



Jersey Financial
Services Commission

Consultation Paper No. 6 2019

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

A consultation on proposals to change fee rates.

Issued: September 2019

Unrestricted

Consultation Paper

The JFSC invites comments on this Consultation Paper. Comments should reach Jersey Finance Limited by 3 October 2019.

Responses should be sent to:

Lisa Springate

Jersey Finance Limited
4th Floor
Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey
JE2 3QB

Direct Line: +44 (0) 1534 836029
Office Line: +44 (0) 1534 836000
Email: lisa.springate@jerseyfinance.je

Alternatively, responses may be sent directly to the JFSC by 3 October 2019. 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:

Stuart Keir

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

Direct Line: +44 (0) 1534 822188
Email: s.keir@jerseyfsc.org

It is the policy of the JFSC to provide the content of responses for 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 |

Contents

- 1 Consultation5**
 - 1.1 Basis for consultation 5
 - 1.2 Who will be affected by the proposed changes?..... 5
 - 1.3 Responding to the consultation 5
 - 1.4 Next steps..... 5

- 2 The JFSC6**
 - 2.1 Overview 6
 - 2.2 The JFSC’s functions 6
 - 2.3 Jersey Resolution Authority 6
 - 2.4 Guiding principles..... 7

- 3 Proposals.....8**
 - 3.1 Proposed fee rate increases..... 8
 - 3.2 Fee proposals 9
 - 3.3 Question..... 9

- Appendix A - list of bodies who have been sent this consultation paper11**

- Appendix B - Draft Deposit-Taking Business Fees Notice12**

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 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

“[T]he 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 Article 15(4) of the Commission Law provides that should the JFSC and a Representative Body be unable to agree a fee that the JFSC must request the Bailiff to appoint 3 Jurats to consider if the fee proposed is unreasonable.

1.1.4 The JFSC considers that the proposed fee rates are reasonable and 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 3 October 2019.

1.4 Next steps

1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice with the new fee rates likely to take effect from 11 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 Jersey Resolution Authority

- 2.3.1 In 2017, the Bank (Recovery and Resolution) (Jersey) Law 2017 (**BRRJL**) was enacted (but has not been brought into force yet) in order to provide a revised legal framework for dealing with bank failures. The aim was to enable, in the unlikely event of a bank failure, failures to be managed with minimum disorder or losses to retail depositors.
- 2.3.2 In order to achieve these aims, several resolution powers and stabilization tools were created in the BRRJL. The task of determining how these should be used is assigned to the Jersey Resolution Authority (**JRA**) and the BRRJL permits either a new authority to be formed or the Minister for External Relations to appoint an existing authority.

- 2.3.3 One option being explored is that the JFSC could be appointed to carry out the role and functions of the JRA, perhaps in late 2019 or early 2020.
- 2.3.4 In order to undertake the work of a resolution authority, there would be a cost to the JFSC which is discrete from and above the JFSC's existing financial commitments.
- 2.3.5 Assuming work were to begin in Q2 2020, we estimate that further funding equivalent to an additional 12% increase may be required during this fee period to commence that work.
- 2.3.6 Such an increase is not included in this consultation and we will need to consult with regard to further funding requirements related to resolution authority functions if the JFSC is appointed as the resolution authority. We expect to do this early in 2020 and the additional levy would likely be invoiced in Q2 2020.

2.4 Guiding principles

- 2.4.1 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:
- 2.4.1.1 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;
 - 2.4.1.2 The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 2.4.1.3 The best economic interests of Jersey; and
 - 2.4.1.4 The need to counter financial crime in both Jersey and elsewhere.

