



Jersey Financial
Services Commission

A consultation on proposals to increase investment business fees relating to Financial Services (Jersey) Law 1998

Issued: 8 March 2016

Consultation No. 1 2016

Consultation Paper

Please note that terms in *italics* are defined in the Glossary of Terms.

The Jersey Financial Services Commission (the **Commission**) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 8 April 2016.

Responses should be sent to:

William Byrne

Head of Technical
Jersey Finance Limited
4th Floor,
Sir Walter Raleigh House,
48-50 Esplanade,
St Helier,
Jersey
JE2 3QB

Telephone: +44 (0) 1534 836021
Facsimile: +44 (0) 1534 836001
Email: william.byrne@jerseyfinance.je

Alternatively, responses may be sent directly to Martin Edwards at the *Commission* by 8 April 2016. 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 *Commission*.

The *Commission* contact is:

Martin Edwards

Senior Manager, Investment Business
Jersey Financial Services Commission
PO Box 267
14-18 Castle Street
St Helier
Jersey
JE4 8TP

Telephone: +44 (0) 1534 822031
Email: m.edwards@jerseyfsc.org

It is the policy of the *Commission* to make the content of all responses available for public inspection unless specifically requested otherwise

Glossary of Terms

the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
Consultation Paper No.5 2015	Means the Consultation Paper on proposals to increase investment business fees issued by the Commission on 6 March 2015 ⁱ
IB	means investment business
IB Fees Notice	means the Investment Business Fees Notice
RPI	means the Retail Prices Index published by the States of Jersey Statistics Unit

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 Commission's functions	6
2.3	Guiding principles.....	6
3	Proposals	7
3.1	Proposed Fee Increase	7
3.2	Operational changes	7
3.3	Background	7
3.4	Basis for the proposed fees.....	8
3.5	Questions	10
	Appendix A	11
	List of representative bodies who have been sent this consultation paper.....	11
	Appendix B	12
	Draft Investment Business Fees Notice	12

1 Consultation

1.1 Basis for consultation

- 1.1.1 The *Commission* is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (the “**Commission Law**”), under which the *Commission* “*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 *Commission* 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 The *Commission* considers 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 provisions will affect all persons registered under the Financial Services (Jersey) Law 1998 to conduct investment business (“**IB**”) and persons that are issued with an *IB* registration certificate after 1 May 2016.

1.3 Responding to the consultation

- 1.3.1 The *Commission* invites comments in writing from interested parties on the content of this consultation paper and its likely impact on those impacted.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the *Commission* no later than 8 April 2016.

1.4 Next steps

- 1.4.1 Following this consultation, the *Commission* will publish feedback and the final *IB Fees Notice*. If agreed, the fees will be payable by 1 May 2016, and a late payment penalty will be due if the annual registration fees are not paid with a value date on or before 1 June 2016. Please note that the fees are charged based on investment employee numbers at 1 April 2016 so registered persons should retain this information.

2 The Commission

2.1 Overview

- 2.1.1 The *Commission* 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.

2.2 The Commission's functions

- 2.2.1 The *Commission Law* prescribes that the *Commission* 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 as are conferred on the *Commission* by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 The *Commission's* guiding principles require it to have particular regard to:
- 2.3.1.1 the reduction of 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 Increase

- 3.1.1 The *Commission* proposes an increase in regulatory fees for *IBs* for the year 2016 as follows:
- 3.1.1.1 Firstly, increase the base fee charged to each Class A, B or C registered person from £1,760 to £2,650 and the base fee charged to each Class D registered person from £1,630 to £2,450; and
 - 3.1.1.2 Secondly, subject to rounding, apply a 5% increase to all other aspects of the *IB* fee tariff.
- 3.1.2 The proposed *IB Fees Notice* can be found in Appendix B.

3.2 Operational changes

- 3.2.1 The *Commission* is currently undergoing a “change programme” with an aim of improving our regulatory effectiveness and efficiency. More information about this can be found in our recent publication: [A Changing Commission: How it affects you - Issue 1](#)
- 3.2.2 As part of its change programme, the *Commission* will be creating a new web portalⁱⁱ for both the submission of data and collection of fees; and will not be accepting cheques – registered persons will have to pay their fees using the following bank details.

