

CONSULTATION PAPER NO. 4 2014

FINANCIAL SERVICES (JERSEY) LAW 1998 TRUST COMPANY BUSINESS REGISTRATION FEES

A consultation on proposals to increase annual registration fees.

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 21 November 2014.

Responses should be sent to:

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Alternatively, responses may be sent directly to John Everett at the Commission by 21 November 2014. 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.

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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
the FS(J)L	means the Financial Services (Jersey) Law 1998
TCB	means trust company business

Contents

Glossary of Terms	3
Contents	4
1 CONSULTATION	5
1.1 Basis for consultation	5
1.2 Who will be affected by the proposed changes?	5
1.3 Responding to the consultation.....	5
2 THE COMMISSION	6
2.1 Overview	6
2.2 The Commission’s functions.....	6
2.3 Guiding principles.....	6
3 PROPOSALS	7
3.1 Overview	7
3.2 Proposed Fee Increase.....	7
3.3 Background	7
3.4 Tariff changes.....	8
APPENDIX A	9
List of representative bodies who have been sent this consultation paper.....	9
APPENDIX B	10
Draft Trust Company Business Fees Notice	10

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;*
 - (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 (the “**FS(J)L**”) to conduct trust company business (“**TCB**”).

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 21 November 2014.

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 –

- as are required or authorised by or under any enactment, or
- 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 Overview

- 3.1.1 Registration fees under the TCB Fees Notice are due to be reviewed for the year 2015.
- 3.1.2 The policy of the Commission is for each of the regulated business sectors to be self-funding and, consequently, the regulatory fee income of each Supervision Division should cover its total operating expenses.
- 3.1.3 The TCB sector has recently experienced a moratorium on fee increases. The current fees tariff is now insufficient to enable the Commission to cover the cost of the total operating expenses attributable to TCBs to implement effective regulatory supervision over the TCB sector.
- 3.1.4 The Commission considers it appropriate to propose an increase in regulatory fees for TCBs, sufficient to meet the regulatory costs of that sector.

3.2 Proposed Fee Increase

- 3.2.1 The Commission proposes an increase in regulatory fees for TCBs for the year 2015 of 1.7%.
- 3.2.2 The figure of 1.7% is the average of the compounded annual change in Jersey's Retail Prices Index ("RPI") for the two year period from June 2012 to June 2014¹. The use of the June 2012 RPI figure reflects the fact that, as the previous TCB fee rates covered the period until the end of 2012, a consultation to set adjusted rates for 2013 onwards would have used the June figure. By using the average of the two years rather than the total increase, the Commission is not seeking to "catch up" the full effect of RPI changes since TCB fees were last amended.

3.3 Background

- 3.3.1 The registration fees applicable to the TCB sector have not been subject to a fee increase since 31 December 2012. The reason for this moratorium is articulated in two "Dear CEO" letters, published on 25 July 2012 and 4 October 2013 respectively.
- 3.3.2 Regrettably, and as anticipated in the 2013 "Dear CEO" letter referred to above, this approach cannot continue. The TCB Division's income for 2014 is forecast to be £2,406,000, leading to an expected loss of £226,000, with expenditure for 2014 forecasted to be £2,632,000.

¹ The RPI(X) figure (ie RPI after setting side the impact of interest rate movements) has been used by the Commission as it has no borrowing. The RPI(X) figures for the years stated above were 1.6% and 1.8% respectively.

- 3.3.3 The following table illustrates the breakdown of the expenditure figure together with a comparison with the figures observed in 2009, the time the last review of TCB fees was undertaken:-

	2009 (£)	Forecast 2014 (£)
Direct costs	1,242,697	1,110,000
Indirect costs	1,127,809	1,282,000
Investigation costs	125,936	240,000
Total	2,496,442	2,632,000

- 3.3.4 Whilst the direct cost of supervising the TCB sector has decreased (reflecting a reduction of headcount within the TCB Division, which in turn recognises the consolidation of this sector), the indirect and investigation costs have increased. In terms of the indirect cost increase, the Commission has increased its staffing levels during 2013 and 2014, for example to meet the growing workload emerging from international organisations such as MONEYVAL.
- 3.3.5 The proposed fees will only apply for 2015 as opposed to a three year cycle. This is because the Commission has committed to undertake a detailed review of its own cost position and allocation methodology, and the rationale behind its existing fee structures. This review will be completed in time for the next consultation process for the TCB sector due next year to come into effect on 1 January 2016. (In respect of the TCB fees, the review will include an analysis of the reasonableness of the current fee cap levels.)
- 3.3.6 In addition, the Commission will be undertaking a wider programme of reform to enhance its efficiency and effectiveness. Further details of these measures will be included in the Commission's 2015 Business Plan.

3.4 Tariff changes

- 3.4.1 The proposed increase in fees of 1.7% will be spread proportionately across the three elements that comprise the registration fee (the standard registration fee), the classes of TCB and the TCB employees. The fee increases are reflected in the proposed TCB Fees Notice for 2015 (**Appendix B**), with figures rounded up or down to the nearest multiple of £5.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

- Jersey Association of Trust Companies
- Jersey Finance Limited

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 from 1 January 2015.

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;

trust company business employee	in respect of a registered person, means – <ol style="list-style-type: none"> (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 on each subsequent relevant date.
- 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 –
- 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 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.

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 £50,000 or two thirds 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 for an application to register a non-affiliated person</p> <p>£1,250 for an application to register an affiliation leader</p> <p>£160 for an application to register a participating member</p>	<p>In the case of a non-affiliated person -</p> <p>£1,700 £1,730; plus</p> <p>£600 £610 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>£410 £415 for each of the first 10 employees in that count</p> <p>£200 £205 for each of the next 10 employees in that count</p> <p>£175 £180 for each of the next 30 employees in that count</p> <p>£135 for each of the next 50 employees in that count</p> <p>£90 for each of the last 100 employees in that count.</p> <p>In the case of an affiliation -</p> <p>£1,700 £1,730 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 £600 £610 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 - £410 £415 for each of the first 10 employees in that count £200 £205 for each of the next 10 employees in that count £175 £180 for each of the next 30 employees in that count £135 for each of the next 50 employees in that count £90 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 - £1,370 £1,395. In the case of an affiliation - £1,370 £1,395 for the leader of the affiliation, plus £470 £480 for each participating member.
Natural persons carrying on a single class of trust company business	£550	£600 £610