



Jersey Financial
Services Commission

Feedback on Consultation Paper

No. 9 2016

Feedback on a consultation on proposals to increase annual registration fees and the fee cap

Proposed Fees Under:

Financial Services (Jersey) Law 1998: Trust Company Business
Registration Fees

Issued: November 2016

Consultation Feedback

Please note that terms are defined in the Glossary of Terms.

This paper reports on responses received by the *JFSC* regarding the Consultation Paper.

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Glossary of Terms

| | |
|---------------------------|---|
| <i>Commission/JFSC</i> | means the Jersey Financial Services Commission |
| <i>The Commission Law</i> | means the Financial Services Commission (Jersey) Law 1998, as amended |
| <i>TCB</i> | Trust Company Business |

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1 Executive Summary

1.1 Overview

- 1.1.1 On 26 September 2016, the *JFSC* issued Consultation Paper No. 9 2016: Financial Services (Jersey) Law 1998: Trust Company Business Registration Fees, to seek views on proposals to increase annual registration fees and the fee cap.
- 1.1.2 The purpose of this paper is to provide feedback on the responses received regarding the Consultation Paper.

1.2 Feedback received

- 1.2.1 The consultation period closed on 28 October 2016. One response was received by Jersey Finance Limited and one was received directly by the *JFSC*. Both responses were received from Trust Company Businesses. The *JFSC* also engaged in dialogue with a representative body for the TCB sector as to the reason for the proposed fee increase.
- 1.2.2 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the *JFSC's* response, as appropriate, to each.
- 1.2.3 The *JFSC* is grateful to the respondents for taking the time to consider and comment on the proposals. The final Fees Notices can be found in Appendix B.

1.3 Next Steps

- 1.3.1 The *JFSC* issued the Trust Company Fees Notice (a copy of which may be found in Appendix B) on 23 December 2016. This can also be accessed on the [JFSC's website](#).

2 Summary of Responses

2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received in response to the *Consultation Paper*. While not every comment received is individually listed, this section contains summaries and the *JFSC's* response to those comments.
- 2.1.2 The *Consultation Paper* asked one question, as set out below in paragraph 2.2.1.

2.2 Question at paragraph 3.7.1.1 of Consultation Paper No. 9 2016

- 2.2.1 “Do you agree with the proposed fee tariff increase of 4%?”
- 2.2.2 The feedback was mixed. The respondent via JFL agreed, describing the proposed increase as “fairly benign, considering the context of low increases in recent years”.
- 2.2.3 The direct respondent disagreed, describing the fee increase as “prejudicial to smaller, independent trust companies” and stated that “it does not appear to reflect where the burden of supervision lies”.

***JFSC* response:**

- 2.2.4 The *JFSC* notes the divergence of views in these two cases.
- 2.2.5 Given the lack of feedback from other trust company businesses, the *JFSC* would conclude that the sector overall views the increases neutrally i.e. TCBs do not hold a strong view for **or against** the proposed changes.

2.3 Other Questions raised by respondents

- 2.3.1 The respondent via JFL stated that “the area which has not been effectively articulated is the Commission’s Reserves Policy” and that “*it would be helpful for the Commission to explain “why” it requires 6 months’ expenses plus an average annual litigation/investigation costs [sic] to comprise their reserves? (It seems a mixture of reserve policy philosophies and methodologies). Have they any data/precedence [sic]/evidence to validate why such a substantial reserve position is required?*”
- 2.3.2 The direct respondent felt that the fee structuring outlined was prejudicial to smaller, independent trust companies and that it did not appear to reflect where the burden of supervision lies. He noted the changes outlined under section 3.6.5, highlighting that this has, in the main, been a result of private equity owned groups buying out smaller trust companies. He felt that this should “encourage the Commission to remove the current fee cap and balance out the front loaded costs based on employee numbers”.

- 2.3.3 The direct respondent went on to state that this meant that his employer “effectively pays more per employee than any other trust company”. He continued as follows: “This ultimately leads to competition being stifled, which is dangerous for any industry. Our research, which is borne out by the continued strong pipeline of opportunities, is that clients and intermediaries have a strong desire to work with owner managed, independent and entrepreneurial trustees. The number of independent trustees has shrunk markedly over the past few years mainly due to the ever increasing costs and associated compliance burdens the industry faces. Whilst this reduction of competition has proved helpful to [us], on the flip side it reduces the opportunities for business to come to the Island and allows competitor jurisdictions such as Guernsey (which has far more independent trustees) to win business which would have otherwise been destined to our Island. The ever increasing and we feel unfair allocation of regulatory fees also acts as a barrier to entry for TCB’s and will create a self-perpetuating situation where more consolidation will ultimately follow – does the Commission truly wish for the Island to consist of only PE backed trust companies?”
- 2.3.4 The direct respondent cited the JFSC’s presentation (on 4 November 2016 to the Jersey Compliance Officers’ Association) where it was confirmed that systemically important businesses will be under enhanced supervision. He asserted that this must lead to higher costs, querying whether the fees charged should reflect this position. He further stated that smaller trust companies would otherwise continue to subsidise larger groups with the following results:
 - › Further disadvantage to smaller trust companies in the market place; and
 - › Jersey becoming a less attractive jurisdiction as costs “naturally end up being passed onto the consumer”.
- 2.3.5 The direct respondent queried whether consolidation would then lead to less supervisory visits being undertaken, providing cost savings to the JFSC. He concluded by enquiring as to the controls in place at the JFSC to ensure that costs remain in check and “value for money” and whether any independent review had been undertaken to assess what efficiencies could be implemented. He also noted that there appears to be little information on how the JFSC manages costs and that this should be expanded upon.

