



**Jersey Financial
Services Commission**

Consultation Paper No. 10 2020

**Consultation on fee rates and associated issues for:
Financial Services (Jersey) Law 1998
Trust Company Business Fees**

A consultation on proposals to change fee rates and structures.

Issued: November 2020

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this Consultation Paper. Those who wish to do so, are invited to respond directly in writing to the JFSC.

The JFSC has also put in place arrangements with Jersey Finance for Jersey Finance to provide a coordinated response. Lisa Springate at Jersey Finance is co-ordinating this. Jersey Finance have asked us to advise those interested in pursuing this option, to provide comments to Jersey Finance by 17 December 2020.

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 Jersey Financial Services Commission (**JFSC**) by 17 December 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:

Jon Stevens

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

Direct Line: +44 (0) 1534 822085
Email: j.stevens@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 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

Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
FSJL	Financial Services (Jersey) Law 1998, as amended
TCB	Trust Company Business

Contents

1	Consultation	5
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 JFSC	6
2.1	Overview	6
2.2	The JFSC's functions	6
2.3	Guiding principles.....	6
3	Proposals	8
3.1	Proposed fees.....	8
3.2	Supervisory effort and cost reduction.....	9
3.3	Fees for change of control.....	10
3.4	Question regarding 3.3.....	10
3.5	Fees for alterations	10
3.6	Question regarding 3.5.....	10
3.7	TCBs that pay other regulatory fees.....	10
3.8	Issues with current fees structure	11
3.9	Inherent volatility within fee projections.....	11
4	Strategic options	12
4.1	Option 1 – increase fee rates within current mechanism	12
4.2	Option 2 – desensitising employee and licence numbers	13
4.3	Option 3 – eliminating the employee metric	14
4.4	Option 4 – introducing new fee bands	15
4.5	Option 5 – blended and alternative approaches.....	15
4.6	Questions	16
	Appendix A - list of representative bodies who have been sent this consultation paper	17

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 the Representative Bodies for the TCB sector to be those listed at Appendix A; 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 trust company business under the FSJL.

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 18 December 2020.

1.4 Next steps

1.4.1 During the course of this consultation the JFSC will be holding strategic discussions with the Representative Bodies 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 1 January. 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.

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 approximately £3.5m in fees from the TCB sector in 2021.
- 3.1.2 This budgeted income of approximately £3.5m does not represent an increase in the overall fees levied, but rather a stable amount in fee income compared to that raised in 2020.
- 3.1.3 The JFSC is closely monitoring and managing its costs in light of the current situation and, as detailed at 3.2, has carefully managed costs in respect of its TCB supervision activities in recent years. While a robust focus on cost management and, where appropriate, 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.
- 3.1.4 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 the JFSC's 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.
- 3.1.5 In order to achieve the budgeted income of approximately £3.5m, the JFSC has considered a number of approaches which are explained below (Section 4). The reason that the JFSC is outlining different approaches is that it believes that now, while we are not proposing over-inflationary increases to fees, is the best time to consider whether the current approach to raising fee income from the TCB sector is proportionate and sustainable or whether there is an alternative which is more likely to impose the cost of regulation on those best placed to bear that increasing cost and those whose activities are most likely to drive regulatory activity. The JFSC intends the alternative ways of raising budgeted income to form the basis of strategic discussions with the Representative Bodies during this consultation.
- 3.1.6 Discussing structural change to the fee mechanism at this time facilitates transparency to industry of the impact of restructuring, given that the overall financing target is being kept stable in 2021.
- 3.1.7 This paper acknowledges that the option of remaining with the current approach is still available. However, it sets out options which create differentiated fee rates. The JFSC is open not only to written response but to direct engagement with representative bodies to refine and help choose between the options set out here.
- 3.1.8 The options that the JFSC has highlighted range from a common rate of increase for all fee payers (which is what would happen in the normal course) and also approaches which create differentiated rates of increase under revised fee structures.

- 3.1.9 Through this consultation and these strategic discussions, the JFSC intends to develop a shared understanding of the most appropriate and sustainable charging mechanism to achieve its budgeted income from the TCB sector. This reflects continuing, and significant, supervisory effort in respect of TCBs while being sensitive to the nature of the TCBs that are registered under the FSJL.
- 3.1.10 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 and that the mechanisms by which fees are levied are sustainable.
- 3.1.11 As stated within all recent consultations 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.
- 3.1.12 Following the receipt of Civil Financial Penalties, TCBs will receive a reduction in the next annual fees payable in respect of Trust Company of approximately 3%.

