

Dated the 30<sup>th</sup> day of March, 2016

**BARING INTERNATIONAL FUND MANAGERS (IRELAND) LIMITED**

and

**NORTHERN TRUST FIDUCIARY SERVICES (IRELAND) LIMITED**

**Amended & Restated**

**TRUST DEED**

constituting

**Baring Global Umbrella Fund**

DILLON EUSTACE  
33 SIR JOHN ROGERSON'S QUAY  
DUBLIN 2  
IRELAND

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**THIS AMENDED AND RESTATED TRUST DEED** made the 30<sup>th</sup> day of March, 2016

**BETWEEN:-**

- (1) **BARING INTERNATIONAL FUND MANAGERS (IRELAND) LIMITED** whose registered office is at George's Court, 54-62 Townsend Street, Dublin 2, as Managers;
- (2) **NORTHERN TRUST FIDUCIARY SERVICES (IRELAND) LIMITED** whose registered office is at George's Court, 54-62 Townsend Street, Dublin 2, as Depositary.

**WHEREAS:-**

- A. The Managers and the Depositary have entered into an amended and restated Trust Deed dated the 11<sup>th</sup> day of August 2011 as amended by the First Supplemental Trust Deed dated 13 January 2014 and the Second Supplemental Trust Deed dated 2<sup>nd</sup> March 2015 (the "Original Deed"). The Managers and the Depositary now wish to further amend and restate the Original Deed as hereinafter provided (this amended deed is hereinafter referred to as the "Deed")
- B. Baring Global Umbrella Fund is an Authorised UCITS within the meaning of the UCITS Regulations.
- C. The Depositary hereby certifies that pursuant to Clause 46A(1) hereof, in its opinion the modifications as effected in this Deed do not materially prejudice the interest of Holders, do not operate to release, to any material extent, the Depositary or the Managers or any other person from any liability to the Holders, will not result in any increase in the amount of costs or charges payable from the Deposited Property.

**WITNESSETH** as follows:-

**DEFINITIONS**

1. (A) EXCEPT where the context otherwise requires, the following words and expressions shall have the meanings respectively assigned to them:-
  - (1) "**Accounting Date**" means 30th April in each year during the continuance of the Trust or such other date in each year during the continuance of the Trust as the Managers may, with the prior written approval of the Depositary, determine.
  - (2) "**Accounting Period**" means a period commencing on the date of commencement of the Trust or on the day following the expiry of the preceding Accounting Period (as the case may be) and ending on the next succeeding Accounting Date;
  - (3) "**Administration Fee**" means any sum which the Managers shall be entitled to charge the Deposited Property pursuant to the provisions of Clause 27(C) hereof;

- (4) "**Administrator**" means any person or company appointed by the Managers to carry out the day to day administration of the Trust on their behalf;
- (5) "**Annual Distribution Date**" in relation to any Accounting Period means such date (being not later than eight weeks after the end of such Accounting Period) as may be determined by the Managers with the prior written approval of the Depositary for the purposes of making any distribution pursuant to Clause 23 in respect of such Accounting Period;
- (6) "**Asset Verification Services**" means asset verification services in respect of the Other Investments, and related services, in accordance with Article 22(5)(b) of the UCITS Directive and Article 14 of the Delegated Regulation;
- (7) "**Auditors**" means a person or persons appointed, with the prior written approval of the Depositary, by the Managers pursuant to the provisions of Clause 38 hereof and who is empowered to audit accounts in accordance with the Companies Act 2014;
- (8) "**Authorised UCITS**" means an undertaking for collective investment in transferable securities, the sole object of which is the collective investment in transferable securities and/or other liquid financial assets referred to in Regulation 4(3) of the UCITS Regulations of capital raised from the public and which operates on the principle of risk spreading; the units of which are, at the request of unitholders, repurchased or redeemed, directly or indirectly, out of the undertakings' assets. Such definition shall also be deemed to include all reference to the Trust.
- (9) "**Business Day**" means a day (other than a Saturday or Sunday) upon which banks in Dublin and London are open for business;
- (10) "**Cash Flow Monitoring Services**" means the services in respect of the monitoring of the Trust's cash flows in accordance with Article 22 (4) of the UCITS Directive and Articles 9-11 of the Delegated Regulation;
- (11) "**Central Bank**" means the Central Bank of Ireland;
- (12) "**Central Bank Regulations**" means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 as may be amended, supplemented or modified from time to time;
- (13) "**Central Bank Requirements**" means the Central Bank Regulations and any other statutory instrument, regulations, rules, conditions, notices, requirements or guidance of the Central Bank issued from time to time applicable to the Trust, the Managers on behalf of the Trust and/or the Depositary pursuant to the Legislation;

(14) "**Certificate**" means a certificate issued at the request of a Holder evidencing the entitlement of a person entered in a Register to the Units represented thereby;

(15) "**Collective Investment Scheme**" means:-

(a) any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of Investments or any other property whatsoever; and

(b) any other investment vehicle of a similar nature to that described in paragraph (a) of this definition (including, without limitation, any open-ended investment company, mutual fund or fonds commun de placement)

and, in relation to any such collective investment scheme, "unit" means any unit, share or other interest (however described) of similar nature in such collective investment scheme;

(16) "**Commission**" means the Securities and Futures Commission established by the Securities and Futures Commission Ordinance, 1989 of Hong Kong;

(17) "**Connected Person**" in relation to any person ("the relevant person") means:-

(a) any person beneficially owning, directly or indirectly, 20 per cent. or more of the ordinary share capital of the relevant person or able to exercise, directly or indirectly, 20 per cent. or more of the total voting rights attributable to the voting share capital of the relevant person;

(b) any company controlled by any such person as is described in (a) above and for this purpose "control" of a company means:-

(i) control (either direct or indirect) of the composition of the board of directors of that company; or

(ii) control (either direct or indirect) of more than half the voting rights attributable to the voting share capital of that company; or

(iii) the holding (either directly or indirectly) of more than half of the issued share capital (excluding any part of such share capital which confers no right to participate beyond a specified amount in a distribution of either profits or capital)

PROVIDED THAT the Depository and the Managers may agree some other definition acceptable to the Central Bank of the term "control" in substitution for the above definition thereof;

- (c) any company 20 per cent. or more in aggregate of whose ordinary share capital is beneficially owned, directly or indirectly, by the relevant person and any company 20 per cent. or more in aggregate of the total votes attributable to the voting share capital of which can be exercised, directly or indirectly, by the relevant person; and
  - (d) any director or other officer of the relevant person or of any company which is a Connected Person of a relevant person pursuant to (a), (b) or (c) above;
- (18) **"Companies Act"** means the Companies Act, 2014 as may be modified, amended, supplemented, consolidated or re-enacted from time to time;
- (19) **"Custody Services"** means the safekeeping and administration of the Financial Instruments, and related services, to be provided to the extent required and in accordance with Article 22(5)(a) of the UCITS Directive and Articles 12 & 13 of the Delegated Regulation;
- (20) **"Dealing Day"** means every day which is a Business Day and/or such other day or days as the Managers may from time to time, with the prior written approval of the Depositary determine and as set out in the Prospectus;
- (21) **"Delegated Regulation"** means the Commission Delegated Regulation supplementing Directive 2009/65/EU of the European Parliament and of the Council of 17 December 2015, once it has entered into force and is directly effective in Ireland;
- (22) **"Delegation Criteria"** means the criteria specified in Schedule G;
- (23) **"Depositary"** means Northern Trust Fiduciary Services (Ireland) Limited or such other person or person for the time being duly appointed depositary or depositary of the Trust in succession to Northern Trust Fiduciary Services (Ireland) Limited under the provisions of Clause 39 hereof and with regard to any provision of this Deed providing for any act or matter to be done by the Depositary such act or matter may be performed on behalf of the Depositary by any person, firm or corporation appointed by the Depositary for such purpose or by any officer or responsible official of the Depositary or any such person, firm or corporation any act or matter so performed shall be deemed for all the purposes of this Deed to be the act of the Depositary;
- (24) **"Depositary Fee"** means any sum to which the Depositary may become entitled pursuant to the provisions of Clause 27(B) hereof;
- (25) **"Deposited Property"** means all the assets for the time being held or deemed to be held upon the trusts of this Deed (or if the context so requires that part referable to a Portfolio);

- (26) **"Distribution Account"** means the Distribution Account referred to in Clause 23 hereof;
- (27) **"Eligible Credit Institution"** means an entity referred to in points (a), (b) and (c) of Article 18(1) of the MiFID Implementing Directive;
- (28) **"Equalisation Payment"** means:-
- (a) in relation to a Unit issued by the Managers, the capital sum deemed by the Managers to represent the amount included in the Issue Price or (as the case may be) the Fixed Price of such Unit for net undistributed income of the relevant Portfolio accrued up to the Dealing Day as at which such Unit is issued; and
  - (b) in relation to a Unit of the same class sold by the Managers, a sum equivalent to the Equalisation Payment which would relate to a Unit issued on the same Dealing Day;
- (29) **"Escalation Procedures"** means the escalation procedures established and implemented by The Depository as required under the Delegated Regulation and which are summarised in Schedule F hereto;
- (30) **"Extraordinary Resolution"** means an extraordinary resolution (within the meaning of paragraph 20 of Schedule C hereto) of a meeting of Holders or, as the case may require, Holders of a particular class of Units, duly convened and held in accordance with the provisions contained in the Schedule C hereto;
- (31) **"Financial Instruments"** mean a financial instrument specified in Section C of Annex 1 to Directive 2014/65/EU of the European Parliament and of the Council and which can be registered in a financial instruments account opened in The Depository's books and all financial instruments that can be physically delivered to the Depository, pursuant to Article 22 (5) (a) of the UCITS Directive;
- (32) **"Fixed Price"** means the fixed price ascertained in accordance with the provisions of Clause 13(D) hereof;
- (33) **"Holder"** means a person for the time being entered on a Register as the holder of a Unit and, where the context so admits, shall include persons jointly so registered;
- (34) **"Interim Distribution Date"** in relation to any Interim Distribution Period means such date (being not later than eight weeks after the end of such Interim Distribution Period) as may be determined by the Managers, with the prior written approval of the Depository, for the purpose of making a distribution pursuant to Clause 23;
- (35) **"Interim Distribution Period"** means in each Accounting Period, each of the periods



commencing on the first day of the Accounting Period or on the day following the end of the previous Interim Distribution Period, as the case may be, and ending on such date as the Managers shall determine and as set out in the Prospectus;

- (36) **"Investments"** means such cash, securities, derivatives and other assets of the Trust from time to time including any certificates or documents of or evidencing title thereto, the categories of which are listed in Schedule H and in which the Trust may invest in accordance with the terms of the Prospectus, the Deed and the UCITS Requirements;
- (37) **"Issue Price"** means the issue price of a Unit fixed in accordance with Clause 13 (A) or Clause 13 (C) or Clause 13 (D) or as calculated in accordance with the Schedule A hereto;
- (38) **"Japanese Person"** means any person resident in Japan, including any corporation or other entity organised under the law of Japan;
- (39) **"Legislation"** means the UCITS Regulations and the Delegated Regulation or either of them, as the case may be;
- (40) **"Management Fee"** means the management fee to which the Managers may become entitled pursuant to the provisions of Clause 27 (A) hereof;
- (41) **"Managers"** means Baring International Fund Managers (Ireland) Limited or such other person or persons for the time being duly appointed managers of the Trust in succession to Baring International Fund Managers (Ireland) Limited under the provisions of Clause 40 hereof;
- (42) **"Market"** means the stock exchanges and other regulated markets listed in the Prospectus. With the exception of permitted investments in unlisted securities, a Portfolio may only invest in those securities and derivative instruments listed or traded on a Market which meets with the regulatory criteria (regulated, operate regularly, be recognized and open to the public) and which is listed in the Prospectus;
- (43) **"Member State"** means a Member State of the European Community;
- (44) **"MiFID Implementing Directive"** means Commission Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- (45) **"Minimum Number of Units"** means the number of Units (to include fractions of Units) or as the Managers may permit or prescribe from time to time and as set out in the Prospectus in relation to any particular class or classes, provided that in each

case, the Managers may waive the requirement to have a Minimum Number of Units either generally or in any particular case, at their discretion;

- (46) **"Net Asset Value"** means the net asset value of the Deposited Property or, as the context may require, of a Portfolio calculated in accordance with the provisions of the Schedule A hereto;
- (47) **"Other Investments"** means Investments other than Financial Instruments;
- (48) **"Oversight Services"** means the oversight and supervision of the Trust and the Managers on behalf of the Trust, and related services, in accordance with Article 22(3) of the UCITS Directive and Articles 3-8 of the Delegated Regulation;
- (49) **"Portfolio"** means the portfolio(s) designated by the Managers from time to time with the consent of the Depositary constituting that part of the Deposited Property referable to any particular class of Units;
- (50) **"Preliminary Charge"** means the preliminary charge referred to in Clause 13(B) hereof;
- (51) **"Realisation Price"** means the realisation price of a Unit calculated in accordance with the Schedule A hereto;
- (52) **"Register"** or **"Registers"** means a register or the registers kept or to be kept in accordance with Clause 10 hereof;
- (53) **"Registrars"** means the Managers or such other person as may from time to time be appointed by the Managers to keep the Registers on behalf of the Managers;
- (54) **"Registration Number"** means a number given to each Holder who has not requested the issue of a Certificate in respect of all of the Units registered in his name;
- (55) **"Right"** means rights issues, subscription options, conversion options, elections, calls and other similar rights, opportunities and advantages applicable to the Investments;
- (56) **"Securities Settlement System"** shall mean a generally recognised book-entry or other settlement system or clearing house or agency as designated for the purpose of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems or the provision of similar services to third-country securities settlement systems which to the extent envisaged by the UCITS Directive may or may not also act as a securities depository the use of which is customary for securities settlement activities in the jurisdiction(s) in which the Depositary carries out its duties under this Deed and through which the Depositary may release, transfer, settle, clear, deposit or maintain securities owned

or held on behalf of the Trust and shall include any services provided by any network service provider or carriers or settlement banks used by a settlement system or clearing house or agency or securities depository;

