



**Jersey Financial
Services Commission**

› **Consultation Paper**

› No. 11 2015

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

A consultation on proposals to increase annual registration fees and alter the current fee cap.

› Consultation Paper

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

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 29 January 2016.

Responses should be sent to:

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 JE2 3QB

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Alternatively, responses may be sent directly to Anita Matthews at the *Commission* by 29 January 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 *Commission*.

The *Commission* contact is:

Anita Matthews

Head of Unit, Supervision
 Jersey Financial Services Commission
 PO Box 267
 14-18 Castle Street
 St Helier
 Jersey
 JE4 8TP

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 Email: a.matthews@jerseyfsc.org

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

› Glossary of Terms

the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
TCB	means trust company business

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1 Consultation

1.1 Basis for consultation

- 1.1.1 The *Commission* is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (the “**Commission Law**”), under which the *Commission* “*may, in connection with the carrying out of its functions... consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.
- 1.1.2 In addition, Article 15(3) of the *Commission Law*, requires that before the *Commission* may introduce and publish any fee “*...the Commission must first publish a report that must include* -
- (a) *details of the duty or power for or in respect of which the fee is to be determined;*
 - (b) *details of the proposed fee;*
 - (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 Commission*”.
- 1.1.3 The *Commission* considers that this consultation paper constitutes such a report as required by the *Commission Law*.

1.2 Who will be affected by the proposed changes?

- 1.2.1 These provisions 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 after 1 January 2016.

1.3 Responding to the consultation

- 1.3.1 The *Commission* 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 *Commission* no later than 29 January 2016.

1.4 Next steps

- 1.4.1 Following this consultation, the *Commission* will publish feedback and the final Fees Notice. If agreed, the fees will be payable by 31 March 2016, and a late payment penalty will be due if the annual registration fees are not paid with a value date on or before 29 April 2016. Please note that the fees are charged based on employee numbers at 1 January 2016 so registered persons should retain this information.

2 The Commission

2.1 Overview

- 2.1.1 The *Commission* is a statutory body corporate established under the *Commission Law*. It is responsible for the supervision and development of financial services provided in or from within Jersey.

2.2 The Commission's functions

- 2.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:
- 2.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 2.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 2.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 2.2.1.4 such functions in relation to financial services or such incidental or ancillary matters –
 - 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 *Commission* by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 The *Commission's* guiding principles require it to have particular regard to:
- 2.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence 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 *Commission* proposes an increase in regulatory fees for TCBs for the year 2016 of 2.0%.
- 3.1.2 The *Commission* also proposes to change the way the current ‘fee cap’ is calculated, so that the cap would apply at the higher of:
- 3.1.2.1 £60,000 and three-quarters of the unadjusted fee: rather than
 - 3.1.2.2 £50,000 and two-thirds of the unadjusted fee.
- 3.1.3 The proposed *TCB* fees notice can be found in Appendix B.

3.2 Operational changes

- 3.2.1 The *Commission* is currently undergoing a “change programme” with an aim of improving our regulatory effectiveness and efficiency. More information about this can be found in our recent publication: [A Changing Commission: How it affects you - Issue 1](#)
- 3.2.2 As part of its change programme, the *Commission* will be creating a new web portal¹ for both the submission of data and to collect fees; and will not be accepting cheques – registered persons will have to pay their fees using the following bank details.

Bank:	HSBC PO Box 14, St Helier, Jersey
Account Name:	Jersey Financial Services Commission
Account Number:	01483455
Sort Code:	40-25-34
IBAN:	GB35MIDL40253401483455
BIC:	MIDLGB22
Payment reference:	TCB reference number

3.3 Background

- 3.3.1 Registration fees under the *TCB* Fees Notice are due to be reviewed for the year 2016.
- 3.3.2 The policy of the *Commission* is that the fee income from each regulated sector should broadly meet the costs of regulating and supervising that sector (i.e. minimal cross-subsidisation) and make a proportionate contribution to the general support costs of the *Commission*.

¹ More details regarding the new portal will be provided within the next month.

