



# **Consultation on proposals to increase fees for Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 for registered persons**

## Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 31 January 2017.

Responses should be sent to:

**Thomas Cowsill**

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Alternatively, responses may be sent directly to the JFSC by 31 January 2017. 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:

**Anita Matthews**

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PO Box 267	
14-18 Castle Street	
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It is the policy of the JFSC to make the content of all responses available for public 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

AML/CFT	anti-money laundering/combating the financing of terrorism
Commission/JFSC	Jersey Financial Services Commission
the Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

## Contents

<b>Consultation Paper .....</b>	<b>2</b>
<b>Glossary of Terms .....</b>	<b>3</b>
<b>Contents .....</b>	<b>4</b>
<b>1 Consultation .....</b>	<b>5</b>
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
<b>2 Proposals .....</b>	<b>6</b>
2.1 Proposed fee increase.....	6
2.2 The work of the JFSC .....	6
2.3 The JFSC's wider financial position.....	7
2.4 Fee proposal.....	7
2.5 Question.....	8
<b>Appendix A - List of Representative Bodies who Have Been Sent this Consultation Paper .....</b>	<b>9</b>
<b>Appendix B - Draft Fees Notice under the Supervisory Bodies Law (for accountants and lawyers) .....</b>	<b>10</b>
<b>Appendix C - Draft Fees Notice under the Supervisory Bodies Law .....</b>	<b>14</b>

# 1 Consultation

## 1.1 Basis for consultation

- 1.1.1 Under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the Law), the JFSC is the supervisory body responsible for regulated persons' activity covered by the Law, as well as having been designated as the supervisory body for persons registered with the JFSC under the Law. Article 20 of the Law allows the Commission to charge an annual fee to persons subject to the Law.
- 1.1.2 Article 21(6) of the Law requires that before the JFSC may publish any fee "...*the [Commission] shall publish a report that includes -*
  - a) *Details of the proposed fee;*
  - b) *A request for comments on the level of the proposed fee; and*
  - c) *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 The JFSC considers that this consultation paper constitutes such a report as required by the Law.

## 1.2 Who will be affected by the proposed changes?

- 1.2.1 The proposed new fees will affect all persons registered under the Law, and persons that become registered on or after 1 January 2017.

## 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 and its likely impact on registered persons.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 31 January 2017.

## 1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice in the first quarter of 2017. Firms will be notified when either their invoices are ready, or they need to supply employee information via the myJFSC portal, and should not make payments until this time.

## 2 Proposals

### 2.1 Proposed fee increase

- 2.1.1 The current fee rates under the Law have applied since January 2011, almost six years ago. Since that time inflation has materially eroded their value. The JFSC proposes to increase the fee rates by the rate of inflation since then, thus restoring their value in real terms, but not increasing them beyond that.
- 2.1.2 The proposed increase in fee rates is 13.6% across the board. For a sole trader, this increases the annual fee by £27 to £227 and the maximum fee payable by any registered person increases to £11,360.
- 2.1.3 The proposed fees notices reflecting the proposals can be found in Appendix B (for accountants and lawyers) and Appendix C (for other registered persons, including estate agency services and lending).
- 2.1.4 As in 2016, fees will be administered via firms' myJFSC portal accounts. Firms will receive an email prompt to notify them that an invoice is awaiting payment, or that they need to supply employee information. The JFSC's bank details for payments are provided within the portal – cheques will not be accepted.

### 2.2 The work of the JFSC

- 2.2.1 The JFSC is the Island's statutory AML/CFT regulator. Our work includes the authorisation and supervision of firms, as well as policy development and enforcement activity.
- 2.2.2 Our Business Plans and Annual Reports set out our priorities and report on outcomes respectively. For example, some of the work we have carried out in 2015 and 2016, particularly relevant to our functions under the Law, includes:
  - › Core 'day to day' supervision of entities, also covering authorisation activity and, where necessary, the progression of a number of referrals to our enforcement unit
  - › Continual outreach and education on AML/CFT risk management through day-to-day interaction with firms
  - › Multiple training sessions for industry on aspects of the AML/CFT and sanctions regimes
  - › Policy work, including the introduction of a regulatory regime for virtual currency and
  - › Together with government and other Island authorities, helping to secure an excellent outcome for Jersey in the MONEYVAL assessment of its AML/CFT regime.
- 2.2.3 Other elements of the JFSC's work contribute to its ability to carry out its duties under the Law. In 2015 and 2016 this has included:
  - › Preparation for the Island's forthcoming National Risk Assessment on threats and vulnerabilities regarding money laundering and the financing of terrorism (part of which directly focusses on registered persons)
  - › Targeted international engagement, such as with the Financial Action Task Force through the JFSC's membership of the Group of International Finance Centre Supervisors and
  - › Engagement with MONEYVAL on emerging trends in AML/CFT.

