



FINANCIAL SERVICES ACT 2008

FINANCIAL SERVICES (FEES) (No. 2) ORDER 2009

Approved by Tynwald 17 November 2009

Coming into operation 1 January 2010

The Financial Supervision Commission, after carrying out the consultations required by section 44(5) of the Financial Services Act 2008¹, makes this Order under section 46 of that Act.

1 Title

This is the Financial Services (Fees) (No. 2) Order 2009.

2 Commencement

This Order comes into operation on 1 January 2010.

3 Interpretation

(1) In this Order —

“the Act” means the Financial Services Act 2008;

“annual compliance return” has the same meaning as in Schedule 1.1 to the Financial Services Rule Book 2009²;

“annual review date” means 1 August each year;

“authorised scheme” has the same meaning as in section 26(1) of the Collective Investment Schemes Act 2008³;

“branch” means an office or establishment of a deposit taking institution;

¹ 2008 c.8

² SD 737/09

³ 2008 c.7

Price £2.00

“deposit taking institution” means an institution carrying on an activity which falls, or if carried on in the Island, would fall within Class 1;

“deposit taking subsidiary” means a deposit taking institution which is a subsidiary of another deposit taking institution;

“exempt scheme” has the same meaning as in section 26(1) of the Collective Investment Schemes Act 2008;

“exempt-type scheme” has the same meaning as in the Regulated Activities Order 2009⁴;

“experienced investor fund” has the same meaning as in regulation 2(1) of the Financial Supervision (Experienced Investor Fund) (Exemption) Regulations 1999⁵;

“full international scheme” has the same meaning as in Schedule 2 to the Collective Investment Schemes Act 2008;

“lead regulator”, in relation to a deposit taking institution, means the regulatory authority which, in accordance with the principles of the Basel Committee on Banking Supervision, is responsible for the prudential or consolidated regulation of the institution;

“nominee exemption” means an exemption contained in paragraph 4.5 or 5.1 of Schedule 1 to the Financial Services (Exemptions) Regulations 2009⁶;

“professional investor fund” has the same meaning as in regulation 2(1) of the Financial Supervision (Professional Investor Fund) (Exemption) Regulations 1999⁷;

“scheme” has the same meaning as in the Collective Investment Schemes Act 2008.

(2) References in this Order to —

(a) a class of regulated activities are to regulated activities of a class specified in Schedule 1 to the Regulated Activities Order 2009;

(b) a numbered class, or to a numbered paragraph of such a class, are to the class of regulated activities so numbered in Schedule 1 to that Order, or to the paragraph so numbered of that class, as the case may be.

⁴ SD 738/09

⁵ SD 603/99; SD 806/07 contains a relevant amendment

⁶ SD 739/09

⁷ SD 602/99

4 Application and annual fees

- (1) Subject to paragraphs (2) to (5) and to articles 5 and 6, in relation to a licence to carry on regulated activities of a description specified in column 2 of Table 1 in the Schedule, the following fees are payable —
 - (a) on initial application for the licence, the application fee specified in column 3;
 - (b) on application for an amended licence to carry on regulated activities falling within any class where the applicant does not already hold a licence to carry on activities falling within that class, the application fee specified in column 3;
 - (c) on every annual review date while the licence is in force, an annual fee of the amount specified in, or calculated in accordance with, column 4.
- (2) Where —
 - (a) a fee in column 3 or column 4 of Table 1 in the Schedule refers to a note, the corresponding note must be referred to when calculating the appropriate fee payable; and
 - (b) a note in the Schedule refers to Table 2 in that Schedule, Table 2 must also be referred to when calculating the appropriate fee payable.
- (3) If —
 - (a) different fees are specified in Table 1 of the Schedule in relation to regulated activities of different descriptions within one single class; and
 - (b) a licence to carry on regulated activities of more than one such description is applied for or issued (as the case may be) or regulated activities of more than one such description are carried on at the annual review date,

only the highest application fee and the highest annual fee, as the case may be, is payable.
- (4) For the purposes of paragraphs (1)(a) and (c), (3) and (6) classes 2 and 3 together shall be treated as one single class, and classes 4 and 5 together shall be treated as one single class.
- (5) In the first year of licensing the proportion of the annual fee relating to the period from the date of issue of the initial licence until the next annual review date (calculated pro rata in

accordance with article 6) is due and payable on the issue of the initial licence.

