Jersey Financial Services Commission

Consultation Paper No. 7 2020

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

A consultation on proposals to change fee rates.

Issued: October 2020

Consultation Paper

We invite comments on this Consultation Paper. Comments should reach Jersey Finance Limited (**JFL**) by 11 November 2020.

Responses should be sent to:

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Alternatively, responses may be sent directly to the Jersey Financial Services Commission (**JFSC**) by 11 November 2020. If you require any assistance, clarification or wish to discuss any aspect of the proposals prior to formulating a response, it is of course appropriate to contact us.

The JFSC contact is:

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It is the policy of the JFSC to provide the content of responses for inspection unless specifically requested otherwise.

It is the policy of JFL (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
JBA	Jersey Bankers Association
JFL	Jersey Finance Limited

Contents

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 introduce and publish any fee

"[The JFSC] 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 we must request the Bailiff to appoint 3 Jurats to consider if the fee proposed is unreasonable.

1.1.4 The JFSC considers that the Jersey Bankers Association (**JBA**) is the Representative Body for the banking industry; that each of the proposals within this consultation is reasonable; and that this consultation constitutes such a report as required by the Commission Law.

1.2 Who will be affected by the proposed changes?

1.2.1 The 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 from interested parties on the content of this consultation paper which should be received by either JFL, or by the JFSC, no later than 11 November 2020.

1.4 Next steps

1.4.1 During the course of this consultation the JFSC will be holding strategic discussions with the JBA regarding the options outlined in section 4, in order to explain the proposals and develop a shared understanding of the approach.

1.4.2 Following this consultation, the JFSC will publish feedback. The final fees notice will take effect on or before 30 November. 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 the JFSC 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.

2.4 Jersey Resolution Authority

2.4.1 As outlined in Consultation Paper No. 6 2019, the Bank (Recovery and Resolution) (Jersey) Law 2017 (**BRRJL**) was enacted in 2017, but has not been brought into force yet. The BRRJL provides a revised legal framework for dealing with bank failures. The aim was to enable, in the unlikely event of a bank failure, for it to be managed with minimum disorder or losses to retail depositors.

2.4.2 In order to achieve these aims, several resolution powers and stabilisation 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.

2.4.3 A decision to create a new authority to be the JRA or appoint the JFSC, as an existing authority, to be the JRA has not been finalised, however, it is envisaged that this will take place during 2021.

2.4.4 In the event that the JFSC was appointed 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. Assuming work were to begin in Q3 2021, the JFSC estimate that further funding, may be required during this fee period to commence that work. The JFSC estimate that this would equate to an additional 12% increase in banking fees.

2.4.5 This increase is not included in this consultation and the JFSC will need to consult with regard to further funding requirements related to resolution authority functions if the JFSC are appointed as the JRA. The JFSC would do this early in 2021 with the additional levy likely to be invoiced in Q3 2021.

2.4.6 In the event that a new authority was created, it would need to set its fees. Potentially, the JFSC could act as an agent to collect these fees in 2021 and future years.

3 Proposals

3.1 Proposed fees

3.1.1 In order to raise sufficient income to meet the JFSC's liabilities; cover its expenses; and to provide a reserve of such an amount as it considers necessary, the JFSC needs to raise £2.16m in annual fees from the banking sector in 2020, and the same amount in 2021.

3.1.2 The budgeted income from the banking sector of £2.16m does not represent an increase in the overall fees levied, but rather a stable amount in fee income compared to that raised in 2019. This consultation is one of several planned consultations over the coming year in which representative bodies from all industry sectors will be invited to engage in strategic dialogue with the JFSC to ensure that there is proportionality across the fees paid by all sectors.

3.1.3 In order to achieve the budgeted income of £2.16m, the JFSC have considered a number of approaches which are explained below (Section 4). The reason that the JFSC is outlining different approaches is that it intends these alternative ways of raising budgeted income to form the basis of strategic discussions with the JBA during this consultation.

3.1.4 The options that the JFSC have highlighted range from a common rate of increase for all banks in Jersey (which is what would happen in the normal course) and also approaches which create differentiated rates of increase for different types of banks (large or small; branch or subsidiary).

3.1.5 Through this consultation and these strategic discussions, the JFSC intends to develop a shared understanding of the most appropriate charging mechanism to achieve its budgeted income from the banking sector. This will reflect its continuing, and significant, supervisory effort in respect of banks while being sensitive to the nature of the banks that are registered under the BBJL.