(57) **"Specific Investment"** means: -

means Transferable securities and money market instruments issued or guaranteed by OECD Governments (provided the relevant issues are investment grade), Government of the People's Republic of China, Government of Brazil (provided the issues are of investment grade), Government of India (provided the issues are of investment grade), Government of Singapore, European Investment Bank, European Bank for Reconstruction and Development, International Finance Corporation, International Monetary Fund, Euratom, The Asian Development Bank, European Central Bank, Council of Europe, Eurofima, African Development Bank, International Bank for Reconstruction and Development (The World Bank), The Inter American Development Bank, European Union, Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), Government National Mortgage Association (Ginnie Mae), Student Loan Marketing Association (Sallie Mae), Federal Home Loan Bank, Federal Farm Credit Bank, Tennessee Valley Authority, Straight-A Funding LLC, Export-Import Bank provided that if more than 35 per cent. of the net assets of a Portfolio is invested in such securities the Portfolio must hold securities from at least six different issues with securities from any one issue not exceeding 30 per cent. of the net assets of the Portfolio;

(58) **"Specified Office"** means:-

- (a) in the case of the Depositary, George's Court, 54-62 Townsend Street, Dublin 2, Ireland, or
- (b) in the case of the Managers, George's Court, 54-62 Townsend Street Dublin 2, Ireland

or such other or further offices as may from time to time be notified to the Holders;

(59) **"Stock Exchange"** means The Irish Stock Exchange Limited;

(60) **"Third Party"** means a third party sub-custodian appointed by the Depositary pursuant to Clause 33 of this Deed for the purpose of holding and safekeeping the Financial Instruments;

(61) **"Third Party Cash Account"** means a cash account opened in the name of the Trust or the Managers acting on behalf of the Trust with an Eligible Credit Institution other than the Depositary. For the avoidance of doubt, any cash accounts opened in the name of the Trust or the Managers acting on behalf of the Trust with Affiliates of the

Depository shall be considered "third party cash accounts" for this purpose;

- (62) "**Trust**" means the unit trust constituted by this Deed and called Baring Global Umbrella Fund or such other name as the Depository and the Managers may, with the approval of the Central Bank and subject to the provisions of Clause 39(C) hereof, from time to time determine;
  - (63) "**UCITS Directive**" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as amended by Directive 2014/911/EU of the European Parliament and of the Council of 23 July 2014 amending Directives 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depository functions, remuneration policies and sanctions and as may be further amended from time to time and including any supplementing European Commission delegated regulations in force from time to time;
  - (64) "**UCITS Regulations**" means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2016 as may be modified, amended, supplemented, consolidated or re-enacted from time to time;
  - (65) "**UCITS Requirements**" means the legislative and regulatory framework for the authorisation and supervision of UCITS in place in Ireland from time to time, pursuant to the UCITS Regulations, the Delegated Regulation and the Central Bank Requirements;
  - (66) "**Unit**" means one undivided share in a Portfolio;
  - (67) "**United States Person**" has the meaning as defined in the Prospectus;
  - (68) "**Valuation Point**" means such time or times every Dealing Day as the Managers, with the approval of the Depository may from time to time determine in respect of a class of classes of units as set out in the Prospectus;
  - (69) "**Value**" in relation to any asset or liability means the value thereof determined in accordance with the Schedule A hereto;
  - (70) "**year**" means calendar year;
  - (71) "**may**" shall be construed as permissive; and
  - (72) "**shall**" shall be construed as obligatory.
- (B) References herein to "EUR" or "Euro" are to the currency of certain states of the

European Union, references to "dollars" or "\$" or "cents" are to the currency of the United States of America, references to "pounds" or "£" are to the currency of the United Kingdom, references to "Yen" are to the currency of Japan, references to "HKD" or "Hong Kong Dollars" are to the currency of Hong Kong and references to "RMB" are to the currency of the People's Republic of China.

(C) References herein to "this Deed" and words of similar import shall mean this Deed and the Schedules hereto as from time to time amended by deed expressed to be supplemental hereto.

(D) Words importing the singular number only shall include the plural and vice versa; words importing the masculine gender only shall include the feminine gender; words importing persons shall include corporations; the words "written" and "in writing" shall include printing, engraving, lithography or other means of visible reproduction or partly one and partly another.

(E) The headings in this Deed are for convenience only and shall not affect the construction of this Deed.

#### **CONFIRMATIONS OF OWNERSHIP AND ISSUE OF CERTIFICATES**

- 2.01 A Holder in a Portfolio shall have his title to Units evidenced by having his name, address, date of becoming a Holder and cessation of being a Holder in the relevant Register of the Portfolio and the number, Portfolio and, where applicable, class of Units held by him entered in the Register.
- 2.02 A Holder whose name appears in the Register shall be issued with a written confirmation of entry in the Register of the number of Units held by him including without limitation, fractions of Units and his Registration Number.

#### **FORM**

- 3.00 Certificates, if issued (which shall be entirely at the discretion of the Managers) shall specify the serial number thereof and the number of Units represented thereby and shall be in such form as the Manager and the Depositary shall agree from time to time.

#### **SIGNATURE OF CERTIFICATES**

- 4.00 Certificates, if issued (which shall be entirely at the discretion of the Managers), shall be signed by the Managers and the Depositary in such manner as may be respectively authorised by them. Any signatures by the Managers and the Depositary may be affixed lithographically or by such other mechanical means as may be approved by the Depositary and the Managers. No Certificate in respect of any Unit shall be issued or be valid until so signed. In case the Depositary or Managers shall cease to be Depositary or Managers respectively of the Trust or in case any person whose signature shall appear on any Certificate shall die or shall cease to be an official so authorised before the said Certificate

shall have been issued such Certificate shall nevertheless be as valid and binding as though the Depositary or Managers or the person whose signature so appeared had lived or continued to be an official so authorised up to the date of the issue of such Certificate.

#### **HOLDERS BOUND BY TRUST DEED**

5. THE terms and conditions of this Deed shall be binding on each Holder and all persons claiming through him as if he had been a party to this Deed.

#### **INSPECTION AND COPIES OF TRUST DEED**

6. A copy of this Deed shall be made available for inspection at the respective specified offices of the Depositary and of the Managers at all times during usual business hours and shall be supplied by the Managers to any person free of charge.

#### **TRUSTS AND EQUITIES**

7. (A) The Holder shall be the only person to be recognised by the Depositary or by the Managers as having any right, title or interest in or to Units registered in his name and the Depositary and the Managers may recognise such Holder as absolute owner thereof and shall not be bound by any notice to the contrary and shall not be bound to take notice of or to see to the execution of any trust or, save as herein expressly provided or save as by some court of competent jurisdiction ordered, to recognise any trust or equity or other interest affecting the title to any such Units.

(B) A receipt signed or purporting to be signed by the Holder for any moneys payable in respect of Units shall be a good discharge to the Depositary and the Managers, and if several persons are registered as joint Holders, or in consequence of the death of a Holder are entitled to be so registered, any one of them may give effectual receipts for any such moneys.

#### **MANAGERS AS HOLDER**

8. The Managers shall be treated for all the purposes of this Deed as the Holder of each Unit during such times as there shall be no other person registered or entitled to be registered as the Holder thereof, but nothing herein contained shall prevent the Managers from becoming the Holder of Units.

#### **EXCHANGE AND REPLACEMENT OF CERTIFICATES**

9.01 A Holder shall be entitled to surrender any or all of his Certificates in relation to Unit held in a particular Portfolio and the Managers shall be entitled to so request the surrender of any or all of the Certificates held by a Holder (with the consent of the Holder) and have entered in the relevant Register against his name a Registration Number in lieu thereof.

9.02 The Managers may; (i) in the case of the loss, damage, theft or destruction of a Certificate(s) and upon proof thereof to the satisfaction of the Managers and on such indemnity as the

Managers may deem adequate to be given, or (ii) in the case of a request for exchange or in the case of a partial redemption of Units in their absolute discretion, refuse to issue a new or replacement Certificate(s) and instead may cancel such Certificate(s) and may enter in the relevant Register against the relevant Holder's name, a Registration Number in lieu thereof.

9.03 If any Certificate be worn out, mutilated or defaced, the Managers upon having the Certificate produced to it may cancel the same and may enter in the relevant Register against the relevant Holder's name, a Registration Number in lieu thereof.

9.04 The Managers shall (subject as hereinafter provided) be entitled to destroy all Certificates which have been cancelled at any time from the date of cancellation thereof and all registers, statements and other records and documents relating to the Trust or any of its Portfolios at any time after the expiration of six years from the date to which they relate. The Managers shall be under no liability whatsoever in consequence thereof and it shall conclusively be presumed in favour of the Managers that every Certificate so destroyed was a valid Certificate duly and properly cancelled provided always that:

- (a) the provisions aforesaid shall apply only to the destruction of a document in good faith and without actual notice of any claim (regardless of the parties thereto) to which the document might be relevant;
- (b) nothing in this sub-Clause shall be construed as imposing upon the Managers any liability in respect of the destruction of any documents earlier than as aforesaid or in any case where the conditions of sub-paragraph (a) above are not fulfilled; and
- (c) reference herein to the destruction of any document includes reference to the disposal thereof in any manner.

#### **REGISTRATION OF HOLDERS AND TRANSFER OF UNITS**

10. (A) There shall in respect of each class of Units be a Register listing the Holders of Units in that class.

(B) All Registers shall be kept by or under the supervision of the Managers or such other person on behalf of the Managers as may from time to time be appointed by the Managers and shall be kept in a form and manner approved by the Managers (in such a manner that the provisions set out in the Schedule D hereto shall be observed). The Registers must be kept in Ireland.

(C) There shall be entered on each Register:-

- (1) the names and addresses of all Holders of Units of that class;
- (2) the number of Units held by every such Holder and the serial numbers of the Certificate or Certificates issued in relation thereto and/or the Registration Number issued in relation thereto whichever is the case;

- (3) the date on which the name of every Holder was entered in respect of the Units standing in his name and (where he became a Holder by virtue of an instrument of transfer) a reference sufficient to enable the name and address of the transferor to be identified;
- (4) the date on which any transfer by a Holder is registered and the name and address of the transferee; and
- (5) the date on which any Units are cancelled pursuant to the provisions of Clause 16 or 17 hereof and the number of Units then cancelled.

(D) The Registrars shall not be bound to register in a Register more than four persons as the joint Holders of any Units and in the case of Units held jointly by several persons the Registrar shall not be bound to issue more than one Certificate thereof and delivery of a Certificate to one of such persons shall be sufficient delivery to all.

(E) Any change of name or address on the part of any Holder whose name appears in a Register shall forthwith be notified to the Registrar who on being satisfied thereof and on compliance with such formalities as it may require shall alter or cause the appropriate Register to be altered accordingly.

(F) The Registers or any one of them may be closed at such times and for such periods as the Registrar may from time to time determine PROVIDED THAT any one shall not be closed for more than 30 Business Days in any one year. Except when a Register is closed as hereinbefore provided, each Register shall during business hours in Dublin (subject to such reasonable restrictions as the Registrar may impose but so that not less than two hours in each Business Day shall be allowed for inspection) be open to inspection by any Holder without charge PROVIDED THAT if any Register is kept on magnetic tape or in accordance with some other mechanical or electrical system the provisions of this sub-clause (F) may be implemented by the production of legible evidence of the contents of that Register.

(G) The following provisions shall have effect with regard to the transfer of Units:-

- (1) Every Holder shall subject to Clause 14 be entitled to transfer any Units registered in his name by any instrument in writing (which need not be a deed) in common form (or in such other form as the Registrar may from time to time approve) PROVIDED THAT no transfer of part of a holding of such Units shall be registered if in consequence thereof either the transferor or the transferee would be the Holder of a number of Units less than the Minimum Number of Units provided further however that any Unitholder who is Irish Resident or Irish Ordinary Resident, other than Exempt Irish Investors must give such notice to the Managers of any intended transfer of Units as the Managers may determine and set out in the Prospectus.
- (2) A purported transfer of Units shall not become effective and binding upon the



Managers until such time as the transferee has completed the prescribed application form and any attendant documentation such as anti-money laundering documentation and the Administrator has received the originals thereof. In this regard, the rights and obligations of the purported transferor will subsist and the purported transferor will continue to be regarded as the registered Holder, to the exclusion of the purported transferee, until receipt by the Administrator of the documentation outlined above.

- (3) Every such instrument of transfer of Units must be signed by (or, in the case of a transfer by a body corporate, signed on behalf of or sealed by) the transferor and subject to the provisions of Clause 8 hereof and of sub-clause (M) of this Clause 10 the transferor shall be deemed to remain the Holder of the Units transferred until the name of the transferee is entered in the appropriate Register in respect thereof.
- (4) Every instrument of transfer must be duly stamped with any applicable stamp duty and left with the Registrars for registration accompanied by any necessary declarations or other documents that may be required in consequence of any exchange control or other legislation for the time being in force and (subject to Clause 9 hereof) by the Certificate or Certificates (if any) relating to the Units to be transferred and such other evidence as the Registrar may require to prove the title of the transferor or his right to transfer the Units.
- (5) All instruments of transfer which shall be registered may be retained either by the Depository or by the Registrars on its behalf.
- (H) Save as herein provided no notice of any trust express, implied or constructive shall be entered on a Register.
- (I) In the case of the death of any one of joint Holders the survivor or survivors shall be the only person or persons recognised by the Registrar and the Managers as having any title to or interest in the Units registered in the names of such joint Holders and upon producing such evidence of the death as the Registrar may require and delivering the relevant Certificate (if any) the survivor or survivors shall be entitled to have such Certificate duly marked or to have a fresh Certificate duly issued in his name or their names as may be appropriate.
- (J) A body corporate may be registered as a Holder or as one of joint Holders.
- (K) The executors or administrators of a deceased Holder (not being one of several joint Holders) shall (subject to sub-clause (D) of this Clause 10) be the only persons recognised by the Depository and the Managers as having title to the Units registered in his name.
- (L) (1) Any person becoming entitled to a Unit in consequence of the death or bankruptcy of any sole Holder or of the survivor of joint Holders shall, subject as hereinafter provided and upon producing such evidence as to his title as the Registrar shall think sufficient, either be registered himself as the Holder

of such Unit upon giving to the Registrar notice in writing of his desire to be registered or transfer such Unit to some other person. All the limitations, restrictions and provisions of this Deed relating to transfers shall be applicable to any such notice or transfer as if the death or bankruptcy had not occurred and such notice or transfer were a transfer executed by the Holder.

