

# **Consultation No. 8 2023**

## **Banking Business (Jersey) Law 1991: Deposit-taking fees**

A consultation on proposals to change fee rates.

## Consultation

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation. Comments should reach Jersey Finance Limited by 24 November 2023.

Responses should be sent to:

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Alternatively, responses may be sent directly to us by 24 November 2023. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, please contact us.

The JFSC contact is:

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**It is our policy to provide the content of responses for 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 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

BBJL	Banking Business (Jersey) Law 1991, as amended
Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
JBA	Jersey Bankers Association
JFL	Jersey Finance Limited

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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 new fee or above RPI fee increase that we must request the Bailiff to appoint three Jurats to consider if the proposed fees are unreasonable.
- 1.1.4 We consider the Jersey Bankers Association (**JBA**) to be the representative body for the banking industry; 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 deposit-taking business under Article 9 of the BBJL.

## 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 24 November 2023.

## 1.4 Next steps

- 1.4.1 Following this consultation, we will publish feedback. The final fees notice will take effect on or before 30 November. 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 £3m in fees from the banking sector in 2023.

### 3.2 Regulatory fee proposals

3.2.1 The Commission Law contemplates increases to fees in line with RPI, which was recorded as 10.1% in September 2023. Although the cost of regulation continues to rise well in excess of this metric, our ongoing focus on cost control means that the proposed fee increase can be limited to this amount, below that proposed in the 2023 Business Plan of 2% above RPI.

3.2.2 No Civil Financial Penalties have been levied on entities in the banking sector which would be applied to reduce these fees.

3.2.3 Draft fees notices reflecting the proposals can be found in Appendix B.

3.2.4 **Question: Do you agree with the proposed fee increase of RPI (10.1%) ?**

### 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 banking sector supervision activities in recent years.

3.3.2 The JFSC has maintained its supervisory approach to banking during 2023. It plans further enhancements to its supervisory approach during 2024. Banks are generally subject to more intensive supervision than other financial services firms because of their systemic importance to the financial system.

3.3.3 The JFSC has taken measures to improve its efficiency and agile working methods during 2023, such as broadening the supervisory toolkit to include sector based assessments, continuing to improve the digitisation of processes and absorbing additional work contributing to the MoneyVal assessment. The JFSC will continue to improve the efficiency of its operations during 2024.

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

- › Jersey Bankers Association



## Appendix B – Deposit-taking Business Fees Notice

### Notice of Fees

Published in accordance with:	<b>Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended</b>
Pursuant to:	<b>Deposit-Taking Business</b>
Payable by or in relation to:	<b>Article 9(1) of the Banking Business (Jersey) Law 1991, as amended</b>
Commencement date:	The fees set out in this notice are effective from 30 November 2023.

#### 1 Interpretation

##### 1.1 In this notice, unless the context otherwise requires:

advanced approaches	the adoption of advanced approaches to credit risk as defined at section 5 of the Code of Practice for deposit-taking business, issued in accordance with Article 19A of the Banking Business (Jersey) Law 1991, as amended
annual fee period	means the period between 1 February and 31 January in respect of which an annual fee is payable
business continuity	means the continuing in Jersey of business operations that are normally carried on in a place outside Jersey, where those operations are for the time being disrupted in that other place because of any accident, disaster, epidemic, civil unrest, or occurrence of a similar nature
home supervisor	means, in relation to a deposit-taking business, and to a person <ol style="list-style-type: none"><li>that carries on deposit-taking business in another country;</li><li>that is the holding company of a subsidiary company that carries on deposit-taking business in another country; or</li><li>that is the holding company of a subsidiary company that in turn is the holding company of a subsidiary company that carries on deposit-taking business in another country,</li></ol> an authority that <ol style="list-style-type: none"><li>is based in that other country; and</li><li>exercises supervision of the deposit-taking business</li></ol>
JFSC	means the Jersey Financial Services Commission
Law	means the Banking Business (Jersey) Law 1991, as amended
registered person	means a person registered to conduct deposit-taking business under the Law

## **2 Fees payable**

- 2.1 For the purposes of Articles 9(1) and 48E of the Law, the prescribed fee is:
- 2.1.1 In the case of a person applying to be registered under the Law £31,400 on application, plus the annual fee as and when such application is granted; or
  - 2.1.2 In the case of a person registered under the Law, the annual fee.

