

# **Consultation No. 14 2022**

**Financial Services (Jersey) Law 1998**

**Trust Company Business Fees**

A consultation on proposals to change fee rates.

## Consultation

We invite comments on this consultation via Jersey Finance Limited (JFL) or directly to our Finance team. 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.

Comments should reach JFL by 14 December 2022 and 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: <mailto:lisa.springate@jerseyfinance.je>

Alternatively, responses may be sent directly to our Finance team at the Jersey Financial Services Commission (JFSC) by 14 December 2022.

**JFSC Finance team**

Jersey Financial Services Commission

PO Box 267

14-18 Castle Street

St Helier

Jersey

JE4 8TP

Telephone: +44 (0) 1534 822000

Email: <mailto:fscaccountsteam@jerseyfsc.org>

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 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 three 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 is 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, which should be received by either JFL or the JFSC no later than 14 December 2022.

## 1.4 Next steps

- 1.4.1 Following this consultation, we will publish feedback. The final fees notice will take effect on or before 1 January. Fees will be administered via businesses’ myJFSC accounts. Businesses will receive an email prompt to notify them that an invoice is awaiting payment.

## 2 The JFSC

### 2.1 Overview

- 2.1.1 We are a statutory body corporate established under the Commission Law. We are 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 such amount we consider as necessary.

### 2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that we are 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 Government of Jersey, any Minister for External Relations and Financial Services 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 for External Relations and Financial Services 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 Government of Jersey 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 our functions we may take into account any appropriate matter, but that we will 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 Funding requirement

- 3.1.1 In order for us to obtain sufficient funding to carry out our supervisory objectives and to ensure our ongoing financial resilience, we need to raise £3.8m in fees from the TCB sector.

### 3.2 Regulatory fee proposals

- 3.2.1 The Commission Law contemplates increases to fees in line with RPI, which was recorded as 10.4% in September 2022. Although the cost of regulation continues to rise well in excess of this metric, our ongoing focus on cost control means that the inflationary component of the proposed fee increase can be limited to this amount.
- 3.2.2 An additional fee rate increase of 5% is dedicated to the stabilisation of our Financial Resilience as detailed in the Business plan and Financial Resilience Review published earlier this year.
- 3.2.3 The combined effect of the above is that we propose a fee rate increase of 15.4%, comprising:
  - 3.2.3.1 Jersey RPI of 10.4%; and
  - 3.2.3.2 A contribution towards our financial resilience objectives of 5%.
- 3.2.4 Two civil financial penalties have been levied on entities in the TBC sector, which will reduce invoiced fees for individual TCBs. The amount of the reduction stands approximately at 20%.
- 3.2.5 Draft fees notices reflecting the proposals can be found in Appendix B.
- 3.2.6 ***Question: Do you agree with the proposed fee increase of 15.4%?***

### 3.3 Supervisory effort and cost reduction

- 3.3.1 We are closely monitoring and managing our costs and have carefully managed costs for our TCB sector supervision activities in recent years.
- 3.3.2 The volume of activity within the TCB sector has continued to increase in-line with recent years, the consolidation of some firms not having reduced the overall risk profile of the sector. Recent restructures of TCB affiliations have demonstrated this.
- 3.3.3 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.

- 3.3.4 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.
- 3.3.5 The agile deployment of pooled teams has assisted us in managing costs but coupled with the significant fluctuation in efforts by Policy and Enforcement teams between sectors on a year-on-year basis prevents accurate assessment of sector-by-sector costs.



## **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:	<b>Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended</b>
Payable by or in relation to:	<b>Trust Company Business</b>
Pursuant to:	<b>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</b>
Commencement date:	The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December 2023

### 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 The due date for the JFSC to receive the registration fee is:
- 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 1 July but before the following 1 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 include 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 The JFSC 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 the opinion of the JFSC 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 £1,155 shall be payable under paragraph 4.

## **5 Alteration fee**

- 5.1 A fee of £460 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 the JFSC 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 the JFSC 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 JFSC 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.

## Schedule: Fees

Classes of trust company business of registered person	Application fee	Registration fee
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>£2,070 for an application to register a non-affiliated person</p> <p>£2,070 for an application to register an affiliation leader</p> <p>£265 for an application to register a participating member</p>	<p>In the case of a non-affiliated person –</p> <p>£2,940; plus</p> <p>£1,890 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>£625 for each of the first 10 employees in that count</p> <p>£310 for each of the next 10 employees in that count</p> <p>£250 for each of the next 30 employees in that count</p> <p>£220 for each of the next 50 employees in that count</p> <p>£150 for each of the remainder of the employees in that count.</p> <p>In the case of an affiliation –</p> <p>£2,940 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>
Classes of trust company business of registered person	Application fee	Registration fee

Classes of trust company business of registered person	Application fee	Registration fee
		<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>£625 for each of the first 10 employees in that count</p> <p>£310 for each of the next 10 employees in that count</p> <p>£250 for each of the next 30 employees in that count</p> <p>£220 for each of the next 50 employees in that count</p> <p>£150 for each of the remainder of the employees in that count.</p>
<p><b>Class O</b></p>	<p>£1,040 for an application to register a non-affiliated person</p> <p>£1,040 for an application to register an affiliation leader</p> <p>£210 for an application to register a participating member</p>	<p>In the case of a non-affiliated person - £2,350.</p> <p>In the case of an affiliation – £2,350 for the leader of the affiliation, plus £935 for each participating member.</p>
<p><b>Natural persons carrying on a single class of trust company business</b></p>	<p>£950</p>	<p>£1,190</p>