- (6) In the first year in which an additional class or subclass of regulated activity is undertaken by an existing licenceholder the proportion of any increased annual fee relating to the period from the date of issue of the amended licence until the next annual review date (calculated pro rata in accordance with article 6) is due and payable on the issue of the amended licence.
- (7) Fees under this article shall be payable as follows —
 - (a) in the case of an application fee, by the applicant for the licence;
 - (b) in the case of an annual fee, by the licenceholder (except as provided in sub-paragraph (c));
 - (c) in the case of an annual fee calculated in accordance with paragraph (2) of note 5 in the Schedule, by the licenceholder or licenceholders referred to in that paragraph (their liability being joint and several, if more than one).
- (8) Application fees and annual fees are not refundable.

5 Exemptions

- (1) In relation to a licence to carry on activities of Classes 2, 4 or 5, no application fee shall be payable on application for a licence (“the new licence”) by a company —
 - (a) of which a licenceholder, being an individual or partnership, is the beneficial owner; and
 - (b) which intends to continue the same regulated activities carried on by the licenceholder,and the unexpired balance of any annual fee paid by the licenceholder shall be applied towards the first annual fee payable in respect of the new licence.
- (2) No application fee is payable on an application for an amended licence to carry on regulated activities falling within any class where the applicant already holds a licence to carry on activities falling within that class.

6 Reduction in annual fee

Where a licence is issued on a date other than the annual review date, the annual fee shall be calculated in accordance with the following formula (rounded up to the nearest pound) –

$$\frac{F \times N}{12}$$

where –

F = the annual fee which would be payable apart from this article;

N = the number of months between the date on which the licence is issued and the next annual review date, counting a part of a month as a complete month.

7 Revocations

The Financial Services (Fees) Order 2009⁸ is revoked.

MADE 15th October 2009

Commissioner

Chief Executive

⁸ SD 131/09

Article 4

SCHEDULE

TABLE 1

Column 1	Description of regulated activity Column 2	Application fee (£) Column 3	Annual fee (£) Column 4
1	Class 1	6,650	14,000 (see notes 1, 2 and 3)
2	Class 2 paragraphs (2) to (7) (stockbroker) where the licenceholder does not deal as a principal on its own account	1,700	7,700
3	Class 2 paragraphs (1) to (7) (stockbroker) where the licenceholder deals as a principal on its own account	1,700	15,300
4	Class 2 paragraphs (2) and (5) (custodian)	1,700	5,050
5	Class 2 paragraphs (3) and/or (7) (financial adviser)	1,450	1,150
6	Class 2 paragraphs (3) and (5)	1,450	3,750
7	Class 2 paragraphs (3) and (6) (investment adviser to retirement benefits scheme)	1,450	3,750
8	Class 2 paragraphs (3) to (7) (discretionary portfolio manager)	1,450	3,750
9	Class 2 paragraphs (3), (4), (5) and (7)	1,450	3,750
10	Class 2 in any other case	1,450	5,050
11	Class 3 paragraph (1) or (2) (manager or administrator) in relation to authorised schemes together with any other scheme apart from exempt schemes or exempt-type schemes	1,450	7,700 (see note 7)

