

Consultation No.2 2022

Consultation on fee rates and associated issues for: Financial Services (Jersey) Law 1998 Investment Business Fees

A consultation on proposals to change fee rates and structures.

Issued: March 2022

Consultation

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

We have also put in place arrangements with Jersey Finance (JFL) 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 them by 26 April 2022.

Responses should be sent to:

Lisa Springate

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Email: lisa.springate@jerseyfinance.je

Alternatively, responses may be sent directly to us by 26 April 2022. 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.

Our contact is:

JFSC Finance team

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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

JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
FSJL	Financial Services (Jersey) Law 1998, as amended
IB	Investment Business

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1 Consultation

1.1 Basis for consultation

1.1.1 We are issuing this consultation 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 IB 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 already holding a licence to undertake investment 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 26 April 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 May 2022. Businesses 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. 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
 - 2.1.2.3 Provide a reserve for us of such amount as it considers necessary.

2.2 Our 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 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 Government of Jersey may, by Regulations, transfer
 - 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

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 that we consider necessary, we need to raise approximately £1.6m in fees from the investment business (IB) sector in 2022.
- 3.1.2 This budgeted income of approximately £1.6m 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, have carefully managed costs in respect of our IB supervision activities in recent years. 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. 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. We also need to deliver stretching goals in respect of demonstrating even more effective supervision, embedding risk-focused choices throughout our work and strengthening our organisational resilience.
- 3.1.5 There have been no civil financial penalties received in relation to the IB sector in the previous year.

3.2 Supervisory effort and cost reduction

- 3.2.1 The volume of activity within the IB sector has remained broadly consistent despite there being fewer IB licences, and fewer employees year-on-year. The supervisory effort for IBs has not reduced in proportion to reductions in the number of licences or employees. Recent restructures of IB licence holders demonstrates this.
- 3.2.2 With our focus on financial crime supervision, the volume of IB 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 IB 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 IB fee proposal

4.1 Proposed changes to fee rates

- 4.1.1 We propose to increase the fee rates by 8.8%, being the most recently published Jersey RPI of 3.8% plus 5%. Fees will be rounded to the nearest £5.
- 4.1.2 The draft fees notice reflecting the proposals can be found in Appendix B.
- 4.1.3 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 £1.6m for 2022.

4.2 Questions

- 4.2.1 Do you agree with the proposals relating to IBs?

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

- › Chartered Institute for Securities & Investment
- › Channel Islands Wealth Management Association
- › Jersey Bankers Association
- › 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 2022 – 30 April 2023

1 Interpretation

1.1 In this notice, unless the context otherwise requires

average	in respect of the calculation of the average number of investment employees on the relevant date(s), means the arithmetic mean of each number rounded to the nearest whole number;
investment employee	<p>in respect of a registered person, means:</p> <p>(a) a person employed on the relevant date either under a contract of service or a contract for services by the registered person as:</p> <p>(i) a dealer,</p> <p>(ii) a discretionary investment manager,</p> <p>(iii) an adviser, or</p> <p>(iv) a supervisor; and</p> <p>(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 person¹, 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</p>
JFSC	means the Jersey Financial Services Commission;
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(s)	in respect of a year of registration of a registered person, means 1 May 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 that is available for the calculation until there are sufficient relevant dates to perform the calculation as specified.
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 2022 to 30 April 2023 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 2022 the annual fee payable on registration shall be half the fee otherwise payable.

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

- 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 Change of control fee

- 4.1 Where a Registered Person applies to become, to cease being, or to merge with another Registered Person 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 £1,090 shall be payable under paragraph 4.

5 Alteration fee

- 5.1 A fee of £435 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 The due date for the provision of investment employee data is 15 June 2022.
- 6.2 The due date for payment of the annual fee is:
- 6.2.1 30 days from the invoice date, if the firm is already registered on 1 May 2022; and otherwise
 - 6.2.2 the date an application is granted.
- 6.3 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 first day of each calendar month after that.
- 6.4 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 fifteenth 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 6.3 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 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	£2,330	(i) £3,775; (ii) £2,645 for each of the first 15 investment employees; and (iii) £1,370 for each additional investment employee. <i>Note:</i> investment employees are calculated on the basis of the average number of investment employees employed on the relevant dates in the investment business.
Class D only	£1,165	(i) £3,490; (ii) £1,370 for each of the first 15 investment employees; and (iii) £685 for each additional investment employee. <i>Note:</i> investment employees are calculated on the basis of the average number of investment employees employed on the relevant dates in the investment business.
Class E only	£1,165	£1,370 for each fund in respect of which the applicant or registered person carries on investment business on the relevant date.