3.2 Supervisory effort and cost reduction

- 3.2.1 The volume of activity within the TCB sector has increased in recent years with the consolidation of some firms not having reduced the overall risk profile of the sector. Recent restructures of TCB affiliations have demonstrated this.
- 3.2.2 In line with the JFSC's assessment of risk, TCBs generally receive either enhanced or proactive supervision, 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 As the JFSC have focused efforts on financial crime supervision the volume of TCB supervisory activity has increased. Some of the underlying reasons are articulated in the National Risk Assessment which sets out some of the complex considerations which go to make an assessment of the financial crime risks in the TCB sector. This pattern of increasing supervisory activity in relation to this sector will continue. Financial crime is a substantial and, arguably, growing threat. Global standards and expectations of the good practices expected of a highly developed international financial centre such as Jersey are, rightly, developing in response. The JFSC is involved in a detailed and complex range of initiatives to develop the Island's financial crime fighting capacity.
- 3.2.4 It is important to note that the JFSC have reduced the direct cost of its supervisory resource for the TCB sector in recent years, particularly at a senior level where it has carefully recruited when vacancies have arisen: overall reducing the costs of supervision. However, the intensifying expectations and requirements with regard to the regulatory model to apply is a greater driver of costs than any such savings. Consequently, we have to expect that supervisory costs will rise, even in the absence of inflationary cost drivers and it is desirable that these costs are funded in a resilient and proportionate way. This consultation seeks to identify the best way to structure the fees in order to achieve that, as well as advising on the 2021 financing target from the TCB sector.

3.3 Fees for change of control

- 3.3.1 There is a reasonable volume of transactional activity where TCBs, either at the affiliation or participating member level, are bought or sold. These transactions do not currently incur a fee, however, do require supervisory effort in appraising the transaction and determining the decision to provide a “no objection” or otherwise.
- 3.3.2 It is proposed to introduce a fee for transactions where a registered person applies to become, to cease being, or to merge with an Affiliation Leader or Participating Member. Such fees would be at the same level as for existing applications to register non-affiliated persons, affiliation leaders, or participating members as appropriate to the circumstances of the transaction. For registered persons in heightened supervision or enforcement, it is proposed to include a £1,000 premium on such transactions.
- 3.3.3 For the avoidance of doubt, this is not a fee for individuals (i.e. PQs) or for changes in control where a TCB does not become, or cease to be, a subsidiary of another legal entity.

3.4 Question regarding 3.3

- 3.4.1 Do you agree with the proposed fee in respect of a change of control?

3.5 Fees for alterations

- 3.5.1 As at 3.5, there is also a reasonable volume of activity where TCBs request changes in respect of their names and in respect of adding, amending, or removing licence conditions, or licence classes. These alterations do not currently incur a fee, however, do require supervisory effort in appraising the request, then determining and documenting the outcome.
- 3.5.2 It is proposed that a fee of £400 shall be paid by a registered person who applies for an alteration so as to reflect all or any of the following:
- 3.5.2.1 a change of the name of the registered person;
 - 3.5.2.2 the addition, alteration or removal of conditions pursuant to an application from the registered person; or
 - 3.5.2.3 the removal of a class of licence pursuant to an application from the registered person.

3.6 Question regarding 3.5

- 3.6.1 Do you agree with the proposed fee in respect of alterations?

3.7 TCBs that pay other regulatory fees

- 3.7.1 This consultation is one 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.
- 3.7.2 These discussions will include the JFSC’s consideration of cross-sectoral fees paid by individual firms and the JFSC recognises that several TCBs also pay fees for other types of licence.

- 3.7.3 As for all fees, the amounts raised from the TCB 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 TCB fees, and the activities that these fees contribute to, the approximately £3.5m budgeted income from the TCB sector for 2021 is that sufficient amount.

