



Feedback Paper on Consultation Paper No.6 2019

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

A feedback paper relating to a consultation on proposals regarding changes to fee rates

Issued: October 2019

Consultation Feedback

This paper reports on responses received by the JFSC to the Consultation Paper No. 6 2019 published by the JFSC in September 2019.

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Glossary of Terms

Defined terms are indicated throughout this document as follows:

Commission/JFSC	Jersey Financial Services Commission
JFL	Jersey Finance Limited

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1 Executive Summary

1.1 Overview

- 1.1.1 In September 2019 the JFSC issued Consultation Paper No. 6 2019, Deposit-taking fees, which sought views on proposals to change fee rates.
- 1.1.2 The purpose of this paper is to provide feedback on responses to the Consultation Paper.
- 1.1.3 In light of the feedback received, the JFSC will be changing the fee rates to the levels consulted on, effective 11 October 2019. The final form of the fees notice can be found in Appendix A and on our website.

1.2 Feedback received

- 1.2.1 The JFSC received one direct response and JFL received one further response to the consultation paper. The respondents' comments are detailed at section 2. The consultation paper was also discussed with the Jersey Bankers Association.
- 1.2.2 The JFSC is grateful to the respondents and the Jersey Bankers Association for taking the time to consider the proposals and for their constructive comments. In particular, the JFSC will take forward the suggestions from respondents regarding developing the fees methodology for deposit-taking firms in such a way that the regulatory fees base enables the JFSC to deliver its statutory functions while providing firms with a higher degree of medium-term surety regarding their regulatory fees.

1.3 Next Steps

- 1.3.1 The revised fees will take effect from 11 October 2019.
- 1.3.2 Relevant firms will receive notification via the myJFSC portal that an invoice is ready for them.

2 Summary of responses

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

- 2.1.1 One respondent supported the proposed fee rates noting the main drivers being the consolidation of the banking industry and the JFSC's new project to significantly enhance its supervision of financial crime.
- 2.1.2 One respondent considered the proposed fee rates to be excessive in the context of increasing pressure on costs within their business and in light of general economic uncertainties.
- 2.1.3 All respondents noted that the fee rate increases were significantly above Jersey RPI and that increases over recent years have also been above Jersey RPI which has increased the level of fees at many individual firms.
- 2.1.4 One respondent expressed concern that the JFSC "[apply] a suitable level of rigour when incurring cost and committing to additional resources rather than do so in the knowledge that this will continue to be funded by its licence holders."

JFSC response

- 2.1.5 The JFSC recognises the concerns of respondents that the proposed increase in fee rates is above Jersey RPI. As explained within the consultation paper the increase in fee rates comprises:
- 2.1.5.1 a component to compensate for consolidation within the sector which has not reduced supervisory activities;
 - 2.1.5.2 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;
 - 2.1.5.3 investment towards restoring the JFSC's reserves to a level of six months' total expenditure from the prior year; and
 - 2.1.5.4 investment towards building an enhanced data analytics function.
- 2.1.6 While the increase in fee rates will result in an increase in overall deposit-taking fees for certain firms, it is critical that the JFSC is able to implement the planned activities detailed at 2.1.5 while ensuring that the level and quality of its supervisory activities are maintained.
- 2.1.7 The JFSC is confident that a suitable level of rigour is applied in setting proportionate fees across industry sectors and welcomes the opportunity to engage further with industry as future fee levels are determined. Please see section 2.3 for further detail on future engagement in respect of deposit-taking fees.

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

- 2.2.1 One respondent supported the proposed fees in respect of the JRA while the other respondent was broadly neutral.
- 2.2.2 Both respondents expressed a desire that costs of the resolution authority be subject to suitable scrutiny and that any efficiencies, economies of scale or other savings be made.

JFSC response

- 2.2.3 The JFSC is grateful for the constructive comments from respondents. As noted at 2.1.7, the JFSC applies rigour and closely scrutinises planned expenditure and will continue to engage with the respondents as well as other interested stakeholders as matters pertaining to resolution are developed.
- 2.2.4 Should the JFSC assume the responsibility of the resolution authority such rigour and scrutiny will be applied before fee levels are finalised. The JFSC will utilise respondents' feedback in ensuring that, should it assume the responsibilities of the resolution authority, the fee levels in respect of the resolution authority are appropriate.

2.3 Other comments

- 2.3.1 Respondents expressed the view that the current fee methodology could be revisited. While the precise details should be subject to consultation, ways of improving the methodology might include:
- 2.3.1.1 A balance sheet related component;
 - 2.3.1.2 Changes to the bandings for consolidated income; and

- 2.3.1.3 Differentiation between branches and subsidiaries.
- 2.3.2 Respondents expressed an interest in understanding the strategic roadmap for the JFSC for the next 3 to 5 years and as part of this seeing fees set on a medium-term basis.
- 2.3.3 One respondent explored the possibility of closer working relationships between the Crown Dependencies, particularly in areas where the aim is to achieve compliance with international standards. The firm posited that such closer working might “reduce diseconomies of scale” for firms operating across the Crown Dependencies.
- 2.3.4 One respondent stated that “[there was a] need to curb the escalation in fees that has been evidenced over recent years.”
- 2.3.5 One respondent supported, in principle, additional nominal fees to secure additional policy development resources dedicated to the banking sector.

JFSC response

- 2.3.6 The JFSC is pleased to note that respondents are amenable to dialogue regarding the structure of deposit-taking fees and welcome the positive suggestions towards reviewing the methodology such that improvements may be made both for the JFSC and individual firms. In this regard, the JFSC will work with the respondents including the Jersey Bankers Association over the course of H1 2020 to develop alternative methodologies that enable the JFSC to deliver its statutory functions while developing surety for deposit-taking firms.
- 2.3.7 The JFSC is pleased to note the interest of respondents in the development of its strategy and plans over future periods, particularly in the lead-up to the MoneyVal assessment anticipated in 2022. In February 2020, the JFSC will present its business plan and strategy over the coming period to industry which will include an outline of plans to develop fee structures for the medium term.
- 2.3.8 The JFSC notes the comments regarding engagement between the Crown Dependencies and would highlight that there is frequent collegiate exchange between peer regulators, indeed, including the wider community of international finance centres as well as onshore jurisdictions. There are inherent complexities in cross-jurisdictional policy development and supervisory activity that mean, for the medium-term future, it is unlikely that there will be absolute parity in regulatory expectations, nevertheless, the JFSC continues to work closely with peer regulators including through fora such as the Group of International Finance Centre Supervisors and the International Organisation of Securities Commissions.
- 2.3.9 The JFSC notes the sentiment expressed by some firms that the rise in fee rates over recent years has been unwelcome. The JFSC is not able to commit to the precise nature of future fee rate increases at this stage, but would highlight its comments at 2.3.6 regarding its intent to work with industry to develop fee structures that ensure delivery of the JFSC’s statutory functions simultaneous with surety for firms regarding their regulatory fees.

Appendix A – Deposit-taking Business Fees Notice

Notice of Fees

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

Pursuant to: **Deposit-Taking Business**

Payable by or in relation 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;
 - 3.1.5 A component calculated on the basis of the Consolidated Income of the registered person:
 - 3.1.5.1 For a Consolidated Income not exceeding £5,000,000 (or a loss or an income of zero), a component of £54,950;
 - 3.1.5.2 For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £63,450;
 - 3.1.5.3 For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £73,950;
 - 3.1.5.4 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.