- (2) A person becoming entitled to a Unit in consequence of death or bankruptcy as aforesaid may give a discharge for all moneys payable in respect of the Unit but he shall not be entitled to receive notices of or to attend or vote at any meeting of Holders until he shall have been registered as the Holder of such Unit.
- (3) The Registrar may retain any moneys payable in respect of any Unit of which any person is under the provisions as to the transmission of Units hereinbefore contained entitled to be registered as the Holder or of which any person under those provisions is entitled to transfer until such person shall be registered as the Holder of such Unit or shall duly transfer the same.

(M) In the case of a transfer of Units in favour of the Managers the Registrars shall upon registration thereof cancel the Certificate or Certificates (if any) in respect of the Units transferred and remove the name of the Holder from the relevant Register in respect of such Units. Such removal shall not be treated for any purposes of this Deed as a cancellation of the Units or as withdrawing the same from issue.

(N) The Registers may be kept either in written form or (without prejudice to the provisions of sub-clause (F) of this Clause 10) by such other means (including magnetic or electronic recording) as the Registrar shall from time to time approve.

#### **DEPOSITED PROPERTY**

11. (A) The Deposited Property of each Portfolio shall initially be constituted out of the proceeds of or the Investments or other property acquired on the initial issue of Units of the class to which the Portfolio relates. The Deposited Property of each Portfolio thereafter shall be constituted out of the Investments and cash and other property arising from such proceeds and also out of the proceeds of Units of the relevant class subsequently issued (after deducting therefrom or providing thereout, where appropriate, the Preliminary Charge and in the case of Units issued against the vesting of Investments, any moneys payable pursuant to the provisions of Clause 13(F)) but less any amount standing to the credit of the Distribution Account or distributed or paid up pursuant to any provisions of this Deed.

(B) The Depository shall establish a Portfolio for each class of Unit in issue from time to time and the following provisions shall apply thereto:-

- (1) the records and accounts of each Portfolio shall be maintained separately and in such

currency as the Managers and the Depositary shall from time to time determine;

- (2) the proceeds from the issue of each class of Unit (excluding the Preliminary Charge) shall be applied in the records and accounts of the Trust to the Portfolio established for that class of Unit and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Portfolio subject to the provisions of this Deed;
- (3) where any asset is derived from any asset (whether cash or otherwise), such derivative asset shall be applied in the records and accounts of the Trust to the same Portfolio as the asset from which it was derived and on each re-valuation of an Investment the increase or diminution in value shall be applied to the relevant Portfolio;
- (4) in the case of any asset of the Trust (or amount treated as a notional asset) which the Depositary does not consider as attributable to a particular Portfolio or Portfolios, the Depositary shall have discretion, subject to the approval of the Managers and the Auditors, to determine the basis upon which any such asset shall be allocated between Portfolios and the Depositary shall have the power at any time and from time to time, subject to the approval of the Managers and the Auditors, to vary such basis provided that the approval of the Managers and of the Auditors shall not be required in any case where the asset is allocated between all Portfolios pro rata to their Net Asset Values at the time when the allocation is made;
- (5) the Depositary shall have discretion, subject to the approval of the Managers and the Auditors, to determine the basis upon which any liability shall be allocated between Portfolios (including conditions as to the subsequent re-allocation thereof if circumstances so permit) and shall have power at any time and from time to time to vary such basis, provided that the approval of the Managers and the Auditors shall not be required in any case where a liability is allocated to the Portfolio or Portfolios to which in the opinion of the Depositary it relates or if in the opinion of the Depositary it does not relate to any particular Portfolio or Portfolios, between all the underlying Portfolios pro rata to their Net Asset Values; and
- (6) subject to the approval of the Managers and the Auditors, the Depositary may transfer any assets (or amounts treated as notional assets) to and from Portfolios if, as a result of a creditor proceeding against certain of the assets of the Trust or otherwise, a liability would be borne in a different manner from that in which it would have been borne under paragraph (5) above or in any similar circumstances;
- (7) subject to paragraph (6) above, the assets of each Portfolio shall belong exclusively to that Portfolio, shall be segregated from other Portfolios and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Portfolio and shall not be available for any such purpose; and

- (8) where hedging strategies are used in relation to any class of a Portfolio, the financial instruments used to implement such strategies shall be deemed to be assets/liabilities (as the case may be) of the relevant Portfolio as a whole but the gains/losses on, and the costs of the relevant financial instruments will accrue solely to the relevant class.

## **TRUST**

12. (A) The Depositary shall (subject to and in accordance with the provisions of this Deed) be responsible for the safe keeping of the Deposited Property and shall stand possessed of the Deposited Property of each Portfolio upon trust for the Holders of the Units of the class to which such Portfolio relates *pari passu* according and subject to the provisions of this Deed and any moneys forming part of the Deposited Property shall from time to time be invested at the direction of the Managers in accordance with the provisions herein contained.

(B) The interest in the Deposited Property and in any Portfolio of each Holder shall be represented by the Units of the class referable to that Portfolio for the time being held by such Holder. No Holder shall, except as expressly provided in this Deed, be entitled to any interest or share in any particular part of any Portfolio of the Deposited Property.

(C) Except to the extent expressly provided in this Deed, no Holder shall incur or assume any liability or be required to make any payment to the Depositary or the Managers in respect of his holding of Units.

(D) The liability of a Holder shall be limited to the amount agreed to be contributed by him or her for the subscription of Units. The provision of this Deed shall be binding on the Unitholders and all persons claiming through the Holders as if such person had been a party to this Deed.

## **ISSUE OF UNITS**

13. (A) The Trust is an umbrella fund and, subject as hereinafter provided and to the provisions of the UCITS Regulations, the Managers and/or any other person appointed by the Managers for any such purpose shall have the exclusive right from time to time to effect for the account of the Trust the creation and issue of Units (including fractions of not less than one thousandth of a Unit) in the following Portfolio:

Baring Eastern Europe Fund;

Baring Global Aggregate Bond Fund;

Baring Global Select Fund;

Baring Global Resources Fund;

Baring High Yield Bond Fund;

and may with the prior consent of the Central Bank and with the approval of the Depositary, from time to time establish an additional Portfolio or Portfolios to be designated by such name(s) and in such investments as the Managers deem appropriate and such other classes of Units within a Portfolio(s) and for such purpose to accept subscription moneys and/or Investments for the account of the relevant Portfolio or Class PROVIDED THAT:-

- (a) the Managers shall, before the initial issue of Units of any class determine, with the approval of the Depositary, the name of such class and the currency of such class;
- (b) the Managers shall, before the initial issue of Units of any class determine, with the approval of the Depositary, the terms and conditions applicable to such initial issue and determine the Issue Price therefor;
- (c) the Managers shall simultaneous to the creation and issue of any Units, notify the Depositary of such creation and issue;
- (d) all Units shall be issued on a Dealing Day;
- (e) Units shall not be issued in any manner which would result in any person appearing in a Register as the Holder of a number of Units less than the Minimum Number of Units for that class; and
- (f) the Managers shall have an absolute discretion to accept or reject in whole or in part any application for Units.
- (g) The Managers shall have the right, whether on the establishment of a Portfolio or from time to time, to create one or more sub-classes of Units within each class of Unit, the terms of issue of which may be differentiated by reference to Issue Price, the amount of the Preliminary Charge, Management Fee or other fees and expenses, currency or designation or such other terms and conditions of issue as the Managers may determine at the date of their creation, provided that all Holders of the Units of each respective sub-class within each class shall rank pari passu in respect of the Portfolio to which the Units of such class are referable. The Managers may, in addition, employ currency hedging strategies in relation to such sub-classes of units denominated in a currency other than the base currency of the class in accordance with the UCITS Requirements.

(B) Except in the case of the initial issue of Units of any class or any issue of Units at a fixed price pursuant to sub-clause (D) of this Clause 13, the price per Unit as at which Units are issued shall be the Issue Price which relates to the date of receipt of an application for Units by the Managers or their duly appointed agents (if such day is a Dealing Day and if such application is duly received on such Dealing Day by not later than such time of day as the Managers may specify from time to time in relation to the location in which the application is received) or (in any other case) as at the next Dealing Day following such receipt, plus the Preliminary Charge (if any) and any amount charged by the Managers pursuant to sub-clause (F) of this Clause 13. A Preliminary Charge may be

made by the Managers on the issue of any Units of a percentage (not exceeding the appropriate percentage) of the price (excluding the Preliminary Charge and excluding any amount charged under sub-clause (F) of this Clause 13) ascertained pursuant to sub-clause (A) or (B) of this Clause 13. The Preliminary Charge shall be retained by the Managers for their own absolute use and benefit. The appropriate percentage in the case of any Class of Units shall not exceed six per cent or such higher percentage as may be fixed by an Extraordinary Resolution or by a deed supplemental hereto sanctioned by an Extraordinary Resolution or such lower percentage as the Managers may determine. The Managers may on giving notice to the Depositary increase any such lower percentage so determined to such other amount as the Managers may determine, not exceeding the maximum Preliminary Charge authorised by this Deed.

(C) The Managers may from time to time make arrangements for the issue of Units to any person by way of exchange for Investments approved by the Managers for inclusion in the relevant Portfolio or Portfolios but subject to and in accordance with the following provisions:-

- (1) the nature of the Investments or other property to be transferred to the relevant Portfolio or Portfolios must be in accordance with the investment objectives, policies and restrictions of the relevant Portfolio or Portfolios;
- (2) no Units shall be issued until the Investments shall have been vested in the Depositary or in the Depositary's sub-custodian or nominee to the Depositary's satisfaction;
- (3) all charges, costs, fees and expenses arising in connection with such exchange so far as not paid by the person to whom the Units are to be issued may be paid out of the relevant Portfolio or Portfolios and (unless the Managers otherwise agree) there shall be also paid out of the relevant Portfolio or Portfolios to the Managers except in the case of the initial issue of Units of any class an amount equivalent to the Preliminary Charge which the Managers would, if the Units to be issued had been issued for cash, have been entitled to add to the Issue Price of the Units;
- (4) except in the case of the initial issue of Units of any class the number of Units to be issued shall be that number (from the calculation of which, at the discretion of the Managers, fractions of a Unit may be excluded) which would have fallen to be issued for cash at the current Issue Price (plus the Preliminary Charge) against payment of a sum equal to the value of the Investments transferred plus such sum as the Managers may consider represents an appropriate provision for fiscal and purchase charges which would be involved in the acquisition of the Investments by purchase for cash but minus such sum as the Managers may consider represents any charges, costs, fees or other expenses as aforesaid to be paid out of the relevant Portfolio or Portfolios in connection with the vesting of the Investments;

- (5) the Investments to be transferred to the Trust shall be valued on such basis as the Managers may decide so long as such value does not exceed the highest amount that would be obtained on the date of the exchange by applying the provisions relating to the calculation of the Net Asset Value of Investments contained in the Schedule A hereto;
- (6) there may be paid to the incoming Holder out of the relevant Portfolio or Portfolios a sum in cash equal to the value at the current Issue Price of any fraction of a Unit excluded from the calculation aforesaid;
- (7) in the case of the initial issue of Units of any class, the Managers may, with the approval of the Depositary, determine the number of Units to be issued and may fix the Issue Price applicable thereto and shall be entitled to charge to the relevant Portfolio or Portfolios a charge of an amount not exceeding the maximum permitted percentage for the Preliminary Charge of the Value of the Investments transferred;
- (8) the Depositary shall be satisfied that the terms of such exchange shall not be such as are likely to result in any prejudice to the existing Holders.

(D) The Managers shall be entitled from time to time to make an invitation to the public to apply for Units at a fixed price per 100 Units equal to the Issue Price per 100 Units prevailing at the close of business on the second Business Day immediately preceding the date of first publication of such offer plus the Preliminary Charge (if any) and for a period not exceeding 7 days from and including the date of such publication. Units may be issued or sold by the Managers at the Fixed Price plus the Preliminary Charge (if any) whether pursuant to the public offer or not PROVIDED THAT:-

- (1) the Managers shall forthwith close or procure to be closed such offer if by reason of fluctuations in the Net Asset Value of the relevant Portfolio the Fixed Price per 100 Units has on a particular day during such period exceeded by more than 2.5 per cent the Issue Price per 100 Units which would have prevailed for such day if such day had been a Dealing Day and if the Fixed Price per 100 Units exceeds by not more than 2.5 per cent the said Issue Price per 100 Units the Managers shall pay to the Depositary as an addition to the relevant Portfolio in respect of each 100 Units sold (as distinct from issued) by the Managers at the Fixed Price the excess of the Fixed Price per 100 Units over the said Issue Price per 100 Units; and
  - (2) the Managers shall forthwith close or suspend or procure to be closed or suspended such offer if and whenever by reason of fluctuations in the Net Asset Value of the relevant Portfolio the Fixed Price per 100 Units is lower by more than 2.5 per cent than the said Issue Price per 100 Units.
- (E) The Managers may differentiate between applicants as to the amount of Preliminary

Charge that may be added (within the permitted limit) to the Issue Price of Units issued to them respectively and likewise the Managers may on the issue of Units (including issues at a Fixed Price) allow to persons applying for larger numbers of Units than others a discount or discounts on the price arrived at by adding to the Issue Price or the Fixed Price the amount of the Preliminary Charge, such discount or discounts to be on such basis or such scale as the Managers may think fit (PROVIDED THAT no such discount shall exceed the Preliminary Charge added to the Issue Price or the Fixed Price of the Units concerned) and in any such case the amount of such Preliminary Charge to be deducted from the proceeds of issue of such Units shall be reduced by the amount of the discount and such discount shall accordingly be borne by the Managers. Any commission, remuneration or other sum payable by the Managers to any agent or other person in respect of the issue or sale of any Unit shall not be added to the Issue Price or, as the case may be, the Fixed Price but shall be paid by the Managers out of the Preliminary Charge.