3.8 Issues with current fees structure

- 3.8.1 The current charging mechanism for TCBs relies on variable inputs and the fees cap. These inputs provide a proxy for the scale of TCB activities undertaken in order that the more significant TCBs which the JFSC supervises pay an appropriate fee relative to the level of risk they pose and supervisory effort that they require.
- 3.8.2 The fee cap appears inherently unreasonable, simply reallocating costs from larger firms to smaller traders. Over recent years the cap has been gradually lifted by 5% each year from 75% in 2017 to 90% in 2020. It has always been the intention to remove the fee cap entirely and this is a feature of each of the options explored in Section 4, below.
- 3.8.3 The number of employees and number of licences held are reasonable proxies for the activities within each TCB and therefore the effort required for effective supervision as well as being a reasonable indicator of the strength of financial resources (and therefore ability to pay). Nevertheless the number of employees, in particular, is increasingly vulnerable to changes in working practices.
- 3.8.4 The number of licences held is less prone to fluctuations arising from working practices and, to an extent replicates the effect of the number of employees where larger TCBs also tend to hold a greater number of licences within their affiliation.
- 3.8.5 Even so, both metrics may be subject to rapid change meaning that the JFSC's medium-term financial planning can be compromised which, in turn, may result in the need to increase fee rates at relatively short notice in order that the JFSC can deliver effective supervision and meet the objectives of its Strategic Roadmap 2020-23.

3.9 Inherent volatility within fee projections

- 3.9.1 Because of changes in licensees and their businesses, we may end up collecting more or less than our target budgeted fee income of approximately £3.5m in 2020 under any of the approaches outlined at Section 4.

4 Strategic options

4.1 Option 1 – increase fee rates within current mechanism

4.1.1 The approach that the JFSC has historically taken to achieve its budgeted income targets is to increase the fee rates paid by TCBs in accordance with its published fees notice. The impact on the fees paid by each fee payer is generally in proportion to other fee payers under this approach.

4.1.2 The only change to this mechanism has been through increases to the fee rates paid under each of its component parts including the gradual removal of the fees cap over recent years.

4.1.3 In order to achieve the JFSC's budgeted income from TCB fees of approximately £3.5m, in 2021 an inflationary uplift of 0.9% to existing fee rates would be required, and the cap would be increased to the higher of £85,000 or 95% of the fees that would otherwise be paid absent the cap. Fee rates are rounded to the nearest £10, or £5 for TCB employee fees.

4.1.4 The impact of Option 1 is illustrated in the table below for annual fees.

Fee/year & impact	2020	2021	'20-'21 £	'20-'21%
Base fee	2,320	2,350	30	1%
Per licence fee	820	830	10	1%
Class O base fee	1,870	1,890	20	1%
Class O per licence fee	645	660	15	2%
Natural Person fee	820	830	10	1%
1-10 employees each	555	560	5	1%
11-20 employees each	275	280	5	2%
21-50 employees each	245	250	5	2%
51-100 employees each	180	185	5	3%
100+ employees each	120	125	5	4%
Fees cap	80,000	85,000	5,000	6%
Fees cap %	90%	95%	-	6%

4.1.5 The impact of Option 1 is illustrated in the table below for application fees including the proposed change of control fee summarised at 3.4.

Fee/year & impact	2020	2021	'20-'21%	'20-'21 £
Base fee	1,640	1,655	15	1%
Participating member fee	210	210	-	0%
Class O base fee	820	830	10	1%
Class O participating member fee	160	160	-	0%
Natural Person fee	725	735	10	1%

Fee/year & impact	2020	2021	'20-'21%	'20-'21 £
Change of control	-	8,000	New	New

4.2 Option 2 – desensitising employee and licence numbers

4.2.1 The current charging mechanism for TCBs relies on two variable inputs. These inputs provide a proxy for the scale of TCB activities undertaken in order that the more significant TCBs which the JFSC supervises pay a proportionate fee relative to the level of risk they pose and supervisory effort that they require: the number of licences held; and the number of TCB employees.

4.2.2 As both metrics may be subject to rapid change (see 3.8) the JFSC proposes that the sensitivity of the current fees mechanism to variances in the number of employees and licences held by individual TCBs or by affiliation leaders could be addressed by moving to use a five-year rolling average of both metrics within the fee calculations.

4.2.3 The fee for employees would fall marginally under this option.

4.2.4 Under this option, the JFSC also proposes to increase the fee for Natural Persons to reflect the increasing supervisory effort required to effectively supervise these TCBs.

4.2.5 The impact of Option 2 for annual fees is illustrated in the table below.

Fee/year & impact	2020	2021	'20-'21 £	'20-'21%
Base fee	2,320	2,500	180	8%
Per licence fee	820	1,000	180	22%
Class O base fee	1,870	1,875	5	0%
Class O per licence fee	645	800	155	24%
Natural Person fee	820	1,000	180	22%
1-10 employees each	555	500	(55)	-10%
11-20 employees each	275	250	(25)	-9%
21-50 employees each	245	200	(45)	-18%
51-100 employees each	180	175	(5)	-3%
100+ employees each	120	120	-	0%
Fees cap	80,000	n/a	n/a	n/a
Fees cap %	90%	n/a	n/a	n/a

4.2.6 The impact of Option 2 is illustrated in the table below for application fees including the proposed change of control fee summarised at 3.4.

