

**CONSULTATION PAPER
NO.6 2015**

**BANKING BUSINESS (JERSEY)
LAW 1991**

DEPOSIT-TAKING 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. William Byrne at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should be submitted by 8 July 2015.

Responses should be sent to:

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Alternatively, responses may be sent directly to David Fisher at the Commission by 8 July 2015. 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:

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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

Commission	the Jersey Financial Services Commission
Commission Law	the Financial Services Commission (Jersey) Law 1998, as amended
2014 Paper	Consultation Paper No.1 2014 " <i>Deposit-taking Registration Fees</i> "
Fees Notice	Deposit-taking Business Fees Notice
RPI	Retail Prices Index

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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 the Island as it considers appropriate*”.
- 1.1.2 In addition, Article 15(3) of the Commission Law, as amended, 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 may be taken to constitute such a report as required by the Law.

1.2 Who will be affected by the proposed changes

- 1.2.1 These provisions will affect all deposit-takers registered under the Banking Business (Jersey) Law 1991.

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 deposit-takers.
- 1.3.2 Comments should be received by the Commission no later than 8 July 2015.

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 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 Chief 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, malpractice, 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 Article 9(1) of the Banking Business (Jersey) Law 1991 provides for the payment of fees to the Commission in respect of deposit-taking registrations. These fees were reviewed in 2014, for the registration year to 31 January 2016.
- 3.1.2 It is the policy of the Commission that each regulated business sector is self-funding and, consequently, the regulatory fee income of each Supervision division should cover its total allocated operating expenses.
- 3.1.3 In Consultation Paper No.1 2014 "*Deposit-taking Registration Fees*" (the "**2014 Paper**"), the Commission provided estimates in respect of its costs for the calendar year 2014 and proposed increased fee levels for registered deposit-taking businesses in respect of that period to achieve this aim.
- 3.1.4 This paper provides an update on the Banking division's latest forecast costs, expectations for bank registration levels, the impact of these on Commission fee income and proposed changes to the fee tariff.

3.2 Background

- 3.2.1 In the 2014 Paper, an increase of 30% in deposit-taking registration fees was proposed for the year to January 2016. This reflected the Banking division's estimated operating and allocated expenses for 2015, which were forecast to be £1,539,000. An increase of 30% was necessary to achieve a forecast break-even position.
- 3.2.2 Projecting forwards to 2016, income is forecast to be lower, at £1,480,000, due to the impact of mergers, only partly offset by anticipated income from new banks.
- 3.2.3 Costs are also forecast to be (marginally) lower, at £1,505,000, with the impact of planned reductions in headcount being partly offset by indirect costs relating to the immediate short term cost of the Commission's Change Programme.
- 3.2.4 In summary, a shortfall for 2016 is predicted in the order of £25,000.
- 3.2.5 To partially address this shortfall, an increase in fees in line with the increase in the Retail Prices Index ("**RPI**") over the relevant period is proposed. The December 2014 RPI inflation rate (1.3%) has been chosen as being the most representative rate of those that have been published at this time. It is proposed to increase all annual fees by this amount, resulting in an increase in total fees of circa £19,000.
- 3.2.6 Allowing for this increase, the Banking division's income would approximately match costs, perhaps with a small shortfall. The position for future years will be reviewed again in 2016.
- 3.2.7 Fees for 2017 and later years may be affected by an intended cross-sector review of how Commission fees are set and costs allocated, as well as expected changes in activity levels and bank numbers.

3.3 Tariff changes

- 3.3.1 It is not proposed to increase the application fee of £10,000 or the policy of charging a reduced (50%) annual fee where a registration is for business continuity purposes only.
- 3.3.2 The changes to annual fees as a result of the proposed 1.3% increase are detailed below:

Income Band	Current Fee	Revised Fee
Under £ 5 million	£28,500	£28,900
Over £ 5 million, under £ 10 million	£33,000	£33,400
Over £ 10 million, under £ 20 million	£38,400	£38,900
Over £ 20 million	£47,700	£48,300
Overseas branches and subsidiaries	£10,000	£10,100

- 3.3.3 **Question 1: Do you agree that the proposed increase to the annual fee levels for 2016 is reasonable? If not, please explain why.**
- 3.3.4 A Draft Fee Notice, for the fee year from 1 February 2016 to 31 January 2017, is set out in Appendix B.

4 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
3.3.3	Question 1: Do you agree that the proposed increase to the annual fee levels for 2016 is reasonable? If not, please explain why.