(F) The price at which any Units may be issued may, at the discretion of the Managers, include as an addition to the Issue Price (or the Fixed Price) a further amount sufficient to cover:-

- (1) any stamp duty or taxation (whether national, municipal or otherwise) leviable in the place where the Registers are for the time being situated or in the place of delivery in respect of the issue of the relevant Units or of the delivery or issue of Certificates in respect thereof; and
- (2) the costs of delivery and insurance pending delivery of the Certificates concerned.

Any such further amount so paid shall be retained by the Managers for their own absolute use and benefit.

(G) No Certificate, if any, shall be issued in respect of any Units until the Depositary is (or the Managers on behalf of the Depositary are) satisfied that the full amount of the Issue Price (or the Fixed Price) therefor, in cleared funds, has been duly received by the Depositary (or the Managers on behalf of the Depositary). All amounts so received (apart from any Preliminary Charge and any additional amount charged by the Managers pursuant to the provisions of sub-clause (F) of this Clause 13) shall forthwith on receipt as aforesaid form part of the relevant Portfolio.

(H) The Managers shall furnish to the Depositary from time to time on demand a statement of all issues of Units and of the terms on which the same are issued and of any Investments which they have determined to direct to be acquired for the account of the Trust, and also a statement of any Investments which in accordance with the powers hereinafter contained they have determined to direct to be sold for the account of the Trust, and all information which may be necessary so that the Depositary may be in a position to ascertain at any moment the Net Asset Value of the relevant Portfolio. The Depositary shall be entitled to refuse to issue a Certificate if at any time the Depositary is of the opinion that the provisions of this Clause 13 in regard to the issue of Units are being infringed;

(I) Any Units purchased by the Managers pursuant to Clause 17 hereof or subscribed by



them on Dealing Day and for the time being outstanding may, without notice, be sold by the Managers on the same or any subsequent Dealing Day in satisfaction of the whole or any part of any application for Units. Such sale shall be effected at any price not exceeding the aggregate of the Issue Price as at whichever Dealing Day is relevant for the purpose of Clause 13(B) in the case of such application plus the Preliminary Charge (if any) and any amount pursuant to sub-clause (F) of this Clause 13 which would have been charged on an issue of the same number of Units and the Managers shall be entitled to retain for their own use and benefit all moneys received by them on such sale.

(J) Units shall not be created or issued or sold by the Managers during any period when the right of Holders to require the realisation of Units is suspended pursuant to Clause 17(E) hereof.

(K) The Managers may with the approval of the Depositary accept payment of the Issue Price or Fixed Price for Units in a currency other than the currency of account of the relevant Portfolio and in such event the equivalent amount in the currency of account of the relevant Portfolio of any sum paid in such other currency shall be calculated at such rate (whether official or otherwise) which the Managers, after consulting the Depositary or in accordance with a method approved by the Depositary, shall deem appropriate in the circumstances having regard to any premium or discount which may be relevant and after deducting all costs of exchange.

(L) Payment for Units issued for cash shall be due forthwith upon the issue thereof. If payment in full in cleared funds shall not have been received by the Depositary (or the Managers on behalf of the Depositary) within the usual time limits as the Managers may from time to time specify in the Prospectus then the Managers may in any event refuse the application and cancel the issue or transfer of the relevant Units and shall cancel such issue or transfer if the Depositary and/or the Managers so require or alternatively the Managers may treat the application as an application for such number of Units as may be purchased or subscribed with such payment on the Dealing Day upon which such payment is received by the Depositary or such other Dealing Day as the Managers may determine. Upon such cancellation, the relevant Units shall be deemed never to have been issued and the applicant therefor shall have no right or claim in respect thereof against the Managers or the Depositary, provided that no previous valuations of the Deposited Property shall be re-opened or invalidated as a result of the cancellation of such Units. All the costs, charges and expenses incurred by the Trust, the Managers or the Depositary as a result of the cancellation of such Units shall be borne by the applicant.

#### **QUALIFIED HOLDERS**

14. (A) Each subscriber for or purchaser of Units in any Portfolio shall be requested to certify that he is not, nor is he acquiring such Units on behalf of or for the benefit of any person described in Clause 14(B).

(B) The Managers shall have power (but shall not be under any duty) to impose such restrictions (other than a restriction on transfer which is not expressly referred to herein) as they may think necessary for the purpose of ensuring that no Units of any class are acquired or held directly or beneficially by:-

- (a) any person in breach of any law or requirement of any country or governmental authority or by virtue of which such person is not qualified to hold such Units; or
- (b) any United States Person;
- (c) any Japanese Person;
- (d) any person who, in the opinion of the Managers, is engaging in repeatedly purchasing and selling Units in response to short term market fluctuations, known as "market timing" or are otherwise excessive or potentially disruptive to the Portfolios; or
- (c) any person or persons in circumstances which, (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons connected or not, or any other circumstances appearing to the Managers to be relevant) in the opinion of the Managers might result in the Depositary or the Trust incurring any liability to taxation or suffering pecuniary disadvantages which the Depositary or Trust might not otherwise have incurred or suffered.

(C) The Managers may upon an application for Units or at any other time and from time to time require such evidence to be furnished to them in connection with the matters stated in sub-clause (A) of this Clause 14 as they shall in their discretion deem sufficient or as they may require for the purpose of any restrictions imposed pursuant to sub-clause (B) of this Clause 14.

(D) If a person becomes aware that he is holding or owning Units in contravention of sub-clause (A) of this Clause 14 or any restrictions imposed pursuant to sub-clause (B) of this Clause 14 he shall forthwith sell his Units to the Managers or to a person whose holding will not involve such a contravention.

(E) If it shall come to the notice of the Managers or if the Managers shall have reason to believe that any Units are owned directly or beneficially by any person in breach of sub-clause (A) of this Clause 14 or any restrictions imposed under sub-clause (B) of this Clause 14 the Managers shall be entitled to give notice to such person requiring him to transfer such Units to a person whose holding will not involve such a breach or to give a request in writing for the purchase of such Units in accordance with Clause 17.

(F) If any such person upon whom such a notice is served as aforesaid does not within 30 days after such notice transfer such Units or request the Managers to purchase such Units as aforesaid he shall be deemed forthwith upon the expiration of 30 days to have requested the Managers to purchase his Units and he shall be bound to deliver his Certificate or Certificates to the Managers forthwith and the Managers shall be entitled to appoint any person to sign on his behalf such documents as may be required for the purposes of the purchase of the said Units by the Managers.

(G) If the Portfolio becomes liable to account for tax in any jurisdiction in the event that a Unitholder or beneficial owner of a Unit were to receive a distribution in respect of his/her Units or to dispose (or deemed to have disposed) of his/her Units in any way ("Chargeable Event"), the Manager shall be entitled to deduct from the payment arising on a Chargeable Event an amount equal to the appropriate tax and/or where applicable, to appropriate, cancel or compulsorily repurchase such number of Units held by the Unitholder or such beneficial owner as are required to meet the amount of tax. The relevant Unitholder shall indemnify and keep the Portfolio indemnified against loss arising to the Portfolio by reason of the Portfolio becoming liable to account for tax in any jurisdiction on the happening of a Chargeable Event if no such deduction, appropriation, cancellation or compulsory repurchase has been made.

### EXCHANGE OF UNITS

15. The following provisions shall have effect in relation to the exchange of Units of one class for Units of another class:-

- (1) a Holder of Units of any class ("the Original Class") may by notice to the Managers or any duly authorised agent of the Managers, such notice to be in writing or in such other form as the Managers may accept, and subject to the payment of such fee (if any) as is hereinafter provided, request the Managers to exchange some or all of such Units of the Original Class for Units of another class ("the New Class") subject to Units of the New Class being in issue and being offered for sale by the Managers, subject to the creation, issue or sale thereof not being suspended pursuant to Clause 13(J) and subject to the right of Holders of Units of the Original Class to require a realisation of such Units not being suspended under Clause 17(E). Provided that no such exchange shall be effected if it would result in the Holder being a Holder of Units of the New Class or Units of the Original Class less in number than the Minimum Number of Units; the provisions of Clauses 17(G) and 17(H)(1) shall apply to any such request as if the request was a request to realise the relevant Units of the Original Class;
- (2) the exchange shall be effected on the Dealing Day on which the notice is received (if such notice is received on a Dealing Day by not later than such time of the day as the Managers may specify from time to time in relation to the location in which the notice is received) or, in any other case, as at the next Dealing Day following such receipt;
- (3) the number of Units of the New Class to be issued will be calculated in accordance with the following formula:

$$N = \frac{P(R \times CF)}{S}$$

S

where:

- N - is the number of Units of the New Class to be allotted
- P - is the number of Units of the Original Class to be exchanged.
- R - is the Realisation Price per Unit of the Original Class as at the relevant Dealing Day
- CF - is the currency conversion factor determined by the Managers as representing the applicable rate of exchange on the relevant Dealing Day between the currencies of account of the Original Class and the New Class (where the currencies of account are different)
- S - is the Issue Price per Unit of the New Class as at the relevant Dealing Day;

- (4) upon any such exchange being effected, there shall be transferred to the Portfolio to which Units of the New Class relate from the Portfolio relating to the Original Class assets or cash equal to the aggregate Realisation Price of the Units of the Original Class exchanged; the assets or cash to be so transferred shall be determined at the sole discretion of the Managers;
- (5) in respect of any such exchange the Holder shall pay to the Managers in such manner as the Managers may from time to time determine a fee in respect of such exchange not exceeding the prevailing maximum percentage permitted for the Preliminary Charge pursuant to Clause 13(B) of the value of the Units of the Original Class being exchanged but the Managers shall not otherwise be entitled to receive any Preliminary Charge in respect thereof; the Holder may also be required by the Managers to reimburse to the Managers, any fiscal and sale and purchase charges arising out of such exchange; such fee and all such charges may be taken into account by the Managers in determining the number of Units of the New Class to be issued in which event the Depositary will reimburse the Managers the amount thereof;
- (6) upon any such exchange becoming effective, the Managers shall procure that the relevant Registers are amended accordingly;
- (7) No such exchange shall be reflected unless the Managers shall have received the Certificate or Certificates (if any) issued in respect of the Original Class being exchanged; upon exchange, the Managers shall be entitled to cancel such Certificates and shall enter in the relevant Register against the name of the Holder, a Registration Number in lien thereof.

## **REALISATION OF UNITS BY MANAGERS**

16. (A) Subject to the provisions of Clause 17(G) hereof, the Managers shall have the right on any Dealing Day, by notice in writing delivered to the Depositary, to effect reductions of the Trust by the surrender of Certificates to the Depositary for cancellation of some or all of the Units represented thereby or by requiring the Depositary to cancel Units in respect of which no Certificate is outstanding. Such notice shall state the number of Units to be cancelled and the amount payable to the Managers in respect thereof. Before exercising such right it shall be the duty of the Managers to ensure that the relevant Portfolio includes (or will upon the completion of the sale of Investments agreed to be sold include) cash sufficient to pay the amount payable to the Managers upon such reduction. In respect of any such cancellation of Units the Managers shall be entitled to receive out of each Portfolio an amount equal to the Realisation Price that would be payable in respect of such Units if they were realised as of that Dealing Day pursuant to the provisions of Clause 17 hereof.

(B) Any amount payable to the Managers under sub-clause (A) of this Clause 16 shall be payable as soon as practicable thereafter against surrender to the Depositary of the Certificates, if any, to be cancelled or against delivery to the Depositary of particulars of the Units to be cancelled in respect of which no Certificate is outstanding. Upon such payment and surrender, the Units in question shall be deemed to have been cancelled and withdrawn from issue.

(C) The right of the Managers to require cancellation of any Unit shall be suspended during any period when the right of Holders to require the realisation of Units is suspended pursuant to Clause 17(E) hereof.

## **REALISATION OF UNITS BY OTHER HOLDERS**

17. Subject to the provisions of the UCITS Regulations, the following provisions shall have effect in regard to the realisation and (where appropriate) cancellation of Units upon the request of a Holder other than the Managers:-

(A) Subject to the provisions of sub-clause (G) of this Clause 17, no Holder shall be entitled to realise part only of his holding of Units if such realisation would result in his holding being reduced to less than the Minimum Number of Units, and the following provisions (other than sub-clause (G) of this Clause 17) are to be read and construed subject thereto.

(B) Subject to the provisions of sub-clauses (E), (G) and (H) of this Clause 17, the Managers shall at any time during the continuance of the Trust, on receipt by them or their duly authorised agents of a request from a Holder in writing or in such other form as the Managers may accept, effect the realisation of Units at not less than the Realisation Price of such Units which relates to the day on which the request is received (if such day is a Dealing Day and if such request is duly received on such Dealing Day by not later than such time of day as the Managers may specify from time to time in relation to the location in which the application is received) or (in any other case) as at the next Dealing Day following receipt. Except pursuant to the provisions of sub-clause (E) of this Clause 17, a Holder may only withdraw a realisation request in whole or in part at any time prior to

realisation being effected with the express consent of the Managers.

