600)	(650)	(650)	(650)
(Deficit)/surplus for the year	42	(639)	(379)	222	490	790
Reserves	7,119	6,480	6,101	6,323	6,813	7,603

2019 target: £8.4m

3.5 Regulatory fees

- 3.5.1 Total regulatory fees charged by the Commission have increased only modestly in recent times. The Commission's total regulatory fee income has increased by a compound rate of less than 2.5% per annum since 2012, a period that has seen some of the most intensive regulatory effort across the world in the post-crisis period. The

fee income has also been volatile – regulatory fee income actually fell between 2013 and 2014, for example.

- 3.5.2 The Commission also receives income from its operation of the Companies Registry. The Registry will shortly be consulting on⁵ changing some of the fees it charges. The table above does not include the effect of those changes - the increasing demands on technological developments to keep the Registry operating at the forefront of international jurisdictions, as well as the development of improved/additional registers for the benefit of the Island, will likely absorb any income increases achieved, limiting the ability to apply any such extra income for the benefit of the regulated community.
- 3.5.3 Having considered all the circumstances, the Commission believes it is appropriate to undertake a rebalancing exercise to increase the level of its regulatory fees to a sustainable base. After that point, it would be the Commission's intention to restrict further increases to that needed to meet the inflationary costs suffered by the Commission (including salaries) together with the maintenance of reserves at an appropriate level (assuming the Commission's duties are not expanded and there are no unanticipated external events which necessitate changes in resourcing).
- 3.5.4 The Commission considers that targeting a regulated fee income base of some £13m by 2019 would allow its reserves to be rebuilt over a reasonable period of time. This would be an increase of £1.7m (or some 15%) over the comparable 2015 figure. By comparison, the Guernsey Financial Services Commission's regulatory fee income in 2014 was £12.8m.

3.6 Fees for the trust company business sector

- 3.6.1 With regard to TCBs, it is notable that the JFSC imposed no fee increases on the sector for a number of years, followed by an increase of 1.7% for 2015 and 2.0% in 2016. The Commission's fee income from TCBs has fallen from £2.53m in 2011 to £2.40m in 2015.
- 3.6.2 Based on the existing share of regulatory fees paid by the TCB sector, a 15% increase would mean the JFSC looking to increase the TCB sector's contribution to Commission costs from £2.40m in 2015 to £2.76m by 2019 (an increase of £360,000). Other sectors have and will be asked for fee increases that will achieve the same proportionate result.
- 3.6.3 Although not yet finally confirmed, the JFSC is expecting to receive some £2.46m fee income from TCBs in 2016 – that is, the fee rates set for 2016 have led to £60,000 more income being collected from TCBs in 2016 than 2015. That leaves £300,000 of the planned increase to be collected, which the Commission proposes to spread equally over the next three fee periods. That is, we would be aiming to raise the following amounts from the sector: in 2017, £2.56m; in 2018, £2.66m and in 2019, £2.76m.
- 3.6.4 So in order to raise an amount of £2.56m in 2017, we are proposing an increase of 4% in all fee rates and the fee cap over their 2016 levels. The JFSC believes these increases are essential to address the drivers set out in paragraph 3.3.4 above, including

⁵ This consultation has now taken place (available at http://www.jerseyfsc.org/pdf/2016_05_20_Registry_Fees_Consultation_Paper.pdf).

investment in cyber-security and continuing the ability to obtain highly positive international assessment outcomes, such as the recent MONEYVAL report on the jurisdiction and ESMA's view that AIFMD passporting should be extended to Jersey⁶.

- 3.6.5 These proposals do not make any attempt to take into account changes in the number of registered TCBs or employees, whereas in recent years there has been a degree of consolidation in licence numbers. If that trend continues we will be likely to raise less than the additional amount required in 2017; this will be factored into future consultations to confirm the 2018 and 2019 fee rates.

3.7 Question

- 3.7.1 Do you agree with the proposed fee tariff increase of 4%?

⁶ Please see our press releases (available at http://www.jerseyfsc.org/pdf/2016_05_24_MONEYVAL_JFSC_Government_of_Jersey_Press_Release.pdf and http://www.jerseyfsc.org/pdf/2016-07-19_ESMA_AIFMD_Passport_July_2016.pdf).

Appendix A - List of representative bodies who have been sent this consultation paper

- › Jersey Association of Trust Companies
- › Jersey Finance Limited
- › Institute of Directors (Jersey branch)
- › Jersey Chamber of Commerce and Industry
- › Jersey Compliance Officers Association
- › Society of Trust and Estate Practitioners (Jersey branch)

Appendix B - Draft Trust Company Business Fees Notice

NOTICE OF FEES

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

Payable by or in relation to: **TRUST COMPANY BUSINESS**

Pursuant to: **Articles 8(3) and 9(6) of the Financial Services (Jersey) Law 1998, as amended; and
Article 15(6) of the Financial Services Commission (Jersey) Law 1998, as amended**

Commencement date

The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December ~~2016~~ 2017.