## **3 Annual fee calculation**

- 3.1 The annual fee is the sum of the following components:
- 3.1.1 A component calculated on the basis of £31,400 for each country (other than Jersey) where the person carries on a deposit-taking business through an office of the person based in the country, if the JFSC is a home supervisor in relation to that business;
  - 3.1.2 A component calculated on the basis of £31,400 for each of the person's subsidiary companies that has its registered office outside Jersey and carries on a deposit-taking business, if the JFSC is a home supervisor in relation to that business;
  - 3.1.3 A component calculated on the basis of £31,400 for each country where a subsidiary company of the person carries on a deposit-taking business through an office of the subsidiary company based in the country, if:
    - 3.1.3.1 The country is not Jersey, nor the country where the subsidiary company has its registered office; and
    - 3.1.3.2 The JFSC is a home supervisor in relation to that business;
  - 3.1.4 A component calculated on the basis of £31,400 for each subsidiary company (hereafter called "X") of a subsidiary company of the person, if:
    - 3.1.4.1 X has its registered office outside Jersey and carries on a deposit-taking business; and
    - 3.1.4.2 The JFSC is a home supervisor in relation to that business;
  - 3.1.5 A component calculated on the basis of the Consolidated Income of the registered person:
    - 3.1.5.1 For a Consolidated Income not exceeding £5,000,000 (or a loss or an income of zero), a component of £89,400;
    - 3.1.5.2 For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £103,300;
    - 3.1.5.3 For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £117,400;
    - 3.1.5.4 For a Consolidated Income exceeding £20,000,000, a component of £149,500.
  - 3.1.6 Where any registered person that is incorporated in Jersey has adopted advanced approaches, the JFSC may amend this Notice to establish an additional component, payable by such registered persons, that is sufficient to meet the JFSC's liabilities; cover its expenses; and to provide a reserve of such an amount as the JFSC considers necessary, in respect of this work.

## **4 Calculation notes – overseas operations**

- 4.1 The components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated on the basis of the factors mentioned in each paragraph; save that, in the case of a

person applying to be registered under the Law, the components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated as the person expects the factors to be when the business of the person to which the application relates starts operations.

- 4.2 If a new operation leads to a factor relevant to paragraphs 3.1.1 to 3.1.4 of the annual fee calculation subsequently increasing before the end of the annual fee period, the registered person should calculate a revised annual fee, being the incremental sum of the relevant components (pro rata reduced), being one-twelfth of the incremental sum multiplied by the number of whole or part calendar months between the date of opening and the end of the annual fee period, and notify the JFSC accordingly.

- 4.3 For the purposes of this Fees Notice:

- 4.3.1 A territory is taken to be a country if the territory is co-extensive with a discrete jurisdiction concerned with the supervision of deposit-taking business;

Jersey is a country;

- 4.3.2 Guernsey is a country and Alderney, and Sark are parts of that country;

- 4.3.3 The Isle of Man is a country;

- 4.3.4 Each member state (however described) of the following federations is taken to be a separate country:

- 4.3.4.1 The United Arab Emirates; and

- 4.3.4.2 The United States of America.