(C) Such realisation may be effected at the discretion of the Managers (1) by the purchase of the Units by the Managers at not less than the Realisation Price or (2) by the cancellation of the Units and the payment of the Realisation Price out of the relevant Portfolio or (3) partly in one manner and partly in the other.

(D) In relation to the foregoing provisions of this Clause 17 the following provisions shall apply:-

- (1) Where realisation is to be effected by cancellation of Units the Managers shall proceed to effect any sales of Investments necessary to provide the cash required, shall notify the Depositary that such Units are to be realised and cancelled in accordance with the provisions of this Clause 17 and shall (save where the Managers and the Depositary shall have exercised their discretion under the provisions of Clause 9(G) hereof) deliver to the Depositary for cancellation the Certificate if any representing the said Units and in such event the Trust shall be reduced by the cancellation of such Units and the Depositary shall pay to the Managers out of the relevant Portfolio in respect of the cancellation of such Units the Realisation Price in respect of such Units and the Managers shall pay over the same to the Holder;
- (2) The Managers shall be entitled in the name and on behalf of any Holder who has requested realisation of Units to execute an instrument of transfer in respect of any Units to be realised hereunder by purchase by the Managers and to endorse and sign on the appropriate Certificate in respect of any Units to be realised hereunder by cancellation such statement as may be necessary or desirable as evidence that such Holder no longer has any interest in the said Units PROVIDED THAT in either event the Managers shall within a reasonable period thereafter furnish to the Depositary the authority under which they acted but the Depositary shall not be concerned to require the endorsement of any such statement and shall be entitled to cancel Units upon compliance with the procedure hereinbefore in this Clause 17 provided;
- (3) Any amount payable to a Holder by the Managers in respect of the realisation of Units may be paid sooner but shall be payable no later than the tenth Business Day after the Dealing Day on which the relevant Units were realised or, if later, the tenth Business Day after the day on which the appropriate documents are received by the Managers or their duly appointed agent. For this purpose the appropriate documents shall be the Certificate therefor with the realisation request on the reverse thereof duly completed or, where no Certificate has been issued, a realisation request duly completed in such form as the Managers may approve;
- (4) The Managers reserve the right to withhold any amount payable to a Holder by the Manager in respect of the realisation of Units where it is considered necessary or appropriate to carry out or complete identification procedures in relation to the Holder

pursuant to a statutory, regulatory or European Union obligation.

(E) The Managers may at any time with the approval of the Depositary temporarily suspend the right of the Holders to require the realisation of Units of any particular class under this Clause 17 and/or may delay the payment of any moneys in respect of any such realisation during any of the following periods:-

- (1) any period when any Market on which a substantial part of the Investments for the time being comprised in the relevant Portfolio to which units of such class relate are quoted, listed or dealt in is closed or when trading on such a market is limited or suspended;
- (2) any period when dealings on any such Market are restricted or suspended;
- (3) during the existence of any state of affairs as a result of which disposal of Investments for the time being comprised in that Portfolio cannot, in the opinion of the Managers, be effected normally or without seriously prejudicing the interests of Holders of Units of such class;
- (4) during any breakdown in the means of communication normally employed in determining the Net Asset Value of that Portfolio or when for any other reason the Value of any Investment for the time being comprised in that Portfolio cannot be promptly and accurately ascertained;
- (5) any period during which the Depositary is unable to repatriate funds required for making payments due on redemption of Units or during which the realisation of Investments for the time being comprised in that Portfolio or the transfer of funds involved in such realisation cannot, in the opinion of the Managers, be effected at normal prices or normal rates of exchange.

Such suspension shall take effect forthwith upon the declaration thereof by the Managers and thereafter there shall be no realisation of Units of the relevant class and/or payment of moneys in respect of any such realisation until the Managers shall declare the suspension at an end, except that the suspension shall terminate in any event on the day following the first Business Day on which (a) the condition giving rise to the suspension shall have ceased to exist and (b) no other condition under which such suspension is authorised under this sub-clause (E) shall exist. Each declaration by the Managers pursuant to this sub-clause (E) shall be consistent with such official rules and regulations, if any, relating to the subject-matter thereof as shall have been promulgated by any authority having jurisdiction over the Trust and as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations and subject to the foregoing provisions of this sub-clause (E), the determination of the Managers shall be conclusive. At any time after such suspension, any Holder may withdraw any application for the realisation of Units of the relevant class and the Managers shall permit any applicant for Units of the relevant class to withdraw his application for the issue of Units, in either case such withdrawal to be effected by notice in writing to the Managers. If no such notice

withdrawing any such application has been received by the Managers before termination of such suspension, the Managers shall, subject to and in accordance with the terms of this Deed, realise Units in respect of which they have received such application for realisation or (as the case may be) consider such application for the issue of Units as at the Dealing Day next following the termination of such suspension.

- (F) (1) Any such suspension shall be notified to the Central Bank and to the Stock Exchange without delay and to the competent authorities in the Member States in which Units of the particular class are marketed.
- (2) Any such suspension shall be publicised in a national daily newspaper circulating in Dublin and one English and one Chinese language newspaper circulating in Hong Kong if in the opinion of the Managers it is likely to exceed fourteen (14) days and shall be notified to investors requesting issue or realisation of Units at the time of application or filing of the irrevocable written request for such realisation. Any such suspension of issue and realisation shall be notified to the Registrar without delay.

(G) The Managers shall be entitled with the approval of the Depositary to limit the total number of Units of any class which Holders are entitled to realise (whether by sale to the Managers or by cancellation by the Depositary), on any Dealing Day to 10 per cent. of the total number of Units in issue of the Portfolio on such Dealing Day (the "Deferral Policy"). The Deferral Policy is to be applied pro rata to all Holders who have validly requested realisations on such Dealing Day and the Managers so that the proportion realised of each holding so requested to be realised (or, in the case of the Managers, to be cancelled under Clause 16 hereof) is the same for all such Holders and for the Managers. Any Units which, by virtue of the powers conferred on the Managers by this sub-clause (G), are not realised or, as the case may be, cancelled shall be realised or cancelled (subject to any further application of Deferral Policy) on the next succeeding Dealing Day. If realisation requests are carried forward as aforesaid, the Managers will give immediate notice to the Holders of Units affected thereby that such Units have not been realised or cancelled and that (subject as aforesaid) they shall be realised or cancelled on the next succeeding Dealing Day.

(H) (1) On any Dealing Day where a Holder wishes to realise more than 5% of the Units of a Portfolio the Managers may at their discretion, satisfy any request for realisation of Units by the transfer in specie to those Unitholders requesting realisation of assets provided (a) the Holder requesting realisation consents to such transfer in specie or (b) the Holder has requested such transfer in specie. The assets transferred in specie pursuant to this sub-clause (H) shall have a value (calculated in accordance with paragraph 6 of Schedule I of this Deed) equal to the Realisation Price as if the realisation proceeds were paid in cash, less any charges or costs incurred in connection with the sale of in-specie transfer including an amount equivalent to any Stamp Duty Reserve Tax (SDRT) to be paid in relation to the cancellation of the Units. The assets to be transferred in specie to the relevant Holder will be selected in consultation with and subject to the approval of the Depositary on such terms as the Manager deems equitable and not prejudicial to the Unitholders in the relevant



Fund or class. Holders may however, by notice in writing to the Managers, request the Managers to sell such assets, less such costs of the sale, which shall be borne by the relevant Holder.

(2) Where a Unitholder has consented or request such in-specie transfer pursuant to the provisions of sub-clause (H) (1) hereof, the percentage of Units to be selected in specie will not be included in the calculation of the percentage of Units used to determine to the Deferral Policy as set out in the sub-clause (G). Where a Unitholder has elected or consented to receive in-specie transfer, the Managers shall advise the Holder that a Deferral Policy may operate if cash settlement is requested.

### **ACQUISITION AND DISPOSAL OF INVESTMENTS**

18. (A) Subject to the provisions of Clause 20(C) hereof and sub-clause (B) of this Clause 18 all cash and other property which ought in accordance with the provisions of this Deed to form part of a Portfolio or part of the Deposited Property shall be paid or transferred to the Depositary forthwith on receipt by the Managers and all cash shall (except in so far as such cash may in the opinion of the Managers be required for transfer to the Distribution Account or for other purposes of or incidental to the carrying into effect of this Deed) be applied at the discretion of the Managers (but subject always to the provisions of this Deed) in the acquisition of Investments PROVIDED THAT all or any amount of cash may during such time or times as the Managers may think fit and subject to the UCITS Regulations be retained in any currency or currencies either:-

- (1) in cash or on deposit with, or in certificates of deposit or other banking instruments issued by the Depositary, (if it is a banker or other financial institution) or any banker or any other financial institution selected by the Managers and approved by the Depositary (including any Connected Person of the Managers) subject to the provisions of the Central Bank Acts, 1942 to 2003; or
- (2) on deposit pursuant to the provisions of Clause 20(C)(2) hereof with any person approved by the Depositary;
- (3) on deposit in a Third Party Cash Account;
- (4) the Depositary shall be entitled to delegate the whole or any part of the Custody Services and Asset Verification Services to any Sub-Custodian in accordance with the provisions of Clause 33 hereof
- (5) the fees and expenses of any such Sub-Custodian which shall be at normal commercial rates, shall be paid out of the relevant Portfolio.

(B) The Managers may from time to time for the account of any Portfolio enter into underwriting or sub-underwriting contracts in relation to the subscription or purchase of Investments upon such terms in all respects as they shall think fit (but subject always to the provisions of this Deed and the UCITS Regulations) PROVIDED THAT:-

- (1) no such contract shall relate to an Investment which if acquired would constitute a holding in excess of any of the limits specified in Clause 19 hereof; and
- (2) notice thereof shall be given to the Depositary in advance so far as is practicable under the circumstances and in any event as soon as practicable thereafter.

All commissions or other fees received by the Managers and all Investments or cash acquired pursuant to any such contract shall form part of the relevant Portfolio and all subscription or purchase moneys payable thereunder and all fees or commissions payable to sub-underwriters shall be paid out of the relevant Portfolio.

(C) Any Investment comprised in the Deposited Property may at any time be realised at the discretion of the Managers either in order to invest the proceeds of sale in other Investments or in order to provide cash required for the purpose of any provision of this Deed or in order to retain the proceeds of sale in cash or on deposit as aforesaid or partly one and partly another.

(D) Subject to the provisions of the UCITS Requirements, the Managers may purchase and sell Investments for the account of the Trust as agent for the Depositary and shall be entitled to accept payment of and to retain for their own absolute use and benefit all commissions, brokerages and discounts on or rebates of brokerage commission which they may derive from or in connection with any such purchase or sale whether or not such commissions, brokerages, discounts or rebates would otherwise form part of the relevant Portfolio or fall to be treated as such.

(E) Any transaction authorised hereunder may be effected in, and moneys may be held hereunder in cash or on deposit as aforesaid in, a currency or currencies other than the currency of account of the relevant Portfolio and for such purpose foreign currency may be acquired either at the official rate of exchange or otherwise as the Managers may determine and either for present or forward settlement and any costs and commissions thereby incurred shall be paid out of the relevant Portfolio.

(F) Without prejudice to any other charges, fees, expenses or liabilities expressly authorised by this Deed to be charged against Holders or against the Deposited Property, there shall be payable out of the Deposited Property and attributed to each Portfolio:-

- (1) all stamp and other duties, taxes, governmental charges, brokerages, commissions, exchange costs and commissions, bank charges, transfer fees and expenses, registration fees and expenses, sub-custodian, sub-sub-custodian and proxy fees and expenses, warehousing and storage charges and expenses, paying agency or conversion agency fees and expenses in relation to any part of a Portfolio, collection fees and expenses, insurance and security costs, and any other costs, charges or expenses payable in respect of the acquisition, holding and realisation of any Investment or any cash, deposit or loan as aforesaid (including the claiming or collection of income or other rights in respect thereof and including any fees or expenses charged or incurred by the Depositary or the Managers or any Connected

Person of either of them in the event of the Depositary or the Managers or such Connected Person rendering services or effecting transactions giving rise to such fees or expenses);

- (2) the fees and expenses of the Auditors;
- (3) the fees and expenses of the Registrars in connection with keeping the Registers;
- (4) expenses in connection with the management, administration and trusteeship of the Trust authorised by this Deed to be payable out of the relevant Portfolio;
- (5) all legal charges and out-of-pocket expenses incurred by the Depositary wholly and exclusively in the performance of its duties hereunder;
- (6) all legal charges incurred by the Managers wholly and exclusively in the performance of their duties hereunder;
- (7) the expenses incurred by the Managers and the Depositary in connection with the initial issue of Units in the relevant Portfolio and all the expenses or such portion of the expenses determined by the Managers with the approval of the Depositary in establishing the Trust which expenses shall be amortised by being written off against the relevant Portfolio in equal amounts over the first five Accounting Periods of the relevant Portfolio or such other period as the Managers with the approval of the Depositary may determine PROVIDED THAT such expenses shall not include expenses arising out of advertising or promotional activities;
- (8) the expenses incurred by the Managers and the Depositary in obtaining or maintaining any listing of the Units (or any of them) on the official list of the Stock Exchange or on any other Market or in complying with any undertaking given, or agreement entered into, in connection with, or any rules governing, any such listing;
- (9) without prejudice to the generality of the foregoing, all costs of printing and distributing prospectuses, statements, accounts and reports relating to the Trust, and all costs and expenses of publishing Issue Prices and Realisation Prices and all expenses (including the expenses of preparing and printing any revised prospectus) deemed by the Managers, after consulting with the Auditors, to have been incurred in compliance with, or in connection with any change in or introduction of, any law or regulation (whether or not having the force of law) of the Central Bank or any governmental or other regulatory authority or with the provisions of any code relevant to Collective Investment Schemes; and
- (10) The fees of any distribution or placing agent appointed by the Managers or their delegates, as authorised pursuant to Clause 27 of this Principal Deed.