- 3.3.3 In the years leading up to 2015, the *Commission* placed a moratorium on fee increases for the *TCB* sector. For 2015, fee rates were increased by 1.7%, which did not “catch up” the full effect of RPI changes since *TCB* fees were last amended prior to 2015 or reflect that costs do not necessarily only increase by the general inflation rate.
- 3.3.4 In the meantime, the *TCB* sector has experienced a considerable degree of consolidation of registered persons. Currently part of the element of the *Commission’s* fees relates to the number of licences held, so consolidation tends to reduce the *Commission’s* fee income without necessarily reducing the requirement for supervisory resource given the lack of a direct link between the total ‘amount’ of business being conducted and the number of licences.
- 3.3.5 In October 2015, the *Commission* issued a consultation about the way it levies and collects fees, which can be found here: [Consultation Paper No. 10 2015: Funding Review](#). The proposals in this paper would change the way fees for *TCBs* would be calculated and levied in future.
- 3.3.6 The proposals include replacing fees based on licences and employees with a system based on turnover from regulated activities, which has the benefit of being a direct link to a registered person’s economic size while also isolating the *Commission’s* fee base from structural changes in the industry. It also proposes removing fee caps, while taking account of the fact that, for the largest registered persons, there is not necessarily a 1:1 equivalence between the increasing size of a registered person and the appropriate regulatory fee. Provided that there are no significant objections to the proposals in that general consultation, they would take effect for *TCB* (and other sectors’) fees in 2017.

3.4 Basis for the proposed fees

- 3.4.1 In accordance with Article 15(3)(ba) of the *Commission Law*, the *Commission* confirms that no penalties have been received.
- 3.4.2 The table below sets out the *Commission’s* actual 2014 and expected 2015 expenditure for the *TCB* sector.

(£ '000s)	2014	2015 (forecast)
Income	2,393	2,396
Direct costs	(1,000)	(1,134)
Indirect costs	(1,308)	(1,403)
Sub-total	85	(141)
Investigation and litigation costs	(316)	(204)
Exceptional enforcement recovery	500	-
Total	269	(345)

- 3.4.3 The increase in direct costs reflects the fact that, for most of 2015, the *TCB* supervisory team was fully staffed (for the first time in recent years). The increase in indirect costs results from a variety of factors, including:
 - 3.4.3.1 the increased headcount in the team acts to generally increase its share of indirect costs relative to other supervisory areas;

- 3.4.3.2 there is a contribution to the *Commission's* new communications work;
- 3.4.3.3 there is an increased contribution towards ICT/project costs.
- 3.4.4 The predicted deficit, even before investigation and litigation costs are taken into account, is not sustainable, and so the *Commission* is proposing two changes in this fee consultation.
- 3.4.5 The first proposal is to increase annual fees by 2.0%. Of this figure, because of a reduction in the number of licence-holders, 1.0% will merely allow the *Commission* to 'stand still' in the amount of fee income collected, as explained above².
- 3.4.6 The second proposal, also reflecting consolidation in the sector, is to change the level at which the 'fee cap' applies. Consolidation has led to an increase in the size of some *TCBs* in the sector, and the fee cap artificially constrains the fees payable by certain registered persons, so that in effect they are 'subsidised' by smaller registered persons. This change will affect around eight *TCBs*.
- 3.4.7 The *Commission* expects the combined effect of both these changes to increase fee income by around £84,000. As can be seen, this does not reduce the deficit to zero.

3.5 Questions

- 3.5.1 Are you aware of any operational reasons why paying fees electronically would cause your registered person an issue?
- 3.5.2 Do you understand and agree with:
 - 3.5.2.1 the 2% proposed increase; and
 - 3.5.2.2 the proposed basis for applying the fee cap?

² This assumes that there is no change in the quantity or 'structure' of employees. The *Commission* does not hold sufficient data to model the effect of this factor on fees.

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 Incorporated
- Jersey Compliance Officers Association
- Society of Trust and Estate Practitioners (STEP), Jersey Branch

Appendix B

Draft Trust Company Business Fees Notice



Jersey Financial Services Commission

NOTICE OF FEES

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

Payable by or in relation to: **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.

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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 Commission and the members of the affiliation with respect to compliance with the Commission's prudential rules and conduct of business regulation;
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;

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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, 31 March 2016,~~
- 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 Commission may remit a registration fee in whole or in part if –

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- 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 Commission 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 Commission, 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 Commission 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 Commission 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 Commission 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 or three quarters of the fee that would be payable absent any fee cap being in place.

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SCHEDULE

FEES

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

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Classes of trust company business of registered person	Application fee	Registration fee
		affiliation (up to a maximum of 200 employees); and (b) at the rate of – £423 for each of the first 10 employees in that count £209 for each of the next 10 employees in that count £183 for each of the next 30 employees in that count £137 for each of the next 50 employees in that count £91 for each of the last 100 employees in that count.
Class O	£625 for an application to register a non-affiliated person £625 for an application to register an affiliation leader £125 for an application to register a participating member	In the case of a non-affiliated person - £1,422 . In the case of an affiliation – £1,422 for the leader of the affiliation, plus £489 for each participating member.
Natural persons carrying on a single class of trust company business	£550	£622

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