3.1.6 The JFSC's funding targets are designed to ensure that it can deliver on its Strategic Roadmap 2020-23. A critical component of its Strategic Roadmap, is its contribution to the Island's successes in the forthcoming MONEYVAL assessment as well as the need for the JFSC to deliver stretching goals in respect of demonstrating even more effective supervision, embedding risk-focused choices throughout its work and strengthening its organisational resilience.

3.1.7 The JFSC is closely monitoring and managing its costs in light of the current situation and, as detailed at 3.2, has reduced costs in respect of its banking supervision activities in recent years. While a robust focus on cost management and reduction remains a priority for the JFSC, as for the businesses it supervises, the crucial work that the JFSC undertakes continues with minimal disruption and regulatory fees form a very small part of the outgoings of the majority of regulated businesses.

3.1.8 As highlighted at 3.3, where banking entities also pay fees for other regulatory licences, this will be considered in those consultations.

3.1.9 As stated within consultation Papers No. 1, No. 2 and No. 5 2020 in respect of other regulatory fees, any firms that are experiencing financial constraints as a result of the Covid-19 outbreak that mean they are unable to pay increased fees as they fall due are encouraged to contact their supervisors at the earliest opportunity.

3.1.10 No penalties have been levied on entities in the banking sector which would be applied, to this sector only, to reduce banking fees. However, certain banking entities will receive a reduction in the next fees payable in respect of Trust Company and Fund Services Business licences.

3.2 Supervisory effort and cost reduction

3.2.1 The volume of activity within the banking sector has remained broadly consistent despite there being fewer banking licences (branches and subsidiaries) year-on-year. The supervisory effort for the banking groups present on the Island does not reduce in proportion to a reduction in the number of licences with, for example, a reduction in licences for a group not reducing its size or complexity in Jersey. Recent restructures of banking groups have demonstrated this.

3.2.2 In line with the JFSC's assessment of risk, banks generally receive enhanced supervision, compared to other types of licensed financial services firms, being subject to more intense engagement including examinations. This has been particularly the case as the JFSC have focused efforts on financial crime supervision in the last two years.

3.2.3 The JFSC's enhanced supervision activities over the last two years in respect of banks have required additional supervisory effort and continue to bear higher costs.

3.2.4 It is important to note that the JFSC have reduced the direct cost of its supervisory resource for the banking sector in recent years, particularly at a senior level where it has carefully recruited when vacancies have arisen: overall significantly reducing the costs of supervising the sector.

3.3 Banks that pay other regulatory fees

3.3.1 This consultation is the first of several consultations with fee payers who hold all types of regulatory licence during which the JFSC will be holding strategic discussions with representative bodies in order to explain its holistic funding requirements.

3.3.2 These discussions will include the JFSC's consideration of cross-sectoral fees paid by individual firms and the JFSC recognises that several banks also pay fees for other types of licence.

3.3.3 As for all fees, the amounts raised from the banking sector must be sufficient to meet the JFSC's liabilities; cover its expenses; and to provide a reserve of such an amount as it considers necessary. In respect of banking fees, and the activities that these fees contribute to, the £2.16m budgeted income from the banking sector for 2020 and 2021 is that sufficient amount.

3.4 JRA

3.4.1 It is probable that Government will move forward with its JRA plans and, as highlighted at 2.4, this may involve the JFSC collecting a separate fee from banks in 2021 to fund that initiative. It is possible this amount would be collected alongside the next fee round in late 2021.

3.4.2 Should Government wish to proceed earlier, banks may be required to pay an additional charge in mid-2021.

3.5 Advanced approaches

3.5.1 Jersey Incorporated Banks wishing to adopt advanced approaches (internal models) present unique supervisory challenges. The JFSC is willing, in principle, to accept the adoption of advanced approaches, recognising the flexibility afforded to the banks in question, however in order to effectively supervise banks that do this, the JFSC will need to recruit specialist staff (or procure specialist advice) to review and opine on the internal models.

3.5.2 As an expensive and specialist activity that will create additional costs, but for very few banks, the JFSC consider that it is necessary to engage directly with the banks that wish to adopt advanced approaches and agree fees bilaterally. As for all of the JFSC's fees, the agreed fees must be sufficient to meet its liabilities; cover its expenses; and to provide a reserve of such an amount as the JFSC considers necessary.

4 Strategic options

4.1 Option 1 – increase fee rates within current mechanism

4.1.1 The approach that the JFSC have historically taken is to increase the fee rates paid by banks in accordance with its published fee notice. The impact on the fees paid by each fee payer is in proportion to other fee payers under this approach.