(G) There may be payable out of the relevant Portfolio at the discretion of the Managers all professional fees relating to the agreeing and/or contesting of taxation liabilities and recoveries to be discharged out of or paid into the relevant Portfolio.

(H) The Managers shall at their discretion and after consultation with the Auditors where they consider appropriate determine whether any particular sum payable pursuant to the provisions of this Clause 18 out of the relevant Portfolio shall be debited to capital or to income.

### **RESTRICTIONS ON INVESTMENT**

19. (A) The Deposited Property shall be invested only in Investments permitted under the UCITS Regulations, and shall be subject to the restrictions and limits on investment set out in the UCITS Regulations and UCITS Requirements and such other restrictions or limits as the Managers, with the approval of the Depositary, may determine in relation to all or any Portfolio(s).

(B) Notwithstanding the generality of the foregoing, the Managers may decide to invest in transferable securities admitted to official listing on, or dealt in on, any Market and may invest up to 100 per cent of the assets of any Portfolio in any of the Specific Investments.

(C) Subject to the UCITS Regulations, the Managers may decide to invest in other investment funds to which the Trust is limited by common management or control, or by a substantial direct or indirect holding if that other fund specialises in investment in a specific geographical or economic sector and the Central Bank has approved such investment, provided that the Managers may not charge any management fees or costs in relation to shares or units held in any linked investment fund.

(D) The Managers and the Depositary may by deed supplemental hereto provide that, subject to the UCITS Regulations, additional investment powers and/or restrictions shall apply to each or any of the Portfolios and the execution of such supplemental deed shall not require the sanction of an Extraordinary Resolution.

### **SELECTION OF INVESTMENTS AND BORROWING**

20. (A) Subject to the provisions of this Clause 20, the selection of all Investments and the currency or currencies in which cash or deposits are kept or into which they are converted shall in all respects be the responsibility of the Managers solely and not of the Depositary.

(B) The Depositary shall be entitled at any time at its entire discretion and without assigning any reason to give notice to the Managers that it is not prepared to accept any property which in the opinion of the Depositary infringes the terms of this Deed and the Depositary shall be entitled to require the Managers to replace any such property with other property not infringing the terms of this Deed.

(C) Subject to the provisions of the UCITS Regulations and to the terms and conditions

hereinafter provided the Depositary may at any time at the request of the Managers concur with the Managers in making and varying arrangements for the borrowing by the Depositary for the account of any Portfolio of any currency **PROVIDED THAT** such borrowing is on a temporary basis and that no borrowing shall be made if the principal amount thereof, when aggregated with the principal amount of all other borrowings for that Portfolio as at the last Dealing Day before such borrowing is to be made, would exceed an amount equal to 10 per cent of the Net Asset Value of the relevant Portfolio as at such Dealing Day. For the purposes of or in connection with any such borrowing (including any such assumption of liability) the following provision shall apply:-

- (1) The borrowing may be effected from any person approved by the Depositary (including, if a banker or other financial institution, the Managers or the Depositary provided that the Depositary is satisfied that such a transaction is carried out as if effected on normal commercial terms negotiated at arms length);
- (2) The Depositary may in pursuance of any borrowing arrangements place on deposit with the lender or any nominee of the lender an amount out of the relevant Portfolio which the Depositary considers to be equivalent to the amount borrowed upon terms providing for the repayment of the deposit at the time or times (and, if more than once, so that on each occasion the proportion which the deposit bears to the borrowing is maintained) as the borrowing is repayable;
- (3) Whilst any borrowing subsists an aggregate amount being, subject as provided below, not less than the equivalent of the amount of all borrowings for the time being outstanding may, if the Depositary so requires, be maintained by the Depositary either on short-term deposit in any manner authorised by this Deed or on deposit as hereinbefore provided or partly one and partly the other. In the event of fluctuations in the rates of exchange whereby such deposits fall below the required amount the Depositary shall not be bound immediately to effect an increase in the amount of such deposits but shall effect the requisite increase as expeditiously as seems to the Depositary after consultation with the Managers to be reasonable in the interests of the Holders;
- (4) Every borrowing shall be made upon the terms that the borrowing shall become repayable in the event of the termination of the Trust;
- (5) Any interest on any borrowing effected under this sub-clause (C) and all expenses incurred in negotiating, entering into, varying, carrying into effect with or without variation and terminating the borrowing arrangements shall be payable out of the relevant Portfolio;
- (6) For the purposes of securing any borrowing, interest thereon and expenses in connection therewith the Depositary shall be entitled with the concurrence of the Managers to charge or pledge in any manner all or any part of the Portfolio but where any part of a Portfolio or any document of title thereto is for the time being under the

custody or control of some person other than the Depositary in consequence of any such charge or pledge the Depositary shall be responsible for the custody and control of such relevant Portfolio or documents of title thereto (including registration of Investments). Any such charge or pledge shall be made upon the terms that the lender or such other person as aforesaid provides a written commitment to the effect that under no such circumstances will it pledge or charge any of such part of a Portfolio to any other person or use any part thereof for the purpose of providing margin or to guarantee, secure, discharge or settle any borrowings, trades or contracts or dispose of any part thereof or treat such part of the relevant Portfolio as if any person other than the Depositary had any interest therein and that no step shall be taken to enforce the security thereby constituted until 30 days after notice in writing shall have been given to the Depositary demanding repayment of the moneys thereby secured. If such notice shall be given the Depositary shall promptly advise the Managers who shall promptly effect such sales of the Investments as may be necessary to enable such repayment to be effected within such period of 30 days;

- (7) The Depositary shall not incur any liability by reason of any loss which a Holder may suffer by reason of depletion in the Net Asset Value of the relevant Portfolio which may result from any borrowing arrangements made hereunder by reasons of fluctuations in rates of exchange or otherwise and (save as herein otherwise expressly provided) the Depositary shall be entitled to be indemnified out of and have recourse to the relevant Portfolio in respect of any liabilities, costs, claims or demands which it may suffer arising directly or indirectly from the operation of this sub-clause (C) and the arrangements referred to herein, **PROVIDED** that nothing contained in this Clause shall restrict or reduce any liability which the Depositary may incur under the UCITS Regulations.

(D) The Managers or their delegate shall, in respect of and for the benefit of each Portfolio have the power to employ derivative instruments, techniques, and instruments for the purposes of investment and efficient portfolio management including without limitation repurchases, reverse repurchase and stocklending agreements and derivative instruments and techniques and instruments intended to provide protection against exchange risks in each case under the condition and within the limits laid down by the Central Bank.

(E) For the purpose of providing margin or collateral in respect of transactions in and the use of derivative instruments and techniques and instruments, the Managers or their delegate in accordance with the requirements of the Central Bank shall be entitled to contract on behalf of the Trust or any Portfolio and bind the Depositary in its capacity as Depositary of the Trust or the relevant Portfolio to:-

- (1) transfer, deposit, mortgage, charge or encumber any Investments forming part of the relevant Portfolio;

- (2) vest any such Investments in the relevant Market or any company controlled by such Market and used for the purpose to receive margin and / or cover or in a nominee of the Depositary; and / or
- (3) in accordance with the instructions of the Managers and as permitted under the rules and regulations of the relevant Market or approved options and futures market, to give or obtain the guarantee of a bank (and to provide any necessary counter-security therefore) and deposit such guarantee or cash, with a Market or counterparty or any company controlled by such Market or counterparty and used for the purpose of receiving margin and / or cover and / or collateral.

PROVIDED ALWAYS however that for the purposes of (a), (b) and (c) above, the value of the assets delivered, charged or pledged as the case may be is the minimum amount required to cover the relevant transaction:

and the Depositary in accordance with instructions of the Managers and the requirements of the Central Bank shall take such actions as are necessary to give effect to such obligations assumed by the Managers or its delegate on behalf of the Trust or any Fund.

(G) The Depositary on behalf of the Trust or a Portfolio may for the purposes and under the conditions specified in the Regulations (namely, carrying on only the business of management, advice or marketing in the country where the subsidiary is located exclusively on behalf of Trust or a Portfolio) own all the issued share capital of any private company, which in the interests of Unitholders the Managers considers it necessary or desirable to incorporate or acquire or utilise in connection with the Trust or a Portfolio. All assets and shares of such a company will be held by the Depositary or its sub-custodian or nominee.

(H) A Portfolio may in accordance with the requirements of the Central Bank replicate the composition of a stock or debt securities index which is recognised by the Central Bank.

(I) A Portfolio may hold ancillary liquid assets.

(J) Unless as otherwise determined by the Managers and as specified in the Prospectus in respect of a Portfolio, a Portfolio may not invest more than 10% of its net assets in the units of Collective Investment Schemes.

#### **VOTING RIGHTS ON INVESTMENTS**

21. (A) Except as otherwise expressly provided all rights of voting conferred by any Financial Instrument shall be exercised in such manner as the Managers may in writing direct and the Managers may refrain at their own discretion from the exercise of any voting rights and no Holder shall have any right to interfere or complain. The Depositary shall upon written request by and at the expense of the Managers from time to time execute and deliver or cause to be executed or delivered to the Managers or their nominees sufficient powers of attorney or proxies in such names as the

Managers may request authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the Deposited Property. The Depositary shall also give, or join in giving, appropriate instructions to any depositary or clearing system holding any part of a Portfolio if the Managers' sole instructions are not sufficient. The Managers shall be entitled to exercise the said rights in what they may consider to be the best interests of the Holders but neither the Managers nor the Depositary shall be under any liability or responsibility in respect of any vote, action or consent given or taken or not given or taken by the Managers whether in person or by proxy and neither the Depositary nor the Managers nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Depositary or the Managers or by the holder of such proxy or power of attorney under this Deed; and the Depositary shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Managers or by any holder or any such proxy or power of attorney.

(B) The phrase "rights of voting" and the word "vote" used in this Clause 21 shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement scheme or resolution or any alteration in or abandonment of any rights attaching to any part of a Portfolio and the right to requisition or join in a resolution to convene any meeting or to give notice of any resolution or to circulate any statement.

(C) Save where restrictions may be imposed by law, local market regulations or the issuer of the relevant Financial Instruments, the Depositary or its duly authorised Sub-Custodian will advise the Managers or the Investment Manager (as appropriate) of any Rights communicated to the Depositary or such Sub-Custodian which may be derived from the Investments. In the absence of Proper Instructions from the Managers or the Investment Manager (as appropriate) the Depositary or such Sub-Custodian will take no action.

(D) The Managers accepts that the Depositary shall not be required to make payment in respect of any Rights or otherwise except out of assets held by the Depositary for the account of the relevant Portfolio.

(E) If any fractional entitlement arises in relation to any Rights that are referable to the Trust and the issuer recognises, and will pay cash in lieu of, such fractions, the Depositary will credit the account of the relevant Portfolio with cash in lieu of such fractions at the rate paid by the issuer according the terms of the relevant Rights. No cash is paid in lieu of fractions where the issuer of the relevant Rights rounds down any fractional entitlement.

(F) In respect of Financial Instruments denominated in the currency of any country from which the Depositary or its Sub-Custodian is able to forward proxies on a timely basis, the Depositary or such Sub-Custodian shall forward any proxies to the Managers, or the Investment Manager (as appropriate) or any other party notified by the Managers or the Investment Manager (as appropriate) to the Depositary or such Sub-Custodian from time to time.



(G) In respect of Financial Instruments denominated in the currency of any country from which the Depositary or its Sub-Custodian is unable to forward proxies on a timely basis, the Depositary shall not vote any proxies. The Depositary shall provide the Managers with a list of any such countries and any amendment to the list.

(H) In certain circumstances, the Managers or the Investment Manager may be prohibited or restricted from exercising a Portfolio's Rights in respect of the Financial Instruments. Such circumstances include the following (without limitation):-

- (a) where the Financial Instruments are out on loan as part of any stock lending programme entered into by the Managers on behalf of such Portfolio;
- (b) where title to the Financial Instruments is pending registration;
- (c) in circumstances where restrictions are imposed by law, local market regulations, or the issuer.

(I) The Managers hereby agree to and shall execute such representations, disclaimers or warranties as the Depositary, any Sub-Custodian, or issuer may require, or which may otherwise be required pursuant to any law, regulation or local market requirement in connection with any matter relating to any Right in respect of the Investments.

(J) In the event the Managers instruct the Depositary to sell any Rights attaching to Financial Instruments, the Managers acknowledge and agree that the Depositary's responsibility shall be limited to transmitting the Managers' order to the relevant broker for execution.

#### **INTEREST UPON DEPOSITED CASH**

22. Where any cash forming part of a Portfolio or of a Distribution Account is transferred to a deposit account with the Depositary or the Managers or any Connected Person of any of them (being, in any such case, a banker or other financial institution) such banker or other financial institution shall allow interest thereon in accordance with normal banking practice for deposits of that term at a rate not lower than the prevailing rate for deposits of a similar size and duration, in the same currency and with institutions of a similar standing. Subject thereto such banker or other financial institution shall be entitled to retain for its own use and benefit any benefit it may derive from any cash for the time being in its hands (whether on current or deposit account) which forms part of that Portfolio or of the Distribution Account (as the case may be).

#### **DISTRIBUTIONS**

23. (A) (i) The Managers may declare such distributions on Units as appear to the Managers to be justified provided always that no dividend shall exceed the amount recommended.

