



Consultation Paper No. 2 2021

Financial Services (Jersey) Law 1998: Investment Business Fees

A consultation on proposals to change fee rates.

Issued: March 2021

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation by 22 April 2021:

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It is the policy of the JFSC to summarise or make the content of responses available on request for public inspection (unless specifically requested otherwise by the respondent)

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
FSJL	Financial Services (Jersey) Law 1998
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
Registered Person	means a person registered under the Law to carry on investment business

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1 Consultation

1.1 Basis for consultation

1.1.1 The JFSC is issuing this consultation paper in accordance with Article 15(3) of the Commission Law which 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".

1.1.2 Should the JFSC and a Representative Body be unable to agree a fee that the JFSC must request the Bailiff to appoint three Jurats to consider if the fee proposed is unreasonable.

1.1.3 The JFSC considers 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 having already been granted a registration to undertake Investment Business under the FSJL.

1.3 Responding to the consultation

1.3.1 The JFSC invites comments on the content of this consultation paper. Comments should be received no later than 22 April 2021.

1.4 Next steps

1.4.1 The JFSC will publish feedback and the final fees notice in April 2021. Firms will be notified by email through the myJFSC portal 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 fees

- 3.1.1 In order to raise sufficient income to meet the JFSC's liabilities; cover its expenses; and to provide a reserve of such an amount as it considers necessary, the JFSC needs to raise circa £1.513m in fees from the IB sector in 2021. This represents a 2% increase in the funding target versus the 2020 figure of £1.483m and reflects the increased cost of supervision (including enforcement) of the IB sector.
- 3.1.2 Whilst the JFSC's funding target has increased by 2%, the headline fee rates will increase by a higher percentage due to the significant reduction of employees in the IB sector. The number of licenced employees reduced by 16% between 2019 and 2020 and so a higher fee rate for licences and employees is needed to compensate for this volume impact. Under the current charging mechanism (presented as Option 1 in paragraph 4.1 below), an uplift of 9% to the existing fee rates would be required.
- 3.1.3 The JFSC has considered whether it is reasonable to reduce the resources allocated to the supervision of the IB sector so that the fee rate might also remain static or increase only in line with Jersey RPI. However, having regard to the rising complexity of supervision, the fact that supervision costs do not vary in line with every variant in sector profile and having regard also to the need to pursue ever more effectively its guiding principles, such a reduction in the resources allocated to IB supervision would not be in Jersey's best interests at this time.
- 3.1.4 Partially offsetting this, it is anticipated that Civil Financial Penalties recently received will reduce the total annual fees payable by IBs in 2021 by approximately £63k.
- 3.1.5 In order to achieve the budgeted income from the IB sector, the JFSC has considered a number of approaches, two of which are explained below. The two options that the JFSC have highlighted to achieve its budgeted income are a common rate of increase for all fee payers (which is what would happen in the normal course); and an approach which uses rolling average employees within the fee calculation. This is what has recently been introduced for trust company business (TCB) and designated non-financial businesses and professions (DNFBP) fees.
- 3.1.6 The reason that the JFSC is outlining two different approaches is that it believes that now, while it is not proposing significant over-inflationary increases to overall fees raised, is the best time to consider whether the current approach to raising fee income from the IB sector is proportionate and sustainable, or whether there is an alternative which is more likely to impose the cost of regulation on those best placed to bear that increasing cost and those whose activities are most likely to drive regulatory activity. The JFSC sees particular merit in the option of using rolling average employee numbers as this a) reduces in the immediate future impact on our income raising of sudden changes in the employee numbers in the sector and b) facilitates firms in medium term planning.

3.2 Supervisory effort and cost reduction

- 3.2.1 The JFSC is closely monitoring and managing its costs and has carefully managed costs in respect of its IB supervision activities in recent years.

- 3.2.2 In 2020 an important impact of its capital investment programme was increased efficiency both in the handling of data through its portals and in the efficiency of its supervisory staff. An additional programme of work on operational effectiveness will begin in 2021 which should contribute further to achieving value for money in its work.
- 3.2.3 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 with recent restructures of IB licence holders demonstrating this.

3.3 Fees for change of control

- 3.3.1 There is a reasonable volume of transactional activity where IBs, are bought or sold. These transactions do not currently incur a fee, however, do require supervisory effort in appraising the transaction and determining the decision to provide a “no objection” or otherwise.
- 3.3.2 It is proposed to introduce a fee for transactions where a legal entity applies to acquire a Registered Person. Such fees would be at the same level as for an application to carry on investment business. For Registered Persons in heightened supervision or enforcement, it is proposed to include a £1,000 premium on such transactions.
- 3.3.3 For the avoidance of doubt, this is not a fee for individuals (i.e. personal questionnaires (PQ) or for changes in control where an IB does not become, or cease to be, a subsidiary of another legal entity.