1 Interpretation

1.1 In this notice, unless the context otherwise requires -

affiliation	in respect of a registered person or an applicant for registration, means a group of persons carrying on or intending to carry on trust company business the members of which have agreed that one member will be the affiliation leader;
affiliation leader	in respect of an affiliation, means the member of the affiliation which has agreed to be the prime source of contact between the JFSC and the members of the affiliation with respect to compliance with the Commission's prudential rules and conduct of business regulation;
JFSC / Commission	means the Jersey Financial Services Commission;
Law	means the Financial Services (Jersey) Law 1998 as amended;
non-affiliated person	in respect of an applicant for registration or a registered person, means a person who is neither an affiliation leader nor a participating member;

trust company business employee in respect of a registered person, means –

- (a) a person employed, either under a contract of service or a contract for services, by the registered person to assist in the provision of trust company business (other than solely to provide book-keeping, filing, secretarial, information technology support or any similar general support service); and
- (b) if, on the relevant date there exists an agreement for the provision to the registered person of the services of such persons by another person not trading in Jersey, shall be taken to include the number of such persons as the registered person estimates would be required to be employed full time to undertake the work undertaken by the persons whose services are to be provided;

participating member in respect of an affiliation, means a member of the affiliation who is not its affiliation leader;

relevant date in respect of a year of registration of a registered person, means the 1st January in that year except in the year the person applied to be registered when it means the date of the application for registration.

- 1.2 In calculating for registration fee purposes the number of trust company business employees of a managed trust company, those trust company business employees that form part of the calculation in respect of the manager's own registration shall not be taken into account.
- 1.3 In calculating for registration fee purposes the number of trust company business employees of a registered person on the relevant date any trust company business employee employed for 25 hours or less during the week in which the relevant date occurs shall be taken into account on a 50% headcount basis (with the total number of trust company business employees being rounded up to the next full number where necessary).

2 Application fee

- 2.1 The fee to accompany an application for registration to carry on trust company business shall be the amount calculated in accordance with the table set out in the Schedule.

3 Registration fees

- 3.1 Except as provided by paragraph 3.4, a person registered to carry on trust company business shall pay a registration fee of an amount calculated in accordance with the table set out in the Schedule.
- 3.2 The registration fee is payable –
 - 3.2.1 on registration; and
 - 3.2.2 in respect of ~~2016 2017~~, 31 ~~March 2016~~ January 2017.
- 3.3 If a person is registered after 1st July but before the following 1st January the registration fee payable on registration shall be half the fee otherwise payable.
- 3.4 The JFSC may remit a registration fee in whole or in part if –
 - 3.4.1 the person liable to pay the fee is a member of an affiliation; and

3.4.2 in the opinion of the JFSC the total of the registration fees payable by the members of the affiliation is unreasonably high having regard to the trust company business carried on by those members.

4 Late payment of registration fees

4.1 If a registered person fails to pay, with value, the whole or any part of a fee on or before the date it becomes due the person shall be liable to pay, unless otherwise agreed by the JFSC, an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid. ~~With respect to the fee payable under 3.2.2 this means value date 29 April 2016.~~

5 Refund of registration fee

5.1 If a person's registration to carry on trust company business is revoked on or before 1st July in any year the JFSC shall refund to the person half of the registration fee paid by the person in respect of that year.

6 Late filing fees

6.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Law or under any provisions of any Order issued in accordance with the Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the Commission prior written notice of the reasons for the late filing or delivery of a document and the JFSC has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

7 Fee cap

7.1 The registration fee is subject to a fee cap of the greater of either ~~£60,000~~ £62,400 or three quarters of the fee that would be payable absent any fee cap being in place.

SCHEDULE

FEES

Classes of trust company business of registered person	Application fee	Registration fee
<p>Any class or combination of classes (not including class O or natural persons carrying on a single class of trust company business – see below)</p>	<p>£1,250 £1,300 for an application to register a non-affiliated person</p> <p>£1,250 £1,300 for an application to register an affiliation leader</p> <p>£160 £166 for an application to register a participating member</p>	<p>In the case of a non-affiliated person –</p> <p>£1,764 £1,835; plus</p> <p>£622 £647 multiplied by the number of classes of trust company business undertaken by the non-affiliated person; plus</p> <p>a sum calculated –</p> <p>(a) on the basis of a count of the trust company business employees employed on the relevant date in the trust company business of the non-affiliated person (up to a maximum of 200 employees); and</p> <p>(b) at the rate of –</p> <p>£423 £440 for each of the first 10 employees in that count</p> <p>£209 £217 for each of the next 10 employees in that count</p> <p>£183 £190 for each of the next 30 employees in that count</p> <p>£137 £143 for each of the next 50 employees in that count</p> <p>£91 £95 for each of the last 100 employees in that count.</p> <p>In the case of an affiliation –</p> <p>£1,764 £1,835 for the affiliation leader; plus</p> <p>in respect of each member of the affiliation (that is, the affiliation leader and every participating member) – the sum of £622 £647 multiplied by the number of classes of trust company business undertaken by the member; plus</p> <p>a sum calculated –</p> <p>(a) on the basis of a count of the trust company business employees employed on the relevant date in the trust company business of the affiliation (up to a maximum of 200 employees); and</p>

Classes of trust company business of registered person	Application fee	Registration fee
		(b) at the rate of – £423 <u>£440</u> for each of the first 10 employees in that count £209 <u>£217</u> for each of the next 10 employees in that count £183 <u>£190</u> for each of the next 30 employees in that count £137 <u>£143</u> for each of the next 50 employees in that count £91 <u>£95</u> for each of the last 100 employees in that count.
Class O	£625 <u>£650</u> for an application to register a non-affiliated person £625 <u>£650</u> for an application to register an affiliation leader £125 <u>£130</u> for an application to register a participating member	In the case of a non-affiliated person - £1,422 <u>£1,479</u> . In the case of an affiliation – £1,422 <u>£1,479</u> for the leader of the affiliation, plus £489 <u>£509</u> for each participating member.
Natural persons carrying on a single class of trust company business	£550 <u>£572</u>	£622 <u>£647</u>