Fee/year & impact	2020	2021	'20-'21%	'20-'21 £
Base fee	1,640	1,655	15	1%
Participating member fee	210	215	5	2%
Class O base fee	820	830	10	1%

Fee/year & impact	2020	2021	'20-'21%	'20-'21 £
Class O participating member fee	160	165	5	3%
Natural Person fee	725	750	25	3%
Change of control	-	8,000	New	New

4.3 Option 3 – eliminating the employee metric

- 4.3.1 The JFSC believes that careful consideration ought to be given to whether the number of TCB employees should be eliminated from the charging mechanism and the fee for the number of licences held re-weighted to achieve the approximately £3.5m of budgeted income for 2021.
- 4.3.2 One benefit of this approach is that over time it is anticipated that “TCB employee” numbers will diminish as a product of technology and automation. The JFSC and the firms its supervises need to invest strategically in the evolution of the way that business is conducted and this will include adequately supervising the evolving ways of doing business which will continue to require significant ongoing investment in supervisory and regulatory technology.
- 4.3.3 Simultaneously, as under 4.2.2, the JFSC proposes that the sensitivity of the current fees mechanism to variances in the number of licences held by individual TCBs or by affiliation leaders could be addressed by moving to use a five-year rolling average number of licences within the fee calculations.
- 4.3.4 The impact of Option 3 is illustrated in the below table.

Fee/year & impact	2020	2021	'20-'21 £	'20-'21%
Base fee	2,320	3,500	1,180	51%
Per licence fee	820	1,400	580	71%
Class O base fee	1,870	2,500	630	34%
Class O per licence fee	645	750	105	16%
Natural Person fee	820	1,000	180	22%
Fees cap	80,000	n/a	n/a	n/a
Fees cap %	90%	n/a	n/a	n/a

4.4 Option 4 – introducing new fee bands

- 4.4.1 The final option the JFSC wishes to discuss with industry during this consultation is the introduction of new fee bands to replace the current charging mechanism. We would use the existing charging mechanism to place TCBs within fee brackets which would form the basis of their fee for 2021 and, subject to review, their fee for 2022 as well.
- 4.4.2 We would seek to develop an alternative mechanism over the course of 2021 that would provide an alternative proxy for the level of risk and therefore supervisory effort in respect of TCBs which would continue to be compatible with this fee band approach. Such alternatives might include TCB income, customer assets under management, or other metrics derived from supervisory risk data collected from TCBs.
- 4.4.3 The table below illustrates potential fee bands based on the equivalent fee payable under the current mechanism and 2020 fees rates.

Fee under current mechanism	Fee band	Equivalent fee payable 2021
£820	1	£830
£821 to £7,500	2	£5,000
£7,501 to £15,000	3	£10,000
£15,001 to £25,000	4	£20,000
£25,001 to £35,000	5	£30,000
£35,001 to £45,000	6	£40,000
£45,001 to £55,000	7	£50,000
£55,001 to £65,000	8	£60,000
£65,001 to £75,000	9	£70,000
£75,001 to £85,000	10	£80,000
£85,001 to £95,000	11	£90,000
£95,001 to £105,000	12	£100,000
£105,001 to £115,000	13	£110,000
£115,001 to £125,000	14	£120,000
£125,001 to £135,000	15	£130,000
£135,001 to £145,000	16	£140,000

4.5 Option 5 – blended and alternative approaches

- 4.5.1 Discussing structural change to the fee mechanism at this time facilitates transparency to industry of the impact of restructuring, given that the overall financing target is being kept stable in 2021.
- 4.5.2 We acknowledge that the option of remaining with the current approach is still available. However, the above options are intended to begin the necessary strategic dialogue with the TCB sector on alternative approaches.

- 4.5.3 We encourage and welcome any comments on alternative approaches or blended approaches (being combinations of the above, or other, options) that would enable the JFSC to achieve its budgeted income of approximately £3.5m during 2021.

4.6 Questions

- 4.6.1 Which of the Strategic Options do you agree would achieve the best outcome for the TCB industry while enabling the JFSC to achieve its budgeted 2021 TCB fee income?
- 4.6.2 Do you consider that there are alternative approaches to those summarised in this consultation?

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

- › Institute of Directors (Jersey branch)
- › Jersey Association of Trust Companies
- › Jersey Compliance Officers Association
- › Society of Trust and Estate Practitioners (Jersey branch)

