



Jersey Financial  
Services Commission

# Consultation Paper No. 5 2017

## Banking Business (Jersey) Law 1991: Deposit-taking fees

A consultation on proposals to change fee rates.

Issued: June 2017

## Consultation Paper

The Jersey Financial Services Commission invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 14 July 2017.

### Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 14 July 2017. 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.

The JFSC contact is:

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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

BBJL	Banking Business (Jersey) Law 1991, as amended
Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
JFL	Jersey Finance Limited

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# 1 Consultation

## 1.1 Basis for consultation

- 1.1.1 The Jersey Financial Service Commission (**JFSC**) is issuing this consultation paper in accordance with Article 8(3) of the 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 Commission”.*
- 1.1.3 The JFSC 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 amendments to fees will affect any person applying for, or having already been granted a registration to undertake deposit-taking business under Article 9 of the BBJL.

## 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.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 14 July 2017.

## 1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice in the third quarter of 2017. The new fee rates will take effect from 1 October. Firms will be notified when they need to use the myJFSC portal to collect their invoices.

## 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:
    - › 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 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 rate changes

- 3.1.1 In line with the approach to fees set out in last year's consultation, the JFSC proposes to increase fee rates by 19%<sup>1</sup>. The change in fees experienced by any specific firm will depend on its business 'size' combined with the new fee rates.
- 3.1.2 No penalties have been received which would reduce these fees.
- 3.1.3 A draft fees notice reflecting the proposal can be found in Appendix B.
- 3.1.4 As in 2016, fees will be administered via firms' myJFSC portal accounts. Firms will receive an email prompt to notify them that an invoice is awaiting payment.

### 3.2 Fee proposals

- 3.2.1 In last year's fee consultation (CP No.5, 2016), the JFSC explained its intention to increase the amount of regulatory fees collected from industry by 15% above their 2015 level by 2019. For the banking sector, this means an increase of some £220,500 in total by 2019<sup>2</sup>.
- 3.2.2 Given the reduction in the number of banking licences that has occurred (a key element in the way fees are charged), a higher increase in *fee rates* than 15% is needed to achieve this desired higher level of *fee income*.
- 3.2.3 So based on forecasts of licence numbers, the JFSC proposed last year to put in place 19% increases in fee rates for each of the subsequent three years (with the exact percentage in the third year to be varied from 19% so as to be able to meet the 2019 desired level of fee income).
- 3.2.4 The fees consulted on now represent the second year of three (they cover the period February 2018 to January 2019), and so the fees notice in Appendix B increases the fee rates by 19% (on a simple, not compound basis – i.e. a 38% increase over the fee rates for 2016/7).
- 3.2.5 We also propose to apply this 38% simple increase to the licence application fee, which we left unchanged in last year's consultation.

### 3.3 Question

- 3.3.1 Do you agree with the proposed fee rate change consulted on in this paper?

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<sup>1</sup> Rounded to the nearest £50.

<sup>2</sup> From some £1.47m in 2015 to some £1.69m by 2019.

## Appendix A - list of bodies who have been sent this consultation paper

- › Jersey Bankers' Association
- › Jersey Finance Limited

# Appendix B - Draft Deposit-Taking 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: **Deposit-Taking Business**

Pursuant to: **Article 9(1) of the Banking Business (Jersey) Law 1991, as amended**

Commencement date: The fees set out in this notice are effective from 1 October 2017.

### 1 Interpretation

1.1 In this notice, unless the context otherwise requires

- annual fee period means the period between 1 February and 31 January in respect of which an annual fee is payable
- 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
- home supervisor means, in relation to a deposit-taking business, and to a person
  - i. that carries on deposit-taking business in another country;
  - ii. that is the holding company of a subsidiary company that carries on deposit-taking business in another country; or
  - iii. 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
- JFSC means the Jersey Financial Services Commission
- Law means the Banking Business (Jersey) Law 1991, as amended

registered person means a person registered to conduct deposit-taking business under the Law

## 2 Fees payable

2.1 For the purposes of Articles 9(1) and 48E of the Law, the prescribed fee is:

2.1.1 In the case of a person applying to be registered under the Law £13,800 on application, plus the annual fee as and when such application is granted; or

