



**Jersey Financial
Services Commission**

Consultation Paper No. 1 2020

Financial Services (Jersey) Law 1998: Investment Business Fees

A consultation on proposals to change fee rates.

Issued: February 2020

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by 20 March 2020. 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:

Jon Stevens

Senior Manager, Policy
Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP
Telephone: +44 (0) 1534 822085
Email: j.stevens@jerseyfsc.org

Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by 20 March 2020.

Lisa Springate

Jersey Finance Limited
4th Floor
Sir Walter Raleigh House
48-50 Esplanade
St Helier
Jersey
JE2 3QB
Telephone: +44 (0) 1534 836029
Email: lisa.springate@jerseyfinance.je

It is the policy of the JFSC to make the content of responses available for inspection unless specifically requested otherwise.

It is the policy of JFL (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

Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
IB	Investment Business
JFL	Jersey Finance Limited
JFSC	Jersey Financial Services Commission
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism

Contents

1	Consultation	5
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
2	The Commission.....	6
2.1	Overview.....	6
2.2	The JFSC's functions.....	6
2.3	Guiding principles	6
3	Proposals	8
3.1	Proposed fee rate changes	8
3.2	Regulatory fee proposals.....	8
3.3	Question	8
	Appendix A - List of bodies who have been sent this consultation paper	9
	Appendix B - Draft Investment Business Fees Notice.....	10

1 Consultation

1.1 Basis for consultation

- 1.1.1 The JFSC is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (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 may introduce and publish any fee “...the Commission 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 the JFSC must request the Bailiff to appoint 3 Jurats to consider if the fee proposed is unreasonable.
- 1.1.4 The JFSC considers that the proposed fee rates are reasonable and that this consultation paper constitutes such a report as required by the Commission Law.

1.2 Who will be affected by the proposed changes?

- 1.2.1 These amendments will affect all persons registered under the Financial Services (Jersey) Law 1998 to conduct investment business (**IB**), and persons that are issued with a registration certificate on or after 1 May 2020.

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 IBs.
- 1.3.2 Comments should be received by the JFSC or JFL no later than 20 March 2020.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice in the second quarter of 2020. Firms will be notified when either their invoices are ready, or they need to supply information for fees to be calculated, via the myJFSC portal.

2 The Commission

2.1 Overview

- 2.1.1 The JFSC is 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 the JFSC are to be retained and must, together with any other income:
 - 2.1.2.1 raise sufficient income to meet the JFSC's liabilities;
 - 2.1.2.2 cover the JFSC's expenses; and
 - 2.1.2.3 provide a reserve for the JFSC of such amount as it considers necessary.

2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that the JFSC 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:
 - 2.2.1.4.1 as are required or authorised by or under any enactment, or
 - 2.2.1.4.2 as the States 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 its functions the JFSC may take into account any appropriate matter, but that it 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 fee rate changes

- 3.1.1 The proposals in this Consultation Paper seek to ensure that the JFSC obtains sufficient funding to carry out its supervisory objectives; to provide additional funding in support of the JFSC's work in respect of combatting financial crime; to enhance our data analytics capacity and to provide investment in the JFSC's reserves to return them to a level equal to at least six months' expenditure by 2022.
- 3.1.2 In 2022/2023, the Island will undergo its next MONEYVAL assessment. A strongly positive outcome to the assessment is considered crucial to the continued ability of the Island's financial services industry to access international markets efficiently. Jersey's Government has indicated that such an outcome to the assessment is one of its key targets over the course of the current Island Strategic Plan. In any event, the JFSC is of the view that the supervision of financial crime will require a significantly enhanced supervisory capacity in the next period having regard to the increasing sophistication and scale of financial crime risks.
- 3.1.3 The JFSC's efforts towards achieving a strongly positive outcome with regard to the forthcoming MONEYVAL assessment and tackling these financial crime risks are focused on demonstrating effective supervision as a key part of Jersey's AML/CFT regime, adequate remediation and enforcement activities, sufficient development of systems and data as well as ensuring the regime's overall compliance with FATF Recommendations. This work has already begun and the JFSC is currently building its Financial Crime supervision capacity.
- 3.1.4 The Commission Law contemplates increases to fees in line with RPI, however, the cost of regulation has been and continues to rise well in excess of this metric.
- 3.1.5 As noted in Feedback to Consultation Papers No.4, No. 5, No. 6, No.9 and No.10 2019 in respect of the Funds, Insurance, Banking, Trust Company, General Insurance, Money Service and DNFBP sectors the JFSC is keen to discuss its fee structures with all industry sectors. During the course of 2020 the JFSC intends to hold strategic discussions with the Investment Business sector and to consult on potential methodologies to ensure that there is proportionality across the fees base.

