

Consultation Paper No. 9 2021

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 2021

Consultation Paper

We invite comments on this Consultation Paper. Those who wish to do so, are invited to respond directly in writing.

We have also put in place arrangements with 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 24 December 2021.

Responses should be sent to:

Lisa Springate

Jersey Finance Limited

4th Floor

Sir Walter Raleigh House

48-50 Esplanade

St Helier

Jersey

JE2 3QB

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Email: lisa.springate@jerseyfinance.je

Alternatively, responses may be sent directly to us by 24 December 2021. 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:

JFSC Finance team

Jersey Financial Services Commission

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14-18 Castle Street

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JE4 8TP

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

JFL's policy (unless otherwise requested or agreed) to collate all responses and share them verbatim with us 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

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1 Consultation

1.1 Basis for consultation

- 1.1.1 We are issuing this consultation paper in accordance with Article 8(3) of the Commission Law, under which we “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 we 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 we 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 We consider 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 We invite comments from interested parties on the content of this consultation paper which should be received by either JFL, or by us, no later than 24 December 2021.

1.4 Next steps

- 1.4.1 During the course of this consultation we will be holding strategic discussions with the Representative Bodies regarding the options outlined in section **Error! Reference source not found.**, in order to explain the proposals and develop a shared understanding of the approach.
- 1.4.2 Following this consultation, we will publish feedback. The final fees notice will take effect on or before 1 January 2022. Firms will be notified when they need to use myJFSC to collect their invoices.

2 The JFSC

2.1 Overview

- 2.1.1 We are 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 us are to be retained and must, together with any other income:
 - 2.1.2.1 Raise sufficient income to meet our liabilities;
 - 2.1.2.2 Cover our expenses; and
 - 2.1.2.3 Provide a reserve for us of such amount as it considers necessary.

2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that we 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 are granted by us or any other Law or enactment.

2.3 Guiding principles

- 2.3.1 Article 7 of the Commission Law provides that in exercising its functions we may take into account any appropriate matter, but that we 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 our liabilities; cover our expenses; and to provide a reserve of such an amount as it considers necessary, we need to raise approximately £3.8m in fees from the TCB sector in 2022.
- 3.1.2 This budgeted income of approximately £3.8m represents an increase of 5% above RPI in the overall fees levied. As detailed below all possible measures have been taken to minimise the increases in fees, however with the expanding remit and enhancements in requirements across all sectors not all of the increase could be absorbed internally.
- 3.1.3 We are closely monitoring and managing our costs in light of the current situation and, as detailed at 3.2, has carefully managed costs in respect of our TCB supervision activities in recent years. While a robust focus on cost management and, where appropriate, reduction remains a priority for us, as for the businesses we supervise, the crucial work that we undertake continues with minimal disruption and regulatory fees form a very small part of the outgoings of the majority of regulated businesses.
- 3.1.4 Our funding targets are designed to ensure that we can deliver on our Strategic Framework 2021-24. A critical component of our Strategic Framework is our contribution to the Island's successes in the forthcoming MONEYVAL assessment as well as the need for us 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 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.
- 3.1.6 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 1.5%.

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 our 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 we have focused efforts on financial crime supervision.

- 3.2.3 We 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. We are involved in a detailed and complex range of initiatives to develop the Island's financial crime fighting capacity.

4 TBC fee Proposals

4.1 Proposed changes to fee rates

- 4.1.1 We propose to increase the fee rates by 8.5%, being the most recently published Jersey RPI plus 5%, rounded to the nearest £5.
- 4.1.2 In accordance with clause 2.5.4.2 of the Feedback on Consultation No 10 2020, we propose to continue with the reduction in the fees cap, such that 2021 would be the last year where a cap was applicable.
- 4.1.3 The draft fees notice reflecting the proposals can be found in Appendix B.
- 4.1.4 Because of changes in licensees and their business levels, we may end up collecting more or less than our budgeted level of fee income of approximately £810k for 2022.

4.2 Questions

- 4.2.1 Do you agree with the proposals relating to TCB's?

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)

Appendix B – Draft TCB 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 2022

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 JFSC and the members of the affiliation with respect to compliance with the JFSC's prudential rules and conduct of business regulation;
average	in respect of the calculation of the average number of employees or licences on the relevant date(s) means the arithmetic mean of each number rounded to the nearest whole number;
due date	means the due date for payment of any fee specified within this Notice of Fees or otherwise the due date for payment specified within an invoice for fees issued by the JFSC;
JFSC	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 filing, secretarial, information technology support or any similar general support service); and

	<p>(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.</p> <p>With respect to the above:</p> <p>(a) employees who do not have anything to do with trust company business (i.e. in a multi-licensed firm or an entity which also carries out unregulated business) may be excluded;</p> <p>(b) employees who are solely employed to carry out activities for the trust company itself who would never deal with clients/client matters (for example, the firm's own HR or IT support staff) may be excluded;</p> <p>(c) genuine 'facilities'-type staff who might deal with client matters but in a more 'generic' way (for example, receptionists) may be excluded;</p> <p>(d) the mention of 'secretarial' staff as an exemption does not include those carrying out client company secretarial work; and</p> <p>(e) compliance staff who work on trust company business issues are trust company business employees;</p>
participating member	in respect of an affiliation, means a member of the affiliation who is not its affiliation leader;
relevant date(s)	in respect of a year of registration of a registered person, means the 1st January in that year and each of the preceding four years of registration except for the year the person applied to be registered when it means the date of the application for registration; where there are fewer than five relevant dates for the purpose of a calculation within the Schedule, the averages calculated will be of each relevant date that is available for the calculation until there are sufficient relevant dates to perform the calculation as specified.