4.1.2 The mechanism for charging fees using this approach was introduced in 2004 through the Banking Business (General Provisions) (Amendment) (Jersey) Order 2004. The only change to this mechanism has been through increases to the fee rates paid under each of its component parts.

4.1.3 This means that over time certain banks, particularly those whose consolidated income exceeds £20m, have experienced increases in their fees that may be disproportionate by comparison to other banks whose consolidated income exceeds £20m by lesser amounts.

4.1.4 In order to achieve the JFSC's budgeted income from banking fees of £2.16m, in 2020 an uplift of 18% to existing fee rates would be required, and a further 5.3% uplift to these fee rates would be required in 2021 (a compound increase from the 2019 to 2021 fee rates of 24.2%). Fee rates are rounded to the nearest £50:

4.1.5 Table illustrating effects of Option 1 (£):

Fee/year & impact	2019	2020	'19-'20	2021	'20-'21	'19-'21
Application fee	19,250	22,700	17.9%	23,900	5.3%	24.2%
Branch/subsidiary fee	19,250	22,700	17.9%	23,900	5.3%	24.2%
£0-5m income	54,950	64,850	18.0%	68,300	5.3%	24.3%
£5-10m income	63,450	74,850	18.0%	78,800	5.3%	24.2%
£10-20m income	73,950	87,250	18.0%	91,850	5.3%	24.2%
£20+m income	91,800	108,300	18.0%	114,050	5.3%	24.2%

4.2 Option 2 – introducing a subsidiary charge

4.2.1 The Codes of Practice specify more prescriptive requirements for subsidiaries (or Jersey Incorporated Banks) than for branches (or Overseas Incorporated Banks), particularly in respect of principles 3 and 5 of the Code. This means that, to an extent, there are additional supervisory considerations and associated costs that the JFSC bears in relation to its work on subsidiaries.

4.2.2 In light of this, the JFSC consider that one option for consideration ought to be whether an additional charge should be introduced for subsidiaries that would be in addition to the existing fee mechanism.

4.2.3 Were no other aspects of the existing fees notice amended, in order to achieve the budgeted income of £2.16m in 2020 and 2021, this would see the introduction of an £82,250 annual fee for 2020 that would be payable by each subsidiary. This additional annual fee for each subsidiary would increase to £105,250 for 2021.

4.3 Option 3 – introducing new income bands

4.3.1 As highlighted at 4.1.2, the current mechanism for charging fees was introduced in 2004 and over time certain banks, particularly those whose consolidated income exceeds £20m, have experienced increases in their fees that may be disproportionate by comparison to other banks whose consolidated income exceeds £20m by lesser amounts.

4.3.2 The relationship between supervisory effort (and therefore cost) does not always precisely correspond to consolidated income, which is a core component of the banking fee mechanism. Nevertheless, there is a proportionate relationship between a bank's consolidated income and its supervisory risk profile over time.

4.3.3 To address the imbalance between those banks with significantly higher consolidated income levels than the current maximum within the fees notice of £20m, new consolidated income bands could be introduced.

4.3.4 In order to achieve the budgeted income of £2.16m in 2020 and 2021, this could see the introduction of consolidated income bands from £20m to £50m, £50m to £100m, £100m to £200m, and greater than £200m.

4.3.5 Illustration of new income bands:

Fee/year & impact	2019	2020	'19-'20	2021	'20-'21	'19-'21
Application fee	19,250	19,350	0.5%	19,450	0.5%	1.0%
Branch/subsidiary fee	19,250	19,350	0.5%	19,450	0.5%	1.0%
£0-5m income	54,950	55,200	0.5%	55,500	0.5%	1.0%
£5-10m income	63,450	63,750	0.5%	64,050	0.5%	0.9%
£10-20m income	73,950	74,300	0.5%	74,650	0.5%	0.9%
£20-50m income	91,800	95,000	3.5%	100,000	5.3%	8.9%
£50-100m income	91,800	115,000	25.3%	120,000	4.3%	30.7%
£100-200m income	91,800	130,000	41.6%	140,000	7.7%	52.5%
£200m+ income	91,800	150,000	63.4%	160,000	6.7%	74.3%

4.4 Option 4 – introducing balance sheet asset bands

4.4.1 The current "consolidated income" mechanism is more susceptible to change in the financial performance and profile of banks than an approach that is more closely aligned to balance sheet assets.