| JFSC response: | |
|-----------------------|---|
| 2.3.6 | The respondent via JFL -The level of the JFSC’s reserves was subject to consultation in 2015 (as set out in Consultation Paper 10 and the Feedback to this). The JFSC does not believe that the target level of reserves is unduly conservative. |
| 2.3.7 | The direct respondent - In practice there are only a small number of firms that are currently affected by the fee cap. The JFSC confirmed in the Feedback to Consultation Paper 10 that there will be no fee cap at the higher end of the tariff from 1 January 2018. |
| 2.3.8 | The JFSC’s fees are broadly size-related. The fee level is driven both by employee numbers and by the level of activity (classes of registration). |
| 2.3.9 | Consultation Paper 10 2015 confirmed why the current metric of employee-driven fees is being retained: No alternative has been identified and confirmed as viable. |

- 2.3.10 The *JFSC*'s main focus is positive risk management, which may be developed within a variety of business models (subject of course to the requirements of the *JFSC*'s Licensing Policies).
- 2.3.11 The enhanced level of supervision does not apply to trust company businesses per se. There are one or two exceptions, where there is a more complex business model: In these cases, fees will not derive from the conduct of trust company business alone.
- 2.3.12 All trust companies are otherwise subject to **proactive** supervision. In some cases, the risk attaching to a smaller trust company means that the level of supervision will be increased. Any "cross-subsidisation" – actual or perceived – must then also work in reverse. The *JFSC*'s approach to supervision is not grounded upon any direct link between the fee a firm pays and the cost of "its" supervision. To do otherwise would be unmanageable for the *JFSC* in terms of administration, as well as creating significant (unpredictable) variations in cost for each trust company.
- 2.3.13 The number of visits is not a cost driver (there is no incremental cost from conducting a visit) and therefore not an area for potential cost savings. Any time saved from changes in our supervisory approach will be spent – as before - in working to better understand the key risks in a business, and whether they are recognised, understood and mitigated.
- 2.3.14 The *JFSC*'s 2015 Annual Report states that the *JFSC* continues to "bear down" on costs as follows: *"During 2015, the JFSC made some immediate cost savings in a number of areas and began to re-engineer some of its core processes to improve efficiency and cost-effectiveness [...] The JFSC has maintained an ongoing review of costs which proved effective in controlling overall costs during 2015. Cost control remains a core objective for the Finance team and the JFSC as a whole. Improvements in reporting, departmental budget monitoring and procurement control are central to this objective. As such, these will continue to be key focus areas for the team"*.
- 2.3.15 With respect to the costs and effectiveness of Supervision the Report also highlighted that: *"The JFSC completed a comprehensive review of its supervisory functions during 2015. The review identified a number of ways to enhance the efficiency and effectiveness of its Supervision teams. Following extensive internal consultation and discussion, the JFSC agreed on a number of actions to implement the recommendations made by the review"*.

Appendix A - List of Respondents to this Consultation Paper

- › Affinity Trust Limited

Appendix B - Trust Company 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: | Trust Company Business |
| Pursuant to: | Articles 8(3) and 9(6) of the Financial Services (Jersey) Law 1998, as amended; and Article 15(6) of the Financial Services Commission (Jersey) Law 1998, as amended |

Commencement date

The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December 2017.

1 Interpretation

1.1 In this notice, unless the context otherwise requires -

| | |
|-----------------------|--|
| affiliation | in respect of a registered person or an applicant for registration, means a group of persons carrying on or intending to carry on trust company business the members of which have agreed that one member will be the affiliation leader; |
| affiliation leader | in respect of an affiliation, means the member of the affiliation which has agreed to be the prime source of contact between the Commission and the members of the affiliation with respect to compliance with the Commission’s prudential rules and conduct of business regulation; |
| Commission | means the Jersey Financial Services Commission; |
| Law | means the Financial Services (Jersey) Law 1998 as amended; |
| non-affiliated person | in respect of an applicant for registration or a registered person, means a person who is neither an affiliation leader nor a participating member; |

| | |
|---------------------------------|--|
| trust company business employee | in respect of a registered person, means – (a) a person employed, either under a contract of service or a contract for services, by the registered person to assist in the provision of trust company business (other than solely to provide book-keeping, filing, secretarial, information technology support or any similar general support service); and (b) if, on the relevant date there exists an agreement for the provision to the registered person of the services of such persons by another person not trading in Jersey, shall be taken to include the number of such persons as the registered person estimates would be required to be employed full time to undertake the work undertaken by the persons whose services are to be provided; |
| participating member | in respect of an affiliation, means a member of the affiliation who is not its affiliation leader; |
| relevant date | in respect of a year of registration of a registered person, means the 1st January in that year except in the year the person applied to be registered when it means the date of the application for registration. |