12	Class 3 paragraph (1) or (2) (manager or administrator) in relation to schemes apart from authorised schemes, exempt schemes or exempt-type schemes	1,450	5,050 (see note 7)
13	Class 3 paragraphs (3), (4) and/or (5) (trustee, fiduciary custodian or custodian) except in relation to authorised schemes or full international schemes	1,450	7,700 (see note 3)
14	Class 3 paragraphs (3), (4) and/or (5) (trustee, fiduciary custodian or custodian) in relation to authorised schemes or full international schemes together with any other type of scheme	1,450	19,050 (see note 3)
15	Class 3 paragraph (6) (asset manager)	1,450	5,050
16	Class 3 paragraph (7) (investment adviser)	1,450	3,750
17	Class 3 paragraph (8) (promoter)	1,450	1,150
18	Class 3 paragraph (9) (management and/or administration services)	1,450	8,050 (see note 8)
19	Class 3 paragraph (10) (administration services to overseas manager and/or administrator)	1,450	3,750
20	Class 3 paragraph (11) and/or (12) (manager etc. of exempt or exempt-type scheme)	nil	nil
21	Class 3 paragraph (13)	nil	nil
22	Class 4 and/or Class 5 (except as mentioned in rows 23 to 25 below)	1,450 (see note 6)	(see notes 4, 5 and 6)
23	Class 4 paragraph (6) (professional officer)	1,100	450
24	Class 5 paragraph (4) (trust corporation) together with any Class 4 activities	1,700 (see note 6)	(see notes 4, 5 and 6)
25	Class 5 paragraph (2) and/or (5) (trustee or protector) in the case of an individual	1,100	450

26	Class 6	1,450	9,950
27	Class 7	nil	nil
28	Class 8 paragraphs (1), (2) and/or (3)	300	300

Note 1 – Class 1 branch/subsidiary fees

(1) Subject to paragraph (2), where the Commission is the lead regulator for a licenceholder which is licensed to carry on Class 1 regulated activity and which –

(a) is incorporated in the Island; and

(b) has a branch and/or deposit taking subsidiary outside the Island,

there shall be added to the amount specified in column 4 of Table 1 the sum of £3,350 for each such branch and/or subsidiary when the licence is issued and on the annual review date, as the case may be, subject to a maximum fee of £33,000.

(2) In relation to the increased amount of the annual fee by virtue of paragraph (1), where the licenceholder establishes such a branch or subsidiary with effect from a date other than an annual review date, that sum shall be reduced in accordance with the following formula (rounded up to the nearest pound) –

$$\frac{3,350 \times N}{12}$$

where N = the number of months between the date of establishment and the next annual review date, counting a part of a month as a complete month.

Note 2 – Class 1 licenceholders in liquidation

Where a Class 1 licenceholder is in liquidation at the annual review date, the annual fee is £100.

Note 3 – Licenceholders permitted to carry on Class 1 and Class 3

(1) The annual fee specified in column 4 of Table 1 for Class 1 is not payable where the licenceholder is also licensed to carry on activities falling within paragraphs (3), (4) and/or (5) of Class 3 (trustee, fiduciary custodian or custodian) in relation to authorised schemes or full international schemes (see row 14 of Table 1).

(2) The annual fees specified in column 4 of Table 1 are not payable for licenceholders licensed to carry on activities falling within Class 1 and activities falling within paragraphs (3), (4) and/or (5) of Class 3 (trustee, fiduciary custodian or custodian) except in relation to authorised schemes or full international schemes (see row 13 of Table 1).

- (3) The annual fee for licenceholders mentioned in paragraph (2) is 19,050.
- (4) If the Class 1 licenceholder —
 - (a) is incorporated in the Island; and
 - (b) has a branch and/or deposit taking subsidiary outside the Island,note 1 applies.

Note 4 – Calculation of initial annual fee for Class 4 and Class 5

- (1) Where the applicant does not already hold a licence to carry on Class 4 or Class 5 activities, the first annual fee payable after the issue of a licence permitting the activities under rows 22 and 24 of Table 1 is the amount of the annual fee specified in column 3 or 4, as the case may be, of Table 2 in respect of a licenceholder carrying on Class 4 or Class 5 activities for 100 or fewer companies, partnerships and trusts.
- (2) In any other case the first annual fee payable after the issue of a licence permitting additional Class 4 or Class 5 activities is the difference (if any), rounded up to the nearest pound, between —
 - (a) the annual fee which (other things being equal) at the next annual review date will be payable in respect of the new regulated activity; and
 - (b) the annual fee which (other things being equal) would, if the new regulated activity had not been authorised, have been payable at the next annual review date in respect of the licence held immediately before the permission to conduct the new regulated activity.
- (3) For the avoidance of doubt, fees under paragraphs (1) and (2) will be calculated pro rata in accordance with article 6.