- (ii) The Managers may if they think fit declare and pay such distributions in respect of Units of any class in a Portfolio as appear to the Managers to be justified, subject to any policy statement in relation to distributions in the Prospectus or any Supplement with respect to any Portfolio or class;
- (iii) The Managers may in their absolute discretion differentiate between the Units in any Portfolio and Units in different classes within the same Portfolio as to the dividends declared on such Units;
- (iv) The dividend policy for each Portfolio or class will be specified in the Prospectus.

(B) On each Annual Distribution Date the Depository shall distribute among the Holders of Units in each class an amount estimated by the Managers to be not less than 85 per cent. of the amount available for distribution from the relevant Portfolio in respect of the Accounting Period ending on the Accounting Date immediately preceding such Annual Distribution Date less the amount (if any) previously distributed from that Portfolio by way of interim distributions in respect of such Accounting Period, but carrying forward such amount as may be necessary to avoid the distribution of any fraction of \$0.01 (or fraction of the equivalent unit of currency in the currency of account of a Portfolio if not dollars) per Unit. As at the Accounting Date the amount required to effect such distribution shall be transferred to a special account in the name of the Depository to be entitled "Distribution Account". The Depository shall in respect of monies transferred to the Distribution Account which are to be applied in acquiring additional units for Reinvesting Holders (as defined below) in accordance with sub-clauses (C)(1) and (2) below act as agent for such Reinvesting Holders in the manner referred to in sub-clause (C)(2) below.

(C) The Managers may at any time prior to the last day of any Interim Distribution Period determine that there shall be distributed to Holders of Units of each class by way of interim distribution from the relevant Portfolio on account of the then current Accounting Period such amount as the Managers may determine and in the event of the Managers so determining:-

- (1) the amount required to effect such interim distribution shall be transferred to the Distribution Account; and
  - (2) the amount so determined to be distributed shall, on the Interim Distribution Date next following such determination, be distributed by the Depository among the Holders of Units of the relevant class. The amount so determined shall not exceed such sum as in the opinion of the Managers represents the amount available for distribution from the relevant Portfolio calculated from the commencement of such Accounting Period down to the day preceding the last day of such Interim Distribution Period.
- (D) (1) Subject to the election provided for in sub-clause (4) below, where the amount of a distribution payable to any Holder in accordance with sub-clause (A) or (B) above in respect of Units of each class registered in the name of

such Holder is equal to or less than such amount (if any) as may be determined by the Managers in respect of each Portfolio, the amount transferred to the Distribution Account in respect thereof shall be applied in payment for additional Units of the relevant class (including fractions of Units) (the "additional units"). Each Holder who has not made such an election (a "Reinvesting Holder") shall have issued to it such number of additional units credited as fully paid up, which, calculated by reference to the Issue Price of Units of the relevant class at the opening of business on the relevant Annual Distribution Date or Interim Distribution Date (the "relevant date") (or if the relevant date is not a Dealing Day, on the next succeeding Dealing Day) is nearly as possible equal to (but not in excess of), the cash amount of the relevant distribution and for such purpose the Managers as agent for the Reinvesting Holder will apply for the issue of the additional units.

- (2) The cash amount of the distribution on or in respect of a Unit of a Reinvesting Holder shall on the relevant date be paid out of the Distribution Account and transferred by the Depositary as agent for each Reinvesting Holder to the account of the relevant Portfolio to be applied in payment in full of the price of the appropriate number of additional units to be issued to each Reinvesting Holder.
- (3) No Certificates will be issued in respect of the additional units unless specifically requested by a Reinvesting Holder.
- (4) A Holder may, by serving notice in writing on the Manager and the Depositary request that any distribution payable to any Holder in accordance with sub-clause (A) or (B) above in respect of Units of any class registered in the name of such Holder (and if Units of more than one class are so registered, identifying the class or classes to which the notice relates) which is equal to or less than the amount referred to in sub-clause (1) above be paid to it, which notice must be received by the Manager and the Depositary at least twenty-one days before the next following relevant date to be effective in respect of any distribution to be paid on that date.
- (5) Any notice under sub-clause (4) above shall be personal to the Holder and shall automatically cease to have effect upon registration of the transfer or transmission of the relevant Units but shall continue in effect in respect of Units retained.
- (6) A Holder who has served notice in accordance with sub-clause (4) above shall be deemed to have made a request in respect of any further Units registered in his name in the Register in respect of all distributions made on such Units, until he revokes such request.

(E) Any interest accrued by placing on deposit moneys standing to the credit of the Distribution Account shall be treated as if the same were income derived from the relevant Portfolio and shall be dealt with accordingly. Subject as aforesaid any amount standing to the credit of the Distribution Account shall not for any of the purposes of this Deed be treated as part of the relevant Portfolio but shall be held by the Depositary upon trust for distribution as herein provided.

(F) Upon the expiry of the period of 6 years after the relevant Annual Distribution Date or Interim Distribution Date, the Holder and any person claiming through, under or in trust for him shall forfeit any right to the distribution or interim distribution falling due to be paid to him on such Annual Distribution Date or Interim Distribution Date, and the amount of such distribution or interim distribution shall become part of the Deposited Properties and shall be transferred out of the Distribution Account.

(G) Subject the provisions of this Clause 23, the Managers may determine that Holders will be entitled to receive in lieu of any distribution (or part thereof) in respect of any Units in any Portfolio or class an issue of additional Units in proportion to the number of Units held by them in the relevant Portfolio or class credited as fully paid and in any such case the following provisions shall apply:-

- (i) the number of additional Units (including any fractional entitlement) to be issued in lieu of any amount of distribution shall be as nearly as possible equal in value to but not in excess of the amount of such dividend at the date of issue of such additional Units;
- (ii) for such purpose the Managers shall capitalise a sum equal to the aggregate value of distribution in respect of which additional Units are proposed to be issued and apply the same in paying up in full the appropriate number of additional Units for issue to the relevant Holders credited as fully paid up;
- (iii) the additional Units so issued shall rank pari passu in all respects with the fully-paid Units then in issue save only as regards participation in the relevant distribution (or share election in lieu);
- (iv) the Managers may do all acts and things considered necessary or expedient to give effect to any such capitalisation, with full power to the Managers to make such provision as they may think fit in the case of Units becoming distributable in fractions so that fractional entitlements are disregarded or rounded up or the benefit of fractional entitlements accrues to the Portfolio or the Managers issues fractions of Units;
- (v) the Managers may on any occasion determine that Units in lieu of distributions shall not be issued to a Shareholder with a registered address in any territory in which, in the absence of a registration statement or other special formalities, the issue of

additional Units would or might be unlawful and in such event the provisions aforesaid shall be read and construed subject to such determination;

- (vi) where a Holder has not provided complete anti-money laundering documentation or such information and/or declarations as the Manager or its delegates may require, the Managers may, in their absolute discretion, determine that any distribution amount to which such a Holder is entitled, be automatically reinvested;
- (vi) no Certificates will be issued in respect of any additional Units.

#### **DISTRIBUTABLE INCOME**

24. (A) The amount available for distribution from each Portfolio in respect of any Accounting Period or part thereof (in this Clause called the "relevant period") shall be the total net amount receivable by the Depository in respect of the relevant period of all interest, dividends and other amounts (accrued on a daily basis) deemed by the Managers after consulting the Auditors to be in the nature of income PROVIDED THAT there may be added, at the discretion of the Managers, to be distributed as income such proportion of a sum equal to the amount of any capital gains or other profits realised for the Portfolio during the relevant Accounting Period (less any capital losses realised for the Portfolio during such Accounting Period as may in the opinion of the Managers be appropriate to maintain a satisfactory level of distribution AND FURTHER PROVIDED THAT there may be added, at the discretion of the Managers, to be distributed as income such proportion of a sum equal to the amount of any unrealised capital gains or other profits in respect of the Portfolio during the relevant Accounting Period (less any unrealised capital losses for the Portfolio during such Accounting Period and less any other amount which is, in the opinion of the Managers, after consulting with the Auditors, properly chargeable to capital) as may in the opinion of the Managers be appropriate to maintain a satisfactory level of distribution after:

- (1) deducting the Management Fee, the Depository Fee, the Administration Fee, any amounts paid or payable under sub-clauses (B), (C), (F), (G) (other than paragraph (7) thereof) and (H) of Clause 18 hereof for the relevant period (in any such case in so far as the same has been paid or is payable out of the income of the relevant Portfolio) and any amount written off or to be written off in respect of such Accounting Period by way of amortisation of establishment expenses under Clause 18(G)(7) hereof (or, where the relevant period is part only of such Accounting Period, the due proportion of such amount);
- (2) deducting any interest paid or payable in respect of the relevant period on borrowings effected under Clause 20(C) hereof and the amount of any expenses paid or payable out of the relevant Portfolio pursuant to Clause 20(C)(5) hereof deemed by the Managers after consulting the Auditors to be properly payable out of the income for the relevant period;
- (3) making such provision for taxation as the Managers after consulting the Auditors shall

think appropriate;

- (4) adjusting the resulting figure by the addition of a sum representing the aggregate of all Equalisation Payments in respect of Units issued during the relevant period and the deduction of a sum representing income distributed upon the cancellation of Units during the relevant period;
- (5) adding such sum as shall have been received or is estimated by the Managers to be receivable by way of repayment of tax on income receivable during the relevant period; and
- (6) adding any amount brought forward from the previous Accounting Period pursuant to Clause 23(A) hereof.

(B) As at each Accounting Date the Managers shall cause to be made up and audited a statement in respect of each Portfolio showing in respect of the Accounting Period then ending the matters set out in Clause 25(A) hereof. The statements relating to each Accounting Period in respect of all the Portfolios with the Auditors' reports thereon referred to in Clause 36(B) in respect of all the Portfolios hereof annexed thereto shall be available for inspection during usual business hours by any Holder at the specified office of the Managers. The Depositary and the Managers shall be absolutely protected in relying upon and shall act upon such statement.

(C) The first distribution to be made in respect of a Unit following the issue or sale thereof shall be of the same net amount as the distribution to be made in respect of other Units of the same class but shall be or include a capital sum equal to the Equalisation Payment in respect of such Unit PROVIDED THAT such capital sum may if the Managers think fit and the Auditors so agree be a sum ascertained by dividing the aggregate of all such Equalisation Payments referable to Units of the same class relating to the first relevant period or to any subsequent period not exceeding 12 months by the number of Units of the same class in respect of which such capital sums are payable.

(D) In respect of each Unit sold by the Managers during the relevant period the Managers shall be entitled to receive for their own use and benefit so much of the distribution in respect of such relevant period as represents the participation of such Unit in income accrued up to the close of business on the day preceding the date of sale of such Unit and in return therefor the Managers on or before the Interim Distribution Date or the Annual Distribution Date relative to the relevant period shall pay to the Depositary for the account of the relevant Portfolio an equivalent amount.

(E) To the extent that, by reason of the income of the Deposited Property or any Portfolio being on or prior to the relevant Accounting Date or (in the case of an interim distribution) the last day of the relevant Interim Distribution Period receivable but not having been received, the total net amount above referred to in the hands of the Depositary is insufficient (after making any necessary provision) to enable the distribution to be made, the deficiency may be made good by temporary interest-free loan from the Deposited Property but the amount of any such temporary loan shall be repaid to the Deposited Property as soon as practicable. For all purposes of this Deed the Deposited

Property shall be deemed to include any amount for the time being owing to the Deposited Property in respect of any such loan.

### STATEMENTS

25. (A) The statement referred to in Clause 24(B) hereof shall show (where applicable) for each Portfolio for a convenient number of Units participating in the net income of the Accounting Period:-
- (1) the gross amount of all cash dividends, interest and income bonuses, the amount (if any) of tax deducted therefrom and the corresponding net amount available for distribution in accordance with the provisions hereof;
  - (2) the amount of any cash received and receivable for distribution in accordance with the provisions hereof which is not liable to tax and the source or sources of such amount;
  - (3) the amount of any tax recoverable or otherwise relieved or estimated by the Managers to be recoverable or otherwise relieved so far as the same falls to be included in the amount available for distribution;
  - (4) the amount included by way of Equalisation Payment in the price of Units of that class issued during the Accounting Period;
  - (5) the amount charged in respect of Management Fee, Depositary Fee and Administration Fee for the Accounting Period (showing separately the proportion, if any, charged against capital) and the authority therefor;
  - (6) the amount of any interest payable on borrowings deducted in computing the amount available for distribution;
  - (7) the amount charged to cover taxation;
  - (8) the amounts of all deductions for charges, costs, fees, expenses or other liabilities debited against income and paid out of or written off against the relevant Portfolio pursuant to the provisions of this Deed (including, without limitation, deduction of amounts so debited and paid or written off pursuant to sub-clauses (B), (C), (F), (G) and (H) of Clause 18) and deducted in computing the amount available for distribution;
  - (9) the amount brought forward from the previous Accounting Period and the amount carried forward to the following Accounting Period;
  - (10) the total amount added by the Managers pursuant to the provisos to Clause 24(A) hereof for distribution for capital gains or other profits realised or otherwise;

(11) the amount (if any) already distributed by way of interim distribution during the Accounting Period; and

(12) the amount distributed by way of final distribution in respect of the Accounting Period.

(B) There shall be appended to such statement particulars of the Net Asset Value of a Unit on the Dealing Day next following the Accounting Date and the Dealing Day next following the immediately preceding Accounting Date.

(C) Such statement shall be included in the annual audited accounts to be sent to Holders pursuant to Clause 36(A).

### **PAYMENTS**

26. (A) Unless otherwise requested by the payee, any monies payable by the Managers or Depositary on the instructions of the Manager to a Unitholder in respect of any Unit under the provisions of this Deed shall be paid by bank transfer at the expense of the Unitholder to a designated account and payment by electronic transfer shall constitute a good discharge to the Manager and Depositary and neither the Managers nor the Depositary shall be responsible for any loss arising in respect of such payment or transmission.