- 1.2 In calculating for registration fee purposes the number of trust company business employees of a managed trust company, those trust company business employees that form part of the calculation in respect of the manager's own registration shall not be taken into account.
- 1.3 In calculating for registration fee purposes the number of trust company business employees of a registered person on the relevant date any trust company business employee employed for 25 hours or less during the week in which the relevant date occurs shall be taken into account on a 50% headcount basis (with the total number of trust company business employees being rounded up to the next full number where necessary).

2 Application fee

- 2.1 The fee to accompany an application for registration to carry on trust company business shall be the amount calculated in accordance with the table set out in the Schedule.

3 Registration fees

- 3.1 Except as provided by paragraph 3.4, a person registered to carry on trust company business shall pay a registration fee of an amount calculated in accordance with the table set out in the Schedule.
- 3.2 The registration fee is payable –
- 3.2.1 on registration; and
- 3.2.2 in respect of 2017, 31 January 2017.
- 3.3 If a person is registered after 1st July but before the following 1st January the registration fee payable on registration shall be half the fee otherwise payable.

3.4 The Commission may remit a registration fee in whole or in part if –

3.4.1 the person liable to pay the fee is a member of an affiliation; and

3.4.2 in the opinion of the Commission the total of the registration fees payable by the members of the affiliation is unreasonably high having regard to the trust company business carried on by those members.

4 Late payment of registration fees

4.1 If a registered person fails to pay, with value, the whole or any part of a fee on or before the date it becomes due the person shall be liable to pay, unless otherwise agreed by the Commission, an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid.

5 Refund of registration fee

5.1 If a person's registration to carry on trust company business is revoked on or before 1st July in any year the Commission shall refund to the person half of the registration fee paid by the person in respect of that year.

6 Late filing fees

6.1 If a registered person fails to file or deliver any document to the Commission under the provisions of the Law or under any 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 un-filed or undelivered unless the registered person has given the Commission prior written notice of the reasons for the late filing or delivery of a document and the Commission 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.

7 Fee cap

7.1 The registration fee is subject to a fee cap of the greater of either £62,400 or three quarters of the fee that would be payable absent any fee cap being in place.

Schedule: Fees

| Classes of trust company business of registered person | Application fee | Registration fee |
|---|---|---|
| <p>Any class or combination of classes (not including class O or natural persons carrying on a single class of trust company business – see below)</p> | <p>£1,300 for an application to register a non-affiliated person</p> <p>£1,300 for an application to register an affiliation leader</p> <p>£166 for an application to register a participating member</p> | <p>In the case of a non-affiliated person –</p> <p>£1,835; plus</p> <p>£647 multiplied by the number of classes of trust company business undertaken by the non-affiliated person; plus</p> <p>a sum calculated –</p> <p>(a) on the basis of a count of the trust company business employees employed on the relevant date in the trust company business of the non-affiliated person (up to a maximum of 200 employees); and</p> <p>(b) at the rate of –</p> <p>£440 for each of the first 10 employees in that count</p> <p>£217 for each of the next 10 employees in that count</p> <p>£190 for each of the next 30 employees in that count</p> <p>£143 for each of the next 50 employees in that count</p> <p>£95 for each of the last 100 employees in that count.</p> <p>In the case of an affiliation –</p> <p>£1,835 for the affiliation leader; plus</p> <p>in respect of each member of the affiliation (that is, the affiliation leader and every participating member) – the sum of £647 multiplied by the number of classes of trust company business undertaken by the member; plus</p> <p>a sum calculated –</p> |

| Classes of trust company business of registered person | Application fee | Registration fee |
|---|--|--|
| | | (a) on the basis of a count of the trust company business employees employed on the relevant date in the trust company business of the affiliation (up to a maximum of 200 employees); and (b) at the rate of – £440 for each of the first 10 employees in that count £217 for each of the next 10 employees in that count £190 for each of the next 30 employees in that count £143 for each of the next 50 employees in that count £95 for each of the last 100 employees in that count. |
| Class O | £650 for an application to register a non-affiliated person £650 for an application to register an affiliation leader £130 for an application to register a participating member | In the case of a non-affiliated person - £1,479. In the case of an affiliation – £1,479 for the leader of the affiliation, plus £509 for each participating member. |
| Natural persons carrying on a single class of trust company business | £572 | £647 |