APPENDIX A

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

- Jersey Bankers' Association
- Jersey Finance Limited



Jersey Financial
Services Commission

APPENDIX B: DRAFT NOTICE OF FEES

DEPOSIT-TAKING BUSINESS FEES

Published in accordance with:

Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended
Article 9 of the Banking Business (Jersey) Law 1991, as amended

Commencement date

The fees set out in this notice are effective from 1 October 2015.

Interpretation

In this notice –

business continuity	means the continuing in Jersey of business operations that are normally carried on in a place outside Jersey, where those operations are for the time being disrupted in that other place because of any accident, disaster, epidemic, civil unrest or occurrence of a similar nature.
Commission	means the Jersey Financial Services Commission.
home supervisor	means, in relation to a deposit-taking business, and to a person – that carries on deposit-taking business in another country; that is the holding company of a subsidiary company that carries on deposit-taking business in another country; or that is the holding company of a subsidiary company that in turn is the holding company of a subsidiary company that carries on deposit-taking business in another country, an authority that – (i) is based in that other country; and (ii) exercises supervision of the deposit-taking business.
Law	means the Banking Business (Jersey) Law 1991, as amended.
registered person	means a person registered to conduct deposit-taking business under the Law.

1 Fees payable

1.1 For the purposes of Article 9(1) of the Law, the prescribed fee is:

1.1.1 In the case of a person not registered under the Law at the time when the application is made, £10,000 on initial application, plus the annual fee as and when such application is granted; or

1.1.2 In the case of a person already registered under the Law at that time, the annual fee.

2 Annual fee calculation

2.1 The annual fee is the sum of the following components:

2.1.1 A component calculated on the basis of £10,100 for each country (other than Jersey) where the person carries on a deposit-taking business through an office of the person based in the country, if the Commission is a home supervisor in relation to that business;

2.1.2 A component calculated on the basis of £10,100 for each of the person's subsidiary companies that has its registered office outside Jersey and carries on a deposit-taking business, if the Commission is a home supervisor in relation to that business;

2.1.3 A component calculated on the basis of £10,100 for each country where a subsidiary company of the person carries on a deposit-taking business through an office of the subsidiary company based in the country, if:

2.1.3.1 The country is not Jersey, nor the country where the subsidiary company has its registered office; and

2.1.3.2 The Commission is a home supervisor in relation to that business;

2.1.4 A component calculated on the basis of £10,100 for each subsidiary company (hereafter called "X") of a subsidiary company of the person, if:

2.1.4.1 X has its registered office outside Jersey and carries on a deposit-taking business; and

2.1.4.2 The Commission is a home supervisor in relation to that business;

2.1.5 The following component calculated on the basis of the Consolidated Income of the registered person:

2.1.5.1 For a Consolidated Income not exceeding £5,000,000 (or a loss or an income of zero), a component of £28,900;

2.1.5.2 For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £33,400;

2.1.5.3 For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £38,900; and

2.1.5.4 For a Consolidated Income exceeding £20,000,000, a component of £48,300.

3 Calculation notes – overseas operations

3.1 The component referred to in paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.4 of the annual fee calculation shall be calculated on the basis of the factors mentioned in each subparagraph:

3.1.1 In the case of a person not registered under the Law at the time when the application is made (or of a person registered under the Law at that time, but whose business to which the application relates has not started operations at that time), as the person expects the factors to be when the business of the person to which the application relates starts operations; or

3.1.2 In any other case, as the factors are when the application is made.

3.2 If a new operation leads to a factor relevant to 2.1.1, 2.1.2, 2.1.3 or 2.1.4 of the annual fee calculation subsequently increasing before the end of the registration period, the registered person should calculate a revised annual fee, being the incremental sum of the relevant components, pro rata reduced, being one twelfth of the incremental sum multiplied by the number of whole or part calendar months between the date of opening and the end of the registration period.

3.3 For the purposes of this notice:

3.3.1 A territory is taken to be a country if the territory is co-extensive with a discrete jurisdiction concerned with the supervision of deposit-taking business;

3.3.2 Jersey is a country;

3.3.3 Guernsey is a country and Alderney and Sark are parts of that country;

3.3.4 The Isle of Man is a country;

3.3.5 Each member state (however described) of the following federations is taken to be a separate country:

3.3.5.1 The United Arab Emirates; and

3.3.5.2 The United States of America.

4 Calculation notes – “Consolidated Income”

4.1 The Consolidated Income referred to in paragraph 2.1.5 of the annual fee calculation must be calculated as the higher of the total income and the “Deemed Income” of the person. The total income means the total income of the registered person arrived at in accordance with prudential reporting guidance. This must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The total income must be that calculated for the relevant period, being:

- 4.1.1 In the case of a person not registered under the Law at the time when the application is made, the total income that the person expects to report for the calendar year starting at midnight on 31 December following the making of the application (whether the application relates to that year or to another period);
 - 4.1.2 In the case of a person registered under the Law at the time when the application is made whose business to which the application relates did not operate for the whole of the year ending at midnight on 31 December in the year preceding the making of the application, the total income that the person expects to report for the calendar year starting at midnight on 31 December following the making of the application; or
 - 4.1.3 In any other case, the total income for the calendar year ending on 31st December preceding the making of the application.
- 4.2 The Deemed Income of a registered person means an amount equal to 0.1% of its total assets plus the amount of its total operating expenses, each arrived at in accordance with prudential reporting guidance. The components must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The components must be those calculated for the relevant period, being:
- 4.2.1 In the case of a person not registered under the Law at the time when the application is made:
 - 4.2.1.1 Total operating expenses: the calendar year starting at midnight on 31 December following the making of the application; and
 - 4.2.1.2 Total assets: as at the end of that period;
 - 4.2.2 In the case of a person registered under the Law at the time when the application is made whose business to which the application relates did not operate for the whole of the year ending at midnight on 31 December in the year preceding the making of the application:
 - 4.2.2.1 Total operating expenses: the calendar year starting at midnight on 31 December following the making of the application; and
 - 4.2.2.2 Total assets: as at the end of that period; or
 - 4.2.3 In any other case:
 - 4.2.3.1 Total operating expenses: the calendar year ending on 31 December preceding the making of the application; and
 - 4.2.3.2 Total assets: as at the end of that period.
- 4.3 For the avoidance of doubt, it is hereby stated that the total income, total operating expenses and total assets of a registered person includes all income, operating expenses and assets of the registered person and not just those relating to its deposit-taking business.

5 Reduced annual fee for applications in respect of a partial year

- 5.1 If an application is made in respect of a period of less than a year, the annual fee may be pro rata reduced, being one twelfth of the annual fee multiplied by the number of calendar months that the application spans in whole or in part.

6 Reduced application fee for registration for business continuity

- 6.1 This section applies if the Commission is satisfied that:

6.1.1 A person who is applying for registration under Article 9 of the Law is a member of the same group of companies as another person who is registered under that Article;

6.1.2 The first person is applying for registration so as to be able to use the other person's business facilities in Jersey for, but only for, the purpose of business continuity; and

6.1.3 At the time when the application is made, the first person is not registered under the Law.

- 6.2 This section applies whether or not the applicant's business operations in a place where they are normally carried on outside Jersey have already been disrupted in that other place.

- 6.3 Where this section applies, the part of the prescribed fee for the purposes of Article 9(1) of the Law shall be reduced by 50 per cent.

7 Reduced annual fee where registration is for business continuity

- 7.1 This section applies if the Commission is satisfied that a person is or is to be registered under Article 9 of the Law for, but only for, the purpose of business continuity in the event of the future disruption of the person's business operations in a place where they are normally carried on outside Jersey.

- 7.2 Where this section applies, the part of the prescribed fee for the purposes of Article 9(1) of the Law shall be reduced by 50 per cent.

- 7.3 However, if in the course of a period for which the annual fee is payable:

7.3.1 Disruption of the person's business operations in a place where they are normally carried on outside Jersey actually occurs; and

7.3.2 The person begins to carry on operations in Jersey for the purpose of business continuity,

- 7.4 the balance of the annual fee for that period shall become payable.

8 Refund of annual fee

- 8.1 The Commission must refund to an applicant the annual fee paid in accordance with the Law if the application:

8.1.1 Is refused; or

- 8.1.2 Withdrawn by the applicant before it is granted or refused.
- 8.2 If an application for registration is refused, the annual fee shall not be refunded until after:
 - 8.2.1 The expiration of the period within which, under Article 18 of the Law, notice of appeal may be given; or
 - 8.2.2 If notice of appeal is given, the appeal is determined or abandoned.

9 Late payment of fees

- 9.1 The annual fee is payable:
 - 9.1.1 In the case of a person not registered under the Law at the time when the application is made, as and when such application is granted; and
 - 9.1.2 In the case of a person registered under the Law at the time when the application is made, by 31 October in the year preceding the date of re-registration.
- 9.2 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 that it remains unpaid.

10 Late filing fees

- 10.1 If a registered person fails to file or deliver any document to the Commission under the provisions of the Law or under the 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 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.