Note 5 – Class 4 and Class 5 group fees

- (1) Subject to paragraph (2), the annual fee payable under rows 22 and 24 of Table 1 is calculated in accordance with Table 2 by reference to the total number of companies, partnerships and trusts in respect of which the licenceholder carries on any Class 4 or Class 5 activity.
- (2) Where —
 - (a) a licenceholder or 2 or more licenceholders within a single group is or are licensed to carry on Class 4 or Class 5 activities; and
 - (b) any other companies in the same group carry on any Class 4 or Class 5 activity by virtue of a nominee exemption,

the single combined annual fee shall be calculated in accordance with Table 2 below by reference to the total number of companies, partnerships and trusts in respect of which the licenceholder or licenceholders and the companies referred to in sub-paragraph (b) carried on any Class 4 or Class 5 activity.

- (3) The total number of companies, partnerships and trusts will be taken from the last annual compliance return made to the Commission on or before 30 April before the annual review date.
- (4) Paragraphs (1) and (2) do not apply to activities falling within paragraph (6) of Class 4 or paragraph (2) and/or (5) of Class 5.
- (5) For the purpose of paragraph (2), where a licenceholder is a partnership, “group” shall be construed as if the partnership were a company.

Note 6 – Class 3 licenceholders also carrying on Class 4 regulated activities

The fees in rows 22 and 24 of Table 1 are not payable for regulated activities falling within Class 4 if those activities are undertaken only in respect of collective investment schemes and subsidiaries and associated entities of such schemes, including the establishment and winding up of such entities.

Note 7 – Overseas schemes

- (1) For a licenceholder which is licensed to carry on regulated activities within paragraphs (1) or (2) of Class 3 (manager or administrator) in relation to schemes established outside the Isle of Man but administered or managed in the Isle of Man, excluding experienced investor funds and professional investor funds, there shall be added to the amount specified in column 4 of Table 1 the sum of £250 for each such scheme when the licence is issued or on the annual review date, as the case may be.
- (2) The number of schemes will be taken as the number of schemes that have been notified to the Commission as at 30 April before the annual review date.

Note 8 - Exempt managers of Experienced Investor Funds and Professional Investor Funds

The fees in row 18 of Table 1 are not payable for regulated activities falling within paragraph (9) of Class 3 if those activities are undertaken only in respect of exempt managers of Experienced Investor Funds and Professional Investor Funds within the meaning of paragraph 3.3 of Schedule 1 to the Financial Services (Exemption) Regulations 2009.

TABLE 2

Number of companies, partnerships and trusts for which licenceholder carries on Class 4 or Class 5 activities		Class 5 paragraph (4) together with any Class 4 activities	Any Class 4 or Class 5 activities apart from Class 5 paragraph (4)
Column 1	Column 2	Column 3	Column 4
Exceeding	Not exceeding		
—	100	6,650	750
100	250	6,650	1,700
250	500	6,650	3,350
500	1,000	6,650	6,650
1,000	2,500	9,950	9,950
2,500	5,000	13,250	13,250
5,000	7,500	19,850	19,850
7,500	—	26,450	26,450

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the application fees and annual fees payable in relation to the licensing of regulated activities under the Financial Services Act 2008. No fee increases have been included since the original Financial Services (Fees) Order 2009 but, as e-money and money transmission services have been split into Class 6 and Class 8 respectively, a new annual fee for e-money issuers has been inserted.

In addition, the split of activities in Class 2 has been broken down further so that some combinations of activities that previously fell within “Class 2 in any other case” have been singled out and given a different fee. Regulated activities falling within Class 2 paragraphs (3) and (5) or paragraphs (3), (4), (5) and (7) will now attract an annual fee of £3,750.