3.2 Regulatory fee proposals

- 3.2.1 The JFSC proposes to increase fee rates for IBs, including application fees, by 16% for 2020, rounded to the nearest £5.
- 3.2.2 The change in fees experienced by any specific firm will depend on its business complexion with respect to employees and classes of licence held combined with the new fee rates.
- 3.2.3 The rate of increase comprises:

- 3.2.3.1 a component of 2.5%, being the most recent Jersey RPI prior to publication; and
- 3.2.3.2 a further 13.5% comprising:
 - › a contribution towards meeting the significantly higher costs of the Island project to enhance the JFSC’s work in respect of countering financial crime, which has already been initiated;
 - › investment towards restoring the JFSC’s reserves to a level of six months’ total expenditure from the prior year; and
 - › investment towards successfully implementing the JFSC’s strategy including enhanced data analytics and industry portals.
- 3.2.4 The main driver of this calculation is JFSC’s new project to significantly enhance its supervision of financial crime.
- 3.2.5 The reserves of the JFSC have been reducing for some time as a result of capital investment in technology which enhances our supervisory effectiveness. A small contribution beginning to reverse this is included in the proposal. This will only go a very small way to beginning to reverse the trend of declining reserves.
- 3.2.6 Investment has been critical to maintaining the JFSC’s supervisory effectiveness at a time when compliance costs for industry and supervisory costs for regulators have been rising in tandem.
- 3.2.7 A draft fees notice reflecting the proposal can be found in Appendix B.
- 3.2.8 Changes in the number of IB licences and/or employees (and/or authorisation income) may mean that we raise more or less than our target amount of fee income in 2020.
- 3.2.9 We are not proposing changes to any other parts of the fees notice this year.

3.3 Question

- 3.3.1 Do you agree with the proposals for changes to IB fee rates?

Appendix A - List of bodies who have been sent this consultation paper

- › Chartered Institute for Securities & Investment
- › Jersey Bankers Association
- › Jersey Finance Limited
- › Personal Finance Society

Appendix B - Draft Investment 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:	Investment 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 May 2020 – 30 April 2021

1 Interpretation

1.1 In this notice, unless the context otherwise requires -

investment employee	in respect of a registered person, means: (a) a person employed on the relevant date either under a contract of service or a contract for services by the registered person as: (i) a dealer, (ii) a discretionary investment manager, (iii) an adviser, or (iv) a supervisor; and (b) a person employed on the relevant date either under a contract for service or a contract for services in any of the categories of work specified in paragraph (a) of this definition by a person who is himself or herself employed on the relevant date either under a contract of service or a contract for services by the registered person ¹ , and if, on the relevant date, there exists a post in the service of the registered person that is vacant but would normally be occupied by a person to which paragraph (a) of this definition applies, includes that person
JFSC	means the Jersey Financial Services Commission
Law	means the Financial Services (Jersey) Law 1998, as amended

¹ In practice this captures ‘indirect’ investment employees who are employed by third parties to conduct these roles on behalf of the registered person.

registered person	means a person registered under the Law to carry on investment business
relevant date	means 1 April 2019, or the date of the application for registration if such application occurs between 1 May 2020 and 30 April 2021
supervisor	means a person who is responsible, either alone or jointly with one or more other persons, for the management, supervision and control of an investment employee who is not a supervisor

2 Application fee

2.1 The fee to accompany an application for registration to carry on investment business shall be the amount specified in the table set out in the Schedule.

3 Annual fee

3.1 A person registered to carry on investment business at any point during the period 1 May 2020 to 30 April 2021 shall pay a fee calculated in accordance with the table set out in the Schedule.

3.2 If a person is registered after 31 December 2020 the annual fee payable on registration shall be half the fee otherwise payable.

3.3 The JFSC may remit an annual fee, in whole or in part, if:

- (a) in its opinion the person liable to pay the fee is a member of an associated group of registered persons; and
- (b) another member of that group has paid a like fee.

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

4.1 The due date for the JFSC to receive the annual fee is:

4.1.1 31 May 2020, if the firm is already registered on 1 May 2020; and otherwise

4.1.2 the date an application is granted.

4.2 If the annual 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.

4.3 If the firm does not supply the required information to calculate its annual 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 4.2 which will be calculated once the information has been submitted.

5 Late filing fees

- 5.1 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 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.

Schedule

<i>Classes of investment business</i>	<i>Application fee</i>	<i>Annual fee</i>
Class A, B or C or any combination of these classes	£2,100	(i) £3,405; (ii) £2,380 for each of the first 15 investment employees; and (iii) £1,235 for each additional investment employee, up to a maximum of 25 additional investment employees.
Class D only	£1,045	(i) £3,150; (ii) £1,235 for each of the first 15 investment employees; and (iii) £615 for each additional investment employee, up to a maximum of 25 additional investment employees.
Class E only	£1,045	£1,235 for each fund in respect of which the applicant or registered person carries on investment business on the relevant date.