3.4 Question

- 3.4.1 Do you agree with the proposed fee in respect of a change of control?

3.5 Fees for alterations

- 3.5.1 There is also a reasonable volume of activity where IBs request changes in respect of their names and in respect of adding, amending, or removing licence conditions, or licence classes. These alterations do not currently incur a fee, however, do require supervisory effort in appraising the request, then determining and documenting the outcome.
- 3.5.1.1 It is proposed that a fee of £400 shall be paid by a Registered Person who applies for an alteration so as to reflect all or any of the following:
- 3.5.1.2 a change of the name of the Registered Person;
- 3.5.1.3 the addition, alteration or removal of conditions pursuant to an application from the Registered Person; or
- 3.5.1.4 the removal of a class of licence pursuant to an application from the Registered Person.

3.6 Question

- 3.6.1 Do you agree with the proposed fee in respect of alterations?

3.7 Issues with current fees structure

- 3.7.1 The current charging mechanism for IBs relies on the variable employee number input and a cap in the number of IB employees. These inputs provide a proxy for the scale of IB activities undertaken in order that the more significant IBs which the JFSC supervises, pay an appropriate fee relative to the level of risk they pose and supervisory effort that they require.
- 3.7.2 The fee cap appears unreasonable, simply reallocating costs from larger to smaller IBs. The JFSC is removing fee caps from other regulatory fees and this is a feature in the options explored below.
- 3.7.3 The number of employees is a reasonable proxy for the activities within each IB and therefore the effort required for effective supervision, as well as being a reasonable indicator of the strength of financial resources (and therefore ability to pay). Nevertheless the number of employees, in particular, is increasingly vulnerable to changes in working practices.

3.8 Volatility within fee projections

- 3.8.1 Because of changes in licensees and their businesses, the JFSC may end up collecting more or less than its budgeted fee income of circa £1.513m in 2021 under any of the approaches outlined in the next section. In 2020 the JFSC collected £1.416m in total, which was 5% under the 2020 budgeted amount, mainly due to the number of licenced employees within the sector having dropped by 16% compared to 2019. Further significant reductions in the number of licences would, again, result in under-collection in 2021. Whether we proceed with Option 1 or Option 2 below, it is the intention of the JFSC to calibrate fees in future based on historical data already held by the JFSC in order to further improve the quality of our funding model and the accuracy and resilience of income receipts.

4 Fee options

4.1 Option 1 – increase rates within current mechanism

- 4.1.1 In order to achieve the JFSC's budgeted income from IB fees in 2021, an uplift of 9% to existing fee rates would be required. Fee rates are rounded to the nearest £10:

Fee/year	Fee	2020	2021	'20-'21 £	'20-'21%
Class A-C	Application	£2,100	£2,290	£190	9%
	Annual	£3,405	£3,710	£305	9%
	First 15 employees (each)	£2,380	£2,590	£210	9%
	Next 25 employees (each)	£1,235	£1,350	£115	9%
Class D	Application	£1,045	£1,140	£95	9%
	Annual	£3,150	£3,430	£280	9%
	First 15 employees (each)	£1,235	£1,350	£115	9%
	Next 25 employees (each)	£615	£670	£55	9%
Class E	Application	£1,045	£1,140	£95	9%
	Annual for each fund	£1,235	£1,350	£115	9%

4.2 Option 2 – rolling average employees, removing the “cap”

4.1.2 The JFSC recently consulted with the TCB and DNFBP sectors on moving to a rolling average basis for employee numbers, while also moving to eliminate the fee caps within these regulatory fees. Taking this approach to IB fees, the uplift required to achieve the budgeted income for 2021 is shown here:

Fee/year	Fee	2020	2021	'20-'21 £	'20-'21%
Class A-C	Application	£2,100	£2,140	£40	2%
	Annual	£3,405	£3,470	£65	2%
	First 15 employees (each)	£2,380	£2,430	£50	2%
	All other employees (each)	£1,235	£1,260	£25	2%
Class D	Application	£1,045	£1,070	£25	2%
	Annual	£3,150	£3,210	£60	2%
	First 15 employees (each)	£1,235	£1,260	£25	2%
	All other employees (each)	£615	£630	£15	2%
Class E	Application	£1,045	£1,070	£25	2%
	Annual for each fund	£1,235	£1,260	£25	2%

4.3 Questions

4.1.3 Which of these options do you agree would achieve the best outcome for the IB industry while enabling the JFSC to achieve its budgeted 2021 IB fee income?

4.1.4 Do you consider that there are alternative approaches to those summarised in this consultation?

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

- › Chartered Institute for Securities & Investment
- › Channel Islands Wealth Management Association
- › Jersey Bankers Association
- › Personal Finance Society