3 Proposals

3.1 Proposed fee rate increases

- 3.1.1 The JFSC proposes to increase fee rates by 21% (rounded to the nearest £50). The change in fees experienced by any specific firm will depend on its business 'size' combined with the new fee rates.
- 3.1.2 The rate of increase comprises:
- 3.1.2.1 a component of 2.8%, being the most recent Jersey RPI prior to publication; and
 - 3.1.2.2 a further 18.2% comprising:
 - › a component to compensate for consolidation within the sector which has not reduced supervisory activities;
 - › a contribution towards meeting the significantly higher costs of a major project to enhance the JFSC's work in respect of countering financial crime, which has already been initiated;
 - › investment towards restoring the JFSC's reserves to a level of six months' total expenditure from the prior year; and
 - › investment towards building an enhanced data analytics function.
- 3.1.3 The main drivers of this calculation are the consolidation of the banking industry and the JFSC's new project to significantly enhance its supervision of financial crime.
- 3.1.4 The reserves of the JFSC have been reducing for some time as a result of capital investment in technology which enhances our supervisory effectiveness. A small contribution beginning to reverse this is included in the proposal. This will only go a very small way to beginning to reverse the trend of declining reserves.
- 3.1.5 The JFSC now has increased demands for data analytics due to the increased volume of data it holds and the need to analyse and report on that data. A small contribution is therefore included to help build out that function.
- 3.1.6 The JFSC has gradually raised its income from the banking industry in line with the strategic approach set out in 2015. This increased income has contributed to funding the Change Programme on which we reported in our 2018 Annual Report.
- 3.1.7 Investment has been critical to maintaining the JFSC's supervisory effectiveness at a time when compliance costs for industry and supervisory costs for regulators have been rising in tandem.
- 3.1.8 No penalties have been levied on entities in the banking sector which would be applied, to this sector only, to reduce these fees in the period immediately after receiving such penalties.
- 3.1.9 A draft fees notice reflecting the proposal can be found in Appendix B.
- 3.1.10 Fees will be administered via firms' myJFSC portal accounts. Firms will receive an email prompt to notify them that an invoice is awaiting payment.

3.1.11 Increases have been consulted on to raise total JFSC income by a similar percentage of the prior year totals collected. These were implemented in respect of FSB, AIF and CIF, CoBO and QSMA fee rates following Consultation Paper No. 4 2019. Similar fee rate increases are being consulted on in respect of Insurance Businesses concurrently with this Consultation (Consultation Paper No.6 2019) and will also be proposed to other industry sectors as part of their next fee cycles to ensure the burden of this increased funding requirement is fairly distributed.

3.2 Fee proposals

3.2.1 The proposals in this Consultation Paper seek to ensure that the JFSC obtains sufficient funding to carry out its supervisory objectives; to provide additional funding in support of the JFSC's work in respect of combatting financial crime; to enhance our data analytics capacity and to provide investment in the JFSC's reserves to return them to a level equal to at least six months' expenditure by 2022.

3.2.2 In 2021/2022, the Island will undergo its next MONEYVAL assessment. A strongly positive outcome to the assessment is considered crucial to the continued ability of the Island's financial services industry to access international markets efficiently. Jersey's Government has indicated that such an outcome to the assessment is one of its key targets over the course of the current Island Strategic Plan. In any event, the JFSC is of the view that the supervision of financial crime will require a significantly enhanced supervisory capacity in the next period having regard to the increasing sophistication and scale of financial crime risks.

3.2.3 The JFSC's efforts towards achieving a strongly positive outcome with regard to the forthcoming MONEYVAL assessment and tackling these financial crime risks are focused on demonstrating effective supervision as a key part of Jersey's AML/CFT regime, adequate remediation and enforcement activities, sufficient development of systems and data as well as ensuring the regime's overall compliance with FATF Recommendations. This work has already begun and the JFSC is currently building its Financial Crime supervision capacity.

3.2.4 In modelling the expected fee income from the Banking industry, the JFSC has taken account of the continuing change in the number of banking licences which is being affected by factors such as various reorganisations needed due to banking reforms in the UK/EU.

3.2.5 Depending on the Banking sector's perspective on the urgency of current policy development projects and priorities, the JFSC invites comment on the option of a further increase of 1.5% across the board which would be sufficient to fund an additional policy development resource devoted to banking-related policy development (products, banking-sector-related fintech issues and the development of the legal framework for the banking sector).

3.2.6 The Commission Law contemplates increases to fees in line with RPI, however, the cost of regulation has been and continues to rise well in excess of this metric.

3.2.7 As noted in Feedback to Consultation Paper No.4 2019 in respect of the Funds Industry, the JFSC is keen to discuss its fee structures with all industry sectors. During the course of 2020 the JFSC intends to hold strategic discussions with the banking industry and to consult on potential methodologies to ensure that there is proportionality across the fees base.

3.3 Question

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

3.3.2 Do you agree with the indicative level of fees in respect of the JRA?

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 11 October 2019.

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 £19,250 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 £19,250 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 £19,250 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 £19,250 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 £19,250 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 £54,950;
- › For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £63,450;
- › For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £73,950;
- › For a Consolidated Income exceeding £20,000,000, a component of £91,800.

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 payable, the person shall be liable to pay an additional late payment fee, or fees, of 5% of the unpaid principal amount that shall be applied on the day after the date the fee becomes payable, and on the 1st day of each calendar month after that.

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.