## **5 Calculation notes – “Consolidated Income”**

- 5.1 The Consolidated Income referred to in paragraph 3.1.5 of the annual fee calculation must be calculated as the higher of the total income and the “Deemed Income” of the person. The total income means the total income of the registered person arrived at in accordance with prudential reporting guidance. This must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The total income must be that calculated for the relevant period, being:

- 5.1.1 In the case of a person applying to be registered under the Law, the total income that the person expects to report for the calendar year starting at midnight on 31 December following the making of the application (whether the application relates to that year or to another period);

- 5.1.2 In the case of a person registered under the Law, whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31 December in the previous year, the total income that the person expects to report for the calendar year starting at midnight on the following 31 December following; or

- 5.1.3 In any other case, the total income for the calendar year ending on 31 December in the previous year.

- 5.2 The Deemed Income of a registered person means an amount equal to 0.1% of its total assets plus the amount of its total operating expenses, each arrived at in accordance with prudential reporting guidance. The components must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The components must be those calculated for the relevant period, being:

- 5.2.1 In the case of a person applying to be registered under the Law:

- 5.2.1.1 Total operating expenses: the calendar year starting at midnight on 31 December following the making of the application; and

- 5.2.1.2 Total assets: as at the end of that period;
    - 5.2.2 In the case of a person registered under the Law whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31 December in the previous year:
      - 5.2.2.1 Total operating expenses: the calendar year starting at midnight on the following 31 December; and
      - 5.2.2.2 Total assets: as at the end of that period; or
    - 5.2.3 In any other case:
      - 5.2.3.1 Total operating expenses: the calendar year ending on the previous 31 December; and
      - 5.2.3.2 Total assets: as at the end of that period.
  - 5.3 For the avoidance of doubt, the total income, total operating expenses and total assets of a registered person includes all income, operating expenses and assets of the registered person and not just those relating to its deposit-taking business.
- 6 Reduced annual fee for applications in respect of a partial year**
- 6.1 If an application is made in respect of a period of less than a year, the annual fee may be pro rata reduced, being one-twelfth of the annual fee multiplied by the number of calendar months that the application spans in whole or in part.
- 7 Reduced application fee for registration for business continuity**
- 7.1 This section applies if the JFSC is satisfied that:
    - 7.1.1 A person who is applying for registration under Article 9 of the Law is a member of the same group of companies as another person who is registered under that Article;
    - 7.1.2 The first person is applying for registration so as to be able to use the other person's business facilities in Jersey for, but only for, the purpose of business continuity; and
    - 7.1.3 At the time when the application is made, the first person is not registered under the Law.
  - 7.2 This section applies whether or not the applicant's business operations in a place where they are normally carried on outside Jersey have already been disrupted in that other place.
  - 7.3 Where this section applies, the part of the prescribed fee for the purposes of Article 9(1) of the Law shall be reduced by 50%.
- 8 Reduced annual fee where registration is for business continuity**
- 8.1 This section applies if the JFSC is satisfied that a person is registered under Article 9 of the Law for, but only for, the purpose of business continuity in the event of the future disruption of the person's business operations in a place where they are normally carried on outside Jersey.
  - 8.2 Where this section applies, the part of the prescribed fee for the purpose of Article 48E of the Law shall be reduced by 50%.
  - 8.3 However, in the course of a period for which the annual fee is payable:
    - 8.3.1 Disruption of the person's business operations in a place where they are normally carried on outside Jersey actually occurs; and
    - 8.3.2 The person begins to carry on operations in Jersey for the purpose of business continuity, the balance of the annual fee for that period shall become payable.

## **9 Late payment of fees**

### **9.1 The annual fee is payable:**

9.1.1 In the case of a person applying to be registered under the Law, as and when such application is granted; and

9.1.2 In the case of a person registered under the Law, by 31 October in each year.

### **9.2 If a registered person fails to pay the whole or any part of a fee on or before the date it becomes payable, the person shall be liable to pay an additional late payment fee, or fees, of 5% of the unpaid principal amount that shall be applied on the day after the date the fee becomes payable, and on the 1<sup>st</sup> day of each calendar month after that.**

## **10 Late filing fees**

### **10.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Law or under the 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 unfiled or undelivered unless the person has given the JFSC 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.**