- 2.2.4 It is important to emphasise the unprecedented step-change in financial regulation and international relations brought about by the financial crisis in 2007/8. Since then, thousands of pages of requirements have been added to the global rulebook by both international, supranational and national standard setters. International finance centres like Jersey are under greater scrutiny, daily, than ever before.
- 2.2.5 Given our statutory remit, the JFSC's view is that we do not undertake significant amounts of discretionary work compared to what is expected of a modern regulator, and it is not credible to believe our workload will decline in the near future. So, the JFSC needs to be sustainably funded to carry out its current level of activity and be prepared to respond to emerging threats. In this regard the Island's authorities, including the JFSC, have to respond to the greater international focus on targeted financial sanctions (financing of terrorism) and proliferation financing<sup>1</sup>.

## 2.3 The JFSC's wider financial position

- 2.3.1 The JFSC's recent financial performance can be summarised as follows:
  - 2.3.1.1 In 2014, the JFSC's income and expenditure were in balance, but absent an exceptional enforcement cost recovery there would have been a deficit of over £950,000 (after restatement due to FRS102)
  - 2.3.1.2 In 2015, the JFSC made a loss of some £640,000
  - 2.3.1.3 Whilst the impact of enforcement and litigation costs make forecasting uncertain, our current forecast for 2016 predicts a loss in excess of £300,000 for the year.
- 2.3.2 Because the JFSC holds reserves, these losses have been able to be accommodated, but that position is not sustainable; indeed, as well as bringing the JFSC's annual finances back into balance, the reserves need to be rebuilt to appropriate levels over a reasonable period of time.
- 2.3.3 The JFSC has previously signalled its intention to increase fees, including, for example, at our 2016 Business Plan presentation. Our 2017 Business Plan and budget will be published at the beginning of February.

## 2.4 Fee proposal

- 2.4.1 The JFSC proposes that the fee rates set under the Law for the period from 1 January 2011 simply be increased by the level of inflation since they were last changed – that is, the value of the fee rates simply being restored in real terms.
- 2.4.2 Retail prices information from the Jersey Government shows that the rate of inflation between December 2010 and September 2016 was 13.6%<sup>2</sup>.
- 2.4.3 The JFSC proposes to increase the fee rates under the Law by 13.6%.

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<sup>1</sup> Proliferation financing means: the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, transhipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

<sup>2</sup> This is the Retail Prices Index calculation. The RPI(X) calculation is higher, at some 14.4%.

## 2.5 Question

2.5.1 Do you agree with the proposed inflation-only fee rate increase of 13.6%?

## Appendix A - List of Representative Bodies who have Been Sent this Consultation Paper

- › Association of English Solicitors practising in Jersey
- › Institute of Chartered Secretaries and Administrators, Jersey branch
- › Institute of Directors, Jersey branch
- › Jersey Association of Directors and Officers
- › Jersey Chamber of Commerce and Industry
- › Jersey Compliance Officers Association
- › Jersey Estate Agents Association
- › Jersey Finance Limited
- › Jersey Society of Chartered and Certified Accountants
- › Law Society of Jersey

## Appendix B - Draft Fees Notice under the Supervisory Bodies Law (for accountants and lawyers)

### Notice of Fees

Published in accordance with: Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

Payable by or in relation to: **Firms of Accountants and Firms of Lawyers**

Pursuant to: Article 20(1) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, 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:

a firm of accountants

means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 2 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law

a firm of lawyers

means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 1 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law

contract of employment,  
contract of service or  
partnership agreement

means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing

relevant date

means the last working day of the year immediately preceding the calendar year to which the fee relates

relevant employee

means an individual who:

- a) works under a contract of employment or any other contract of service
- b) practises alone or with others under the terms of a partnership agreement or

c) is otherwise engaged within the business of a firm of accountants or lawyers

In all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a firm of accountants or lawyers, whether or not engaged directly by the firm of accountants or lawyers or through another entity forming part of the group of entities of which the firm of accountants or lawyers is a part, and the firm of accountants or lawyers is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly

sole trader	means a person who is the sole proprietor of a firm of accountants or lawyers and who does not practise law or accountancy with any other person and who does not engage any relevant employee
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

## 2 Calculation of number of relevant employees

2.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:

- a) A partner practising law or accountancy whether alone or with others
- b) An individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee
- c) An individual based or working outside Jersey but engaged within the Jersey business of the firm of accountants or lawyers and
- d) An individual engaged by a firm of accountants or lawyers which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that firm of accountants or lawyers.

2.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see 2.3 below) applied when calculating the number of relevant employees.