4.4.2 As above at 4.3.2, the relationship between supervisory effort (and therefore cost) does not always precisely correspond to balance sheet assets. Still, there is a proportionate relationship between a bank's total assets and its supervisory risk profile over time.

4.4.3 To address the imbalance between those banks with significantly greater balance sheet assets, the current consolidated income bands could be substituted by a balance sheet asset equivalent with appropriate bandings to reflect the approach at 4.3.

4.4.4 In order to achieve the budgeted income of £2.16m in 2020 and 2021, this could see the introduction of balance sheet asset bands as illustrated below.

4.4.5 Illustration of balance sheet asset bands (2019 fee is the average paid under the consolidated income model by the relevant banks for comparative purposes):

Fee/year & impact	2019	2020	'19-'20	2021	'20-'21	'19-'21
Application fee	19,250	19,350	0.5%	19,450	0.5%	1.0%
Branch/subsidiary fee	19,250	19,350	0.5%	19,450	0.5%	1.0%
£0-100m assets	54,950	55,200	0.5%	55,500	0.5%	1.0%
£100-500m assets	63,450	63,750	0.5%	64,050	0.5%	0.9%
£500-1bn assets	73,950	74,300	0.5%	74,650	0.5%	0.9%
£1-5bn assets	91,800	95,000	3.5%	100,000	5.3%	8.9%
£5bn-10bn assets	91,800	115,000	25.3%	120,000	4.3%	30.7%
£10-20bn assets	91,800	130,000	41.6%	140,000	7.7%	52.5%
£20bn+ assets	91,800	145,000	58.0%	155,000	6.9%	68.8%

4.5 Option 5 – blended approaches

4.5.1 The options explored above lend themselves to inclusion within a blended approach incorporating elements of each. There are many possible permutations, some of which will be more favourable for individual banks and others less so. The JFSC consider that a blend to the above approaches is most likely to meet the broadest balance between achieving the required level of income from banking fees during 2020 and 2021 and focusing the increases fairly among the fee payers.

4.5.2 One such permutation would be to adopt the balance sheet asset approach with a staggered difference between the banded fees paid by subsidiaries and branches as well as an above-inflationary increase to the overseas branch and subsidiary component of the existing fee mechanism. This is illustrated below and, amongst the other approaches highlighted here, the JFSC intend that this will form a part of the strategic discussions that it will hold with the JBA throughout this consultation.

4.5.3 Table illustrating a blended approach (part 1, branches):

Fee/year & impact	2019	2020	'19-'20	2021	'20-'21	'19-'21
Application fee	19,250	20,000	3.9%	20,100	0.5%	4.4%
Branch/subsidiary fee	19,250	20,000	3.9%	20,100	0.5%	4.4%
£0-100m assets	54,950	55,200	0.5%	55,500	0.5%	1.0%
£100-500m assets	63,450	63,750	0.5%	64,050	0.5%	0.9%
£500-1bn assets	73,950	74,300	0.5%	74,650	0.5%	0.9%
£1-5bn assets	91,800	95,000	3.5%	100,000	5.3%	8.7%
£5bn-10bn assets	91,800	105,000	14.4%	115,000	9.5%	23.9%
£10-20bn assets	91,800	125,000	36.2%	130,000	4.0%	40.2%
£20bn+ assets	91,800	140,000	52.5%	145,000	3.6%	56.1%

4.5.4 Table illustrating a blended approach (part 2, subsidiaries):

Fee/year & impact	2019	2020	'19-'20	2021	'20-'21	'19-'21
Application fee	19,250	20,000	3.9%	21,000	5.0%	9.1%
Branch/subsidiary fee	19,250	20,000	3.9%	21,000	5.0%	9.1%
£0-100m assets	54,950	65,000	18.3%	65,350	0.5%	18.9%
£100-500m assets	63,450	75,000	18.2%	75,400	0.5%	18.8%
£500-1bn assets	73,950	85,000	14.9%	85,450	0.5%	15.6%
£1-5bn assets	91,800	110,000	19.8%	115,000	4.5%	25.3%
£5bn-10bn assets	91,800	120,000	30.7%	135,000	12.5%	47.1%
£10-20bn assets	91,800	145,000	58.0%	150,000	3.4%	63.4%
£20bn+ assets	91,800	160,000	74.3%	170,000	6.3%	85.2%

4.6 Question

4.6.1 Which of the Strategic Options do you agree would achieve the best outcome for the banking industry while enabling the JFSC to achieve its budgeted 2020 and 2021 banking fee income?

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

- Jersey Bankers Association