2.1.2 In the case of a person registered under the Law, the annual fee.

## 3 Annual fee calculation

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

3.1.1 A component calculated on the basis of £13,950 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 JFSC is a home supervisor in relation to that business;

3.1.2 A component calculated on the basis of £13,950 for each of the person's subsidiary companies that has its registered office outside Jersey and carries on a deposit-taking business, if the JFSC is a home supervisor in relation to that business;

3.1.3 A component calculated on the basis of £13,950 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:

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

3.1.3.2 the JFSC is a home supervisor in relation to that business;

3.1.4 a component calculated on the basis of £13,950 for each subsidiary company (hereafter called "X") of a subsidiary company of the person, if:

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

3.1.4.2 The JFSC is a home supervisor in relation to that business;

3.1.4.3 A component calculated on the basis of the Consolidated Income of the registered person:

› For a Consolidated Income not exceeding £5,000,000 (or a loss or an income of zero), a component of £39,900;

› For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £46,100;

› For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £53,700;

- › For a Consolidated Income exceeding £20,000,000, a component of £66,650.

#### **4 Calculation notes – overseas operations**

- 4.1 The components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated on the basis of the factors mentioned in each paragraph; save that, in the case of a person applying to be registered under the Law, the components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated as the person expects the factors to be when the business of the person to which the application relates starts operations.
- 4.2 If a new operation leads to a factor relevant to paragraphs 3.1.1 to 3.1.4 of the annual fee calculation subsequently increasing before the end of the annual fee 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 annual fee period, and notify the JFSC accordingly.
- 4.3 For the purposes of this Fees Notice:
- 4.3.1 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;
- Jersey is a country;
- 4.3.2 Guernsey is a country and Alderney and Sark are parts of that country;
- 4.3.3 The Isle of Man is a country;
- 4.3.4 Each member state (however described) of the following federations is taken to be a separate country:
- 4.3.4.1 The United Arab Emirates; and
- 4.3.4.2 The United States of America.

#### **5 Calculation notes – “Consolidated Income”**

- 5.1 The Consolidated Income referred to in paragraph 3.1.5 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:
- 5.1.1 In the case of a person applying to be registered under the Law, 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);
- 5.1.2 In the case of a person registered under the Law, whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31

December in the previous year, the total income that the person expects to report for the calendar year starting at midnight on the following 31 December following; or

- 5.1.3 In any other case, the total income for the calendar year ending on 31 December in the previous year.
- 5.2 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:
- 5.2.1 In the case of a person applying to be registered under the Law:
- 5.2.1.1 Total operating expenses: the calendar year starting at midnight on 31 December following the making of the application; and
- 5.2.1.2 Total assets: as at the end of that period;
- 5.2.2 In the case of a person registered under the Law whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31 December in the previous year:
- 5.2.2.1 Total operating expenses: the calendar year starting at midnight on the following 31 December; and
- 5.2.2.2 Total assets: as at the end of that period; or
- 5.2.3 In any other case:
- 5.2.3.1 Total operating expenses: the calendar year ending on the previous 31 December; and
- 5.2.3.2 Total assets: as at the end of that period.
- 5.3 For the avoidance of doubt, 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.

## **6 Reduced annual fee for applications in respect of a partial year**

- 6.1 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.

## **7 Reduced application fee for registration for business continuity**

- 7.1 This section applies if the JFSC is satisfied that:
- 7.1.1 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;
- 7.1.2 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

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

7.2 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.

7.3 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%.

## **8 Reduced annual fee where registration is for business continuity**

8.1 This section applies if the JFSC is satisfied that a person is 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.

8.2 Where this section applies, the part of the prescribed fee for the purpose of Article 48E of the Law shall be reduced by 50%.

8.3 However, in the course of a period for which the annual fee is payable:

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

8.3.2 The person begins to carry on operations in Jersey for the purpose of business continuity, the balance of the annual fee for that period shall become payable.

## **9 Late payment of fees**

9.1 The annual fee is payable:

9.1.1 In the case of a person applying to be registered under the Law, as and when such application is granted; and

9.1.2 In the case of a person registered under the Law, by 31 October in each year.

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 JFSC, 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 JFSC 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 unfiled or undelivered unless the person has given the JFSC 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.