- 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 3.5, 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 We need to receive the registration fee by:
- 3.2.1 28 February, if the firm is already registered on 1 January; or
 - 3.2.2 otherwise on registration.
- 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 Where a registered person has acquired another person registered to carry on trust company business for each relevant date the registered person shall included in the calculation set out in the Schedule:
- 3.4.1 the trust company business employees of the acquired person; and
 - 3.4.2 the number of classes of trust company business undertaken by the acquired person.
- 3.5 We may remit a registration fee in whole or in part if –
- 3.5.1 the person liable to pay the fee is a member of an affiliation; and
 - 3.5.2 in our opinion 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 Change of control fee

- 4.1 Where a registered person applies to become, to cease being, or to merge with an Affiliation Leader or Participating Member they shall pay a fee calculated in accordance with the Application fee column set out in the Schedule.
- 4.2 Where a shareholder controller acquires an interest in a registered person, either through a one-off, or series of transactions, so that the proportion of the share capital or voting rights held by the person in the registered person reaches or exceeds 20%, 33% or 50%, or so that the registered person becomes the subsidiary of such a shareholder controller, they shall pay a fee calculated in accordance with the Application fee column set out in the Schedule.
- 4.3 The fee referred to in paragraph 4.2 shall be pro-rated according to the proportion of the share capital or voting rights acquired by the shareholder controller.
- 4.4 For registered persons subject to heightened supervision or enforcement, an additional fee of £1,000 shall be payable under paragraph 4.

5 Alteration fee

- 5.1 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:
- 5.1.1 a change of the name of the registered person;
 - 5.1.2 the addition, alteration or removal of each licence condition pursuant to an application from the registered person; or

5.1.3 the removal of each class of licence pursuant to an application from the registered person.

5.2 A fee payable in accordance with paragraph 5.1 shall not be payable where a fee payable in accordance with paragraph 4 is also payable.

6 Late payment of fees and/or late submission of fees information

6.1 If any fee is not received by us by the due date, an additional late payment fee of 5% of the unpaid principal amount will be applied on the day after the due date, and on the 1st day of each calendar month after that.

6.2 If the firm does not supply the required information to calculate its registration fee by the due date, an administration fee of £200 will be charged the day after the due date, and on the 1st day of each calendar month after that while the information is still outstanding. This is in addition to the late payment fee set out in paragraph 6.1 which will be calculated once the information has been submitted.

7 Late filing fees

7.1 If a registered person fails to file or deliver any document to us 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 we have 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.

Schedule: Fees

Classes of trust company business of registered person	Application fee	Registration fee
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<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>£1,795 for an application to register a non-affiliated person</p> <p>£1,795 for an application to register an affiliation leader</p> <p>£230 for an application to register a participating member</p>	<p>In the case of a non-affiliated person –</p> <p>£2,550; plus</p> <p>£1,030 multiplied by the average number of classes of trust company business undertaken by the non-affiliated person on the relevant dates; plus</p> <p>a sum calculated –</p> <p>(a) on the basis of a count of the average number of trust company business employees employed on the relevant dates in the trust company business of the non-affiliated person; and</p> <p>(b) at the rate of –</p> <p>£540 for each of the first 10 employees in that count</p> <p>£270 for each of the next 10 employees in that count</p> <p>£215 for each of the next 30 employees in that count</p> <p>£190 for each of the next 50 employees in that count</p> <p>£130 for each of the remainder of the employees in that count.</p> <p>In the case of an affiliation –</p> <p>£2,550 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 £1,030 multiplied by the average number of classes of trust company business undertaken by the member; plus</p> <p>a sum calculated –</p> <p>(a) on the basis of a count of the average number of trust company business employees employed on the relevant dates in the trust company business of the affiliation; and</p> <p>(b) at the rate of –</p> <p>£540 for each of the first 10 employees in that count</p> <p>£270 for each of the next 10 employees in that count</p> <p>£215 for each of the next 30 employees in</p>
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		<p>that count</p> <p>£190 for each of the next 50 employees in that count</p> <p>£130 for each of the remainder of the employees in that count.</p>
Class O	<p>£900 for an application to register a non-affiliated person</p> <p>£900 for an application to register an affiliation leader</p> <p>£180 for an application to register a participating member</p>	<p>In the case of a non-affiliated person - £2,035.</p> <p>In the case of an affiliation – £2,035 for the leader of the affiliation, plus £810 for each participating member.</p>
Natural persons carrying on a single class of trust company business	£815	£1,030