2.3 The following bandings should be applied when calculating the number of total relevant employees:

a) Up to and including 9 hours per week	0.25 of a person
b) Over 9 hours and up to and including 18 hours per week	0.50 of a person
c) Over 18 hours and up to and including 27 hours per week	0.75 of a person
d) Over 27 hours per week	1 person.

2.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee’s engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

2.5 Example 1: fixed term contract. An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

35 hours x 4 months ÷ 12 months = 11.67 hours per week

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

2.6 Example 2: part time working. An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

2.7 Example 3: part time working + fixed term contract. An individual who is employed part time on a fixed contract (20 hours per week for 6 months) would equate to:

20 hours x 6 months ÷ 12 months = 10 hours per week

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees NOT 0.75 of a person.

### **3 Annual fee**

3.1 Firms of accountants and firms of lawyers shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.

3.2 Payment of the annual fee should be made as follows:

- a) On or before 31 March 2017 or
- b) Where firms of accountants and lawyers indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
  - (i) 31 March 2017
  - (ii) 30 June 2017
  - (iii) 29 September 2017 and
  - (iv) 29 December 2017.

3.3 The annual fee is subject to a fee cap of £11,360.

## Schedule: Accountants and Lawyers

	<b>Base fee</b>	<b>Relevant employee element</b>
Sole Trader	£227	Not applicable
All other firms	£908	Plus: £113 per relevant employee calculated in accordance with this notice  (The total annual fee is capped at £11,360)

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# Appendix C - Draft Fees Notice under the Supervisory Bodies Law

(For specified Schedule 2 business, including estate agency services and lending)

## Notice of Fees

Published in accordance with: Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

Payable by or in relation to: **Registered Persons**

(Specified Schedule 2 business, including estate agency services and lending but excluding services provided by firms of accountants and firms of lawyers)

Pursuant to: Article 20(1) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, 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.

### 4 Interpretation

4.1 In this notice, unless the context otherwise requires:

contract of employment,  
contract of service or  
partnership agreement

means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing

registered person

means a person or persons (including but not limited to a sole trader):

- a) who carries on business alone or with others that falls within the scope of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, **except** business that is defined in paragraphs 1 and 2 (lawyers and accountants) of Part B of Schedule 2 and
- b) who is required to hold either a Level 1 or Level 2 registration under the Supervisory Bodies Law

relevant date

means the last working day of the year immediately preceding the calendar year to which the fee relates

relevant employee

means an individual who:

- a) works under a contract of employment or any other contract of service
- b) practises alone or with others under the terms of a partnership agreement or

	c) is otherwise engaged within the business of a registered person, in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a registered person, whether or not engaged directly by the registered person or through another entity forming part of the group of entities of which the registered person is a part, and the registered person is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly
sole trader	means a person who is the sole proprietor of a registered person and who does not practise Schedule 2 business with any other person and who does not engage any relevant employee
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

## 5 Calculation of number of relevant employees

5.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:

- A partner carrying on Schedule 2 business whether alone or with others;
- An individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
- An individual based or working outside Jersey but engaged within the Jersey business of the registered person; and
- An individual engaged by a registered person which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that registered person.

5.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see 2.3 below) applied when calculating the number of relevant employees.

5.3 The following bandings should be applied when calculating the number of total relevant employees:

a) Up to and including 9 hours per week	0.25 of a person
b) Over 9 hours and up to and including 18 hours per week	0.50 of a person
c) Over 18 hours and up to and including 27 hours per week	0.75 of a person
d) Over 27 hours per week	1 person.

5.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee's engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

5.5 Example 1: fixed term contract. An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

$$35 \text{ hours} \times 4 \text{ months} \div 12 \text{ months} = 11.67 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

5.6 Example 2: part time working. An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

5.7 Example 3: part time working + fixed term contract. An individual who is employed part time on a fixed contract (20 hours per week for 6 months) would equate to:

$$20 \text{ hours} \times 6 \text{ months} \div 12 \text{ months} = 10 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees **not** 0.75 of a person.

## 6 Annual fee

6.1 Registered persons shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.

6.2 Payment of the annual fee should be made as follows:

- a) On or before 31 March 2017 or
- b) Where registered persons indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
  - (i) 31 March 2017
  - (ii) 30 June 2017
  - (iii) 29 September 2017 and
  - (iv) 29 December 2017.

6.3 The annual fee is subject to a fee cap of £11,360.

## **Schedule: Specified Schedule 2 Business, Including Estate Agency Services and Lending**

	<b>Base fee</b>	<b>Relevant employee element</b>
Sole Trader	£227	Not applicable
All other firms	£454	Plus: £113 per relevant employee calculated in accordance with this notice (The total annual fee is capped at £11,360)

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