Bank:	HSBC PO Box 14, St Helier, Jersey
Account Name:	Jersey Financial Services Commission
Account Number:	01483455
Sort Code:	40-25-34
IBAN:	GB35MIDL40253401483455
BIC:	MIDLGB22
Payment reference:	<i>IB</i> reference number

3.3 Background

- 3.3.1 Fees under the *IB Fees Notice* are due to be reviewed for the year 2016.
- 3.3.2 The policy of the *Commission* is that the fee income from each regulated sector should broadly meet the costs of regulating and supervising that sector (i.e. minimal cross-subsidisation) and make a proportionate contribution to the general support costs of the *Commission*.
- 3.3.3 In October 2015, the *Commission* issued a consultation about the way it levies and collects fees, which can be found here: [Consultation Paper No. 10 2015: Funding Review](#). The proposals in this paper would change the way fees for *IBs* would be calculated and levied in future.

- 3.3.4 The proposals include replacing fees based on licences and employees with a system based on turnover from regulated activities, which has the benefit of being a direct link to a registered person's economic size while also isolating the *Commission's* fee base from structural changes in the industry. It also proposes removing fee caps, while taking account of the fact that, for the largest registered persons, there is not necessarily a 1:1 equivalence between the increasing size of a registered person and the appropriate regulatory fee. Feedback to this consultation paper will be published separately. However, it is now intended that these changes will not take effect for *IB* (and other sectors') fees until 2018.
- 3.3.5 In the years leading up to 2015, the *Commission* placed a moratorium on fee increases for the *IB* sector. For 2015, fee rates were increased by 14.4%, which reflected the cumulative change in RPI since June 2009, the previous date at which *IB* fees were last amended. As set out in *Consultation Paper No.5 2015*, it was anticipated that the *IB* division would be in deficit for 2015, even after the increase proposed in 2015.
- 3.3.6 In the meantime, the *IB* sector has experienced considerable consolidation and structural change. The *Commission* has observed a trend of reducing registration numbers (down 15% in the last 5 years) and reducing numbers of investment employees (down 24% in the last 5 years). New applications have tended to be from smaller businesses with lower numbers of investment employees. Given that a large proportion of the *Commission's IB* fee revenue is based on investment employee numbers, this has resulted in a reduction in fees generated from the *IB* sector.
- 3.3.7 Despite the reduction in registration numbers, the *Commission* has not experienced a reduction in the required level of supervisory oversight of the *IB* sector, as reflected in the relatively high levels of heightened supervision and enforcement cases seen. Additionally, the *Commission* has been required to enhance central policy resource in order to keep pace with changes in international standards following the global financial crisis (for example MiFID 2).
- 3.3.8 Accordingly, since 2014 the *Commission* has experienced deficits in respect of the *IB* sector that must be addressed.

3.4 Basis for the proposed fees

- 3.4.1 In accordance with Article 15(3)(ba) of the *Commission Law*, the *Commission* confirms that no penalties have been received.
- 3.4.2 The table below sets out the *Commission's* actual 2014 and 2015 income and expenditure for the *IB* sector as well as budgeted income and expenditure for 2016 (assuming no changes to the *IB* fee tariff).

(£ '000s)	2014	2015	2016 (budgeted)
Income	1,149	1,176	1,168
Direct costs	(498)	(438)	(490)
Indirect costs	(875)	(1,123)	(1,020)
Sub-total	(224)	(385)	(342)
Investigation and litigation costs	(216)	(189)	(189)
Total	(440)	(574)	(531)

- 3.4.3 The increase in indirect costs in 2015 results from a variety of factors, including:
- 3.4.3.1 Enhanced central policy resource in order to keep pace with changes in international standards;
 - 3.4.3.2 An increased contribution towards ICT/project costs; and
 - 3.4.3.3 A contribution to the *Commission's* new communications work.
- 3.4.4 The *Commission* recognises that the 45% increase required to remove the budgeted deficit would not be palatable to the *IB* sector. Nevertheless, the predicted deficit, even before investigation and litigation costs are taken into account, is not sustainable, and so the *Commission* is proposing an increase in the *IB* fee tariff in this fee consultation.
- 3.4.5 The first proposal is to increase the base fee charged to each *IB* registered person. Such an increase would more accurately reflect the minimum level of supervision required for each registered person.
- 3.4.6 The second proposal is to apply a 5% increase to all other aspects of the *IB* fee tariff. This increase represents a 1% increase to reflect inflation and 4% to reflect consolidation in the *IB* sector
- 3.4.7 The *Commission* expects the combined effect of both these changes to increase fee income by around £131,000. As can be seen, this does not reduce the budgeted deficit to zero.
- 3.4.8 The table below illustrates the impact of the proposed increase on various types of registered person:

Type of <i>IB</i> firm (number of investment employees)	Current fee	Proposed Fee	Increase	% increase
Small Class D (2)	£3,460	£4,370	£910	26%
Large Class D (7)	£8,035	£9,170	£1,135	14%
Small Class A, B or C (3)	£7040	£8,200	£1,160	17%
Medium Class A, B or C (10)	£19,360	£21,150	£1,790	9%
Large Class A, B or C (15)	£23,935	£25,950	£2,015	8%
Largest Class A, B or C (30+)	£37,660	£40,350	£2,690	7%

- 3.4.9 The *Commission* notes that, whilst in some cases the percentage increases are relatively high, the monetary impact on any one *IB* registered person remains modest. Accordingly, the *Commission* is of the opinion that the proposed increases are reasonable.

3.5 Questions

- 3.5.1 Are you aware of any operational reasons why paying fees electronically would cause your registered person an issue?
- 3.5.2 Do you understand and agree with:
- 3.5.2.1 the proposed increase to the base fees charged to each registered person; and
 - 3.5.2.2 the proposed 5% increase to all other aspects of the *IB* fee tariff? If not, please explain why.

Appendix A

List of representative bodies who have been sent this consultation paper.

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

1 Commencement date

The fees set out in this notice and the attached schedule are effective from ~~1-May-2015~~ XX April 2016.

2 Interpretation

2.1 In this notice -

Commission means the Jersey Financial Services Commission;

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

investment employee

(b) a person employed on the relevant date either under a contract of 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,

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;

Law means the Financial Services (Jersey) Law 1998 as amended;

registered person means a person registered under the Law to carry on investment business;

relevant date	in respect of a year of registration of a registered person, means 1 April in that year except in the year the person applied to be registered when it means the date of the application for registration;
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.

3 Application fee

- 3.1 The fee to accompany an application for registration to carry on investment business shall be the amount calculated in accordance with the table set out in the Schedule.

4 Registration fees

- 4.1 A registered person shall pay a registration fee of an amount calculated in accordance with the table set out in the Schedule.
- 4.2 The registration fee is payable –
- 4.2.1 on registration; and
 - 4.2.2 on each subsequent 1 May.
- 4.3 If a person is registered after 31 December but before the following 1 May the registration fee payable on registration shall be half the fee otherwise payable.
- 4.4 The Commission may remit a registration fee, in whole or in part, if –
- 4.4.1 in its opinion the person liable to pay the fee is a member of an associated group of registered persons; and
 - 4.4.2 another member of that group has paid a like fee.

5 Late payment of fees

- 5.1 If a registered person fails to pay the whole or any part of a fee on or before the date it becomes due the person shall be liable to pay, unless otherwise agreed by the Commission, an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid.

6 Late filing fees

- 6.1 If a registered person fails to file or deliver any document to the Commission 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 Commission 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 investment business	Application fee	Registration fee
Class A, B or C or any combination of these classes –	£1,565 <u>1,635</u>	(i) £1,760 <u>2,650</u> ; (ii) £1,760 <u>1,850</u> for each of the first 10 investment employees; and (iii) £915 <u>960</u> for each additional investment employee up to a maximum of 20 additional investment employees.
Class D only –	£780 <u>815</u>	(i) £1,630 <u>2,450</u> ; (ii) £915 <u>960</u> for each of the first 10 investment employees; and (iii) £455 <u>480</u> for each additional investment employee up to a maximum of 20 additional investment employees.
Class E only –	£780 <u>815</u>	£915 <u>960</u> for each fund in respect of which the applicant or registered person carries on investment business on the relevant date.

ⁱ Consultation Paper No.5 2015 is available on the Commission's website:

<http://www.jerseyfsc.org/pdf/Consultation-Paper-No-5-2015-IB-Fees.pdf>

ⁱⁱ More details regarding the new portal will be provided in due course.