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## Section 3

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### TRUSTEES OF AUTHORISED AND INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES - LICENSING AND REGULATION

#### 3.1

##### **FINANCIAL SUPERVISION ACT 1988**

The [Financial Supervision Act 1988](#) ("the FSA") requires that all authorised and international collective investment schemes (with the exception of professional investor funds ("PIFs"), experienced investor funds ("EIFs") (where the appointment of a trustee is optional) and exempt international collective investment schemes) must have a trustee.

In the case of an authorised scheme, the trustee must be an authorised person. The trustee of an international collective investment scheme must be either an authorised person or a person authorised to act as trustee under the law of one of the prescribed countries or territories which presently consist of the United Kingdom, Jersey and Guernsey.

The term "authorised person" is defined in [section 31\(1\)](#) of the FSA as:

***"a person holding a licence granted under section 3 of the [Investment Business Act 1991](#) or such other classes of permitted persons (within the meaning of that Act) as may be prescribed."***

Except for an international collective investment scheme whose trustee is authorised under the law of one of the prescribed countries or territories, only banking institutions licensed under section 6 of the Island's [Banking Act 1998](#) ("the BA") are permitted to act as trustees of authorised or international collective investment schemes. Licensed banking institutions are a class of permitted persons which have been prescribed as authorised persons for the purposes of the FSA by virtue of the [Financial Supervision \(Authorised Persons\) Regulations 1992](#) (see [Appendix J](#)). Consequently, a licensed banking institution does not require an investment business licence when acting as trustee of authorised or international collective investment schemes.

However, banking institutions contemplating taking on the trusteeship of an authorised or international collective investment scheme should note the provisions of [paragraph 10.1 of the Banking \(General Practice\) Regulatory Code 1999](#) (S.D. No: 122/99) which states:

***"The banking institution shall obtain the consent of the Commission - in writing - before accepting the trusteeship of any collective investment scheme as defined by the [Financial Supervision Act 1988](#)".***

Before granting consent to a licenceholder to act as trustee of either an authorised or international scheme, the Commission must be satisfied that the banking institution in question is adequately resourced both financially and in terms of qualified personnel and systems.

Applications in respect of authorised schemes are made jointly by the proposed manager and trustee of the scheme. Indeed, the application form must be signed by the trustee.

The Commission will generally expect any bank wishing to act as trustee of an authorised scheme to have a minimum issued and fully paid up share capital of £5million. Trustees of authorised schemes are also required to be party to the compensation arrangements for authorised schemes provided by the [Authorised Collective Investment Schemes \(Compensation\) Regulations 1988](#) (see [Appendix B3](#)) and prior to accepting any such trusteeship must complete and return to the Commission the declaration contained on page (i) of the [Compensation Regulations](#).

Trustees of authorised schemes, in addition to the normal duties and responsibilities of a trustee, are required to undertake detailed supervisory functions imposed on them under the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#) (see [Appendix B1](#)). Indeed, within the annual report of the manager to unitholders, the Trustee of an authorised scheme must make a report to unitholders in accordance with [Part V of Schedule 3](#) to the [Authorised Scheme Regulations](#).

Subject to the provisions of [../showpdf.aspx?pdf=CIS/PDF/CIS - Appendix A1.pdf&page=10](#) of the FSA, the duties imposed by the [Authorised Scheme Regulations](#) on the trustee are in addition to, and not in derogation from, the duties that are otherwise imposed upon the trustee by law - see [regulation 4.07 of the Authorised Scheme Regulations](#).

Whilst trustees of international collective investment schemes are not required to undertake the same detailed supervisory functions, this does not diminish the fundamental role of trustees as both custodians of Scheme assets and guardians of investors' interests. Indeed the Commission expects any trustee/custodian agreement in connection with an international collective investment scheme to impose upon the trustee a duty to ensure that the scheme is managed in accordance with the provisions of its constitutional documents (see [paragraph 2.2 of the Guidance Notes for Managers and Trustees of International Collective Investment Schemes - Appendix C4](#)).

The Commission requires trustees of international schemes to have a fiduciary role as well as a custodial role. The Commission expects the trustee to safeguard the interests of investors at all times. This means that the Commission expects that fiduciary responsibility should be exercised not only from paper-based internal monitoring of the fund manager and scheme, but also by external on-site review of the activities of the fund manager in relation to the scheme.

The Commission will expect trustees of international schemes to establish a monitoring programme to be used for both the internal paper-based monitoring and the external on-site reviews. The programme should cover all areas of the fund manager's activities, for example:

- compliance arrangements;
- accuracy of pricing;
- investment and borrowing powers and restrictions;
- registration;
- application and redemption procedures;
- issue of contract notes;
- complaints procedures.

The activity of acting as trustee of "exempt" international collective investment schemes is excluded from the scope of the IB Act by virtue of [paragraph 20\(1\)\(a\)](#) of Schedule 1 to the Order.

Trustee/custodial facilities can be offered in the Island to schemes whose management and administration is performed in another jurisdiction without the scheme becoming an international collective investment scheme and subject to section 11 of the FSA 1988. This activity is also excluded from the scope of the IB Act by virtue of [paragraph 20\(1\)\(b\) of Schedule 1](#) to the Order.

### 3.2 [INVESTMENT BUSINESS ACT 1991](#)

As stated in [Part I of Schedule 1 to the Investment Business Order 2004](#) (see [Appendix A3](#)) acting as trustee to a collective investment scheme constitutes licensable activity and therefore requires an investment business licence. However, banking institutions licensed under section 6 of the BA are exempt from having to hold an investment business licence by virtue of the Investment Business (Exemption) (Banks and Building Societies) Regulations 1992. A condition of this exemption is that the [Clients' Investments](#) and [Conduct of Business Regulatory Codes](#) apply in respect of investment business activity carried on by the Bank or Building Society. In addition, the [Advertising Code](#) and [General Requirements Code](#) apply in part.

It is intended that banks will in due course cease to be required to comply with these codes and that a separate regulatory code relating to investment business carried on by banks will be issued under [section 10](#) of the BA.