(B) Before making any payment in respect of any Unit the Depositary or the Managers may make such deductions as, by the law of Ireland or any other country in which such payment is made, it is or they are required or entitled to make in respect of any income or other taxes, charges or assessments whatsoever and the Depositary and the Managers may also deduct the amount of any stamp duties or other governmental taxes or charges payable by it or them or for which it or they might be made liable in respect of such payment or any documents signed by it or them in connection therewith. Neither the Depositary nor the Managers shall be liable to account to any Holder or former Holder or otherwise for any payment made or suffered to be made in good faith to any duly empowered fiscal authority of any country for duties, taxes or other charges in any way arising out of or relating to any transaction of whatsoever nature under this Deed, notwithstanding that any such payment need not or ought not to have been made or suffered to be made.

(C) No amount payable to any Holder shall bear interest.

(D) All payments to Holders under this Deed shall be made in the currency of account of the relevant Portfolio or in such other currency as the Managers may determine either generally or in any specific case save that if a request is made by a Holder (or all Holders in the case of a joint holding) in such form and by such time as the Manager may reasonably require from time to time for any such payment to be made in a freely convertible currency other than the currency of account, such payment may be made by the Depositary or the Managers in such other currency but the costs of exchange and of making such payment in such other currency shall be deducted from the amount payable to such Holder or Holders. All payments shall be made at the risk of the persons entitled thereto.



## REMUNERATION OF MANAGERS, DEPOSITARY AND ADMINISTRATOR

27.(A)(1)

The Managers shall be entitled to receive, in addition to the Preliminary Charge and any other amounts which they are entitled to retain for their own use and benefit hereunder, for their own account out of each Portfolio as soon as practicable after the last Dealing Day in each month (until upon determination of the Trust the final distribution shall have been made pursuant to Clause 43 hereof) the amount of Management Fee accrued to them and remaining unpaid. The Management Fee shall accrue on each Dealing Day in respect of the periods from (but not including) the last preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee, the Depositary Fee or the Administration Fee accruing on such Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing day) and the denominator of which is 365 (or 366 in a leap year) PROVIDED THAT:-

- (a) the first accrual of Management Fee shall be in respect of the period from the date of the initial issue of Units up to and including the first Dealing Day;
- (b) if the right of Holders to require realisation of units is suspended pursuant to Clause 17(E) hereof, there shall be deemed to be during such suspension a Dealing Day at the same intervals as the interval which elapsed between the penultimate and the last Dealing Days immediately preceding such suspension and there shall accrue as aforesaid on each such deemed Dealing Day an amount of Management Fee equal to the amount of Management Fee which accrued on the last Dealing Day immediately preceding the suspension; and
- (c) if on any Dealing Day any Portfolio includes any unit or share of any Collective Investment Scheme managed by the Managers or any Connected Person of the Managers (a "connected fund"), the amount of Management Fee which would otherwise accrue on such Dealing Day in respect of such Portfolio shall be reduced by an amount in respect of each interest of the relevant Portfolio in any connected fund equal to the Management Fee which would notionally accrue on such Dealing Day on the value of the units or shares of such connected fund held for such Portfolio if such notional Management Fee were calculated at the same rate per annum as that at which the management fee payable to the manager of such connected fund is accruing in respect of the period in which such Dealing Day falls or (if

lower) a rate per annum equal to the appropriate percentage.

- (2) The appropriate percentage shall be ascertained as follows:-
- (a) subject to sub-paragraph (b), the appropriate percentage shall be 1.5 per cent. or, in respect of Class A and Class C units of the Baring Eastern Europe Fund or the Baring Global Resources Fund or the Baring Global Select Fund, upon giving not less than 90 days prior notice in writing to the Depositary and to each of the holders of units in aforementioned Funds, such higher percentage not exceeding 2.5%, or in relation to Class A units of the Baring High Yield Bond Fund, 1% of the Net Asset Value per Unit subject to an increase, with 90 days prior notification to Unitholders to 2.5% of the Net Asset Value of the aforementioned Funds, or in relation to the Baring Global Aggregate Bond Fund, 0.75% or the Class I units of each Fund, 0.75% of the Net Asset Value per Unit subject to an increase, with 90 days prior notification to Unitholders to 2.5% of the Net Asset Value per Unit, or such higher percentage (or such scale of percentage applicable to different parts of the Net Asset Value of the relevant Portfolio, being a scale of percentages resulting or capable of resulting in a higher overall rate of Management Fee) as may be fixed by a deed supplemental hereto sanctioned by an Extraordinary Resolution; and
  - (b) the Managers may from time to time by notice in writing to the Depositary fix as the appropriate percentage some smaller percentage, (or some scale or other scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio not resulting in or capable of resulting in a higher overall rate of Management Fee than that hereinbefore provided for) in which event and for such period as may be specified in such notice (or if no period is so specified in such notice further notice in writing shall be given to the Depositary, and not less than three months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage.
- (B)(1) The Depositary shall be entitled to receive for its own account out of the relevant Portfolio as soon as practicable after the last Dealing Day in each month (until upon determination of the Trust the final distribution shall have been made pursuant to Clause 39 hereof) the amount of Depositary Fee accrued to the Depositary and remaining unpaid. The Depositary Fee shall accrue on each Dealing Day in respect of the period from (but not including) the last preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee the Depositary Fee or the Administration fee accruing on such

Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing Day) and the denominator of which is 365 (or 366 in a leap year) PROVIDED THAT:-

- (a) the first accrual of Depositary Fee shall be in respect of the period from the date of the initial issue of Units up to and including the first Dealing Day; and
  - (b) if the right of Holders to require realisation of Units is suspended pursuant to Clause 17(E) hereof, there shall be deemed to be during such suspension a Dealing Day at the same intervals as the interval which elapsed between the penultimate and the last Dealing Days immediately preceding such suspension and there shall accrue as aforesaid on each such deemed Dealing Day an amount of Depositary Fee equal to the amount of Depositary Fee which accrued on the last Dealing Day immediately preceding the suspension.
- (2) The appropriate percentage shall be ascertained as follows:-
- (a) subject to sub-paragraph (b), the appropriate percentage shall be 0.025 per cent or such higher percentage (or such scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio, being a scale of percentages resulting or capable of resulting in a higher overall rate of Depositary Fee) as may be fixed by a deed supplemental hereto sanctioned by an Extraordinary Resolution;
  - (b) the Depositary may from time to time by notice in writing to the Managers fix as the appropriate percentage some smaller percentage, (or some scale or other scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio not resulting in or capable of resulting in a higher overall rate of Depositary Fee than that hereinbefore provided for) in which event and for such period as may be specified in such notice (or if no period is so specified then until further notice in writing shall be given to the Managers, and not less than three months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage.
- (3) Notwithstanding the provisions of this sub-clause 27(B), the Depositary shall

be entitled to receive for its own account out of each Portfolio, a minimum fee as may be agreed in writing between the Managers and the Depositary and as shall be disclosed in the Prospectus;

- (4) The Depositary shall also be entitled to receive for its own account out of the relevant Portfolio a transaction charge for each security transaction effected for the account of that Portfolio which shall be at normal commercial rates.

(C)(1) The Managers shall be entitled to receive for the account of the Managers an Administration Fee out of the relevant Portfolio as soon as practicable after the last Dealing Day in each month (until upon the determination of the Trust the final distribution shall have been made pursuant to Clause 43 hereof) equal to the amount of Administration Fee accrued but remaining unpaid out of which it shall pay to the Administrator and the Registrar such amount of the Administration Fee as may be agreed between the Managers and the Administrator and between the Managers and any Registrar respectively. The Administration Fee shall accrue on each Dealing Day in respect of the period from (but not including) the last preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee, the Depositary Fee or the Administration Fee accruing on such Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing Day) and the denominator of which is 365 (or 366 in each leap year) PROVIDED THAT :-

- (a) for the purposes of calculating the amount payable under the "appropriate percentage" below, the accrual of the Administration Fee applying the appropriate percentage shall commence on 1 April, 2005.
- (b) if the right of Holders to require realisation of units is suspended pursuant to Clause 17(E) hereof, there shall be deemed to be during such suspension a Dealing Day at the same intervals as the interval which elapsed between the penultimate and the last Dealing Days immediately preceding such suspension and there shall accrue as aforesaid on such deemed Dealing Day an amount of Administration Fee equal to the amount of Administration Fee which accrued on the last Dealing Day immediately preceding the suspension.

- (2) The appropriate percentage shall be ascertained as follows:-
- (a) subject to sub-paragraph (b), the appropriate percentage shall be 0.45 per cent of the Net Asset Value of the Portfolio (or such lower percentage in respect of a Portfolio or Class as specified in the Prospectus) or such higher percentage (or such scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio, being a scale of percentages resulting or capable of resulting in a higher overall rate of Administration Fee) as may be fixed by an Extraordinary Resolution or by a deed supplemental hereto sanctioned by an Extraordinary Resolution; and
  - (b) the Managers may from time to time by notice in writing to the Depositary fix as the appropriate percentage some smaller percentage, (or some scale or other scale of percentage applicable to different parts of the Net Asset Value of the relevant Portfolio not resulting in or capable of resulting in a higher overall rate of Administration Fee than that hereinbefore provided for) in which event and for such period as may be specified in such notice (or if no period is so specified then until further notice in writing shall be given to the Managers, and not less than three months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage.
- (3) Notwithstanding the provisions of this sub-clause 27 (C) the Managers shall be entitled to receive out of each Portfolio a minimum Administration Fee instead of being calculated by reference to the appropriate percentage and as shall be agreed in writing between the Managers and the Administrator and as shall be disclosed in the Prospectus.
- (4) The Managers or their delegates may appoint distributors or placing agents who may be paid out of the Deposited Property. In respect of the Class C units of Baring Global Resources Fund, a fee up to 1% of the Net Asset Value attributable to each class may be charged or such higher percentage as may be fixed by an Extraordinary Resolution or by a deed supplemental hereto

(D) In consideration of the foregoing neither the Depositary nor the Managers nor the Administrator shall make any charge against Holders or against the relevant Portfolio for their services or for their normal expenses hereunder with the exception of:-

1. all charges, costs, fees and expenses necessarily incurred or to be incurred in the preparation of supplemental trust deeds, which may be discharged out of the relevant

Portfolio; and

2. all other charges, costs, fees and expenses expressly authorised by this Deed including (without limitation) amounts payable out of or to be written off against the relevant Portfolio pursuant to sub-clauses (B), (C), (F), (G) and (H) of Clause 18 hereof or specifically authorised by law.

#### **RELIEF FROM LIABILITY**

28. Subject to the UCITS Regulations:-

(A) Neither the Depositary or the Managers shall incur any liability in respect of any action taken or thing suffered by either of them in reliance upon any notice, resolution, direction, consent, certificate, affidavit, statement, certificate of stock, warehouse receipt or warrant, dock warrant or other documents of title, plan or reorganisation or other paper or document believed to be genuine and to have been passed, sealed or signed by the proper parties.

(B) Neither the Depositary nor the Managers shall incur any liability to the Holders or any of them for doing or (as the case may be) failing to do any act or thing which by reason of any provision of any present or future law or regulation made pursuant thereto or of any decree, order or judgment of any court or by reason of any request, announcement or similar action whether of binding legal effect or not) which may be taken or made by any person or body acting with or purporting to exercise the authority of any government (whether legally or otherwise) either they or either of them shall be directed or requested to do or perform or to forbear from doing or performing. If for any reason it becomes impossible or impracticable to carry out the provisions of this Deed neither the Depositary nor the Managers shall be under any liability therefor or thereby.

(C) Neither the Depositary nor the Managers shall be responsible for the authenticity of any signature on or any seal affixed to any endorsement or other document affecting the title to or transmission of Units or be in any way liable for any forged or unauthorised signature on or any seal affixed to such endorsement, transfer, form or other document or for acting on or giving effect to any such forged or unauthorised signature or seal. The Depositary and the Managers respectively shall nevertheless be entitled but not bound to require that the signature of any Holder or joint Holder to any document required to be signed by him under or in connection with this Deed shall be verified by a banker or broker or other responsible person or otherwise authenticated to its or their reasonable satisfaction. The Depositary and the Managers shall further be entitled (but not bound) to accept and execute any instructions given in respect of Units for which a Certificate has been issued, by the Holder by telephone or by untested telex, irrespective of the number of Units and name of the beneficiary. In respect of Units for which a Registration Number has been assigned the Depositary and the Managers shall be entitled (but not bound) to accept and execute any instructions in respect thereof given by telephone or by untested telex by any person quoting that Registration Number.

(D) Any indemnity expressly given to the Depositary or to the Managers in this Deed is in addition to and without prejudice to any indemnity allowed by law.

(E) (1) The Managers may accept as sufficient evidence of the value of any Investment the cost price or sale price thereof or any Market quotation or a certificate by a stockbroker or dealer or other person, firm or association qualified in the opinion of the Managers to provide such a certificate.

(2) At all times and for all purposes of this Deed the Managers may rely upon the established practice and rulings of any Market and any committees and officials thereof on which any dealing in any Investment is from time to time effected in determining what shall constitute a good delivery and any similar matters and such practice and rulings shall be conclusive and binding upon all persons under this Deed.

(F) Nothing herein contained shall be construed so as to prevent the Managers and the Depositary in conjunction or the Managers or the Depositary separately from establishing or acting as manager or depositary for trusts separate and distinct from the Trust.

(G) The Depositary and the Managers may each act upon any advice or information obtained from the other or any bankers, accountants, brokers, lawyers, dealers, agents or other persons acting as agents or advisers of either of them and neither the Depositary nor the Managers shall be liable for anything done or omitted or suffered in good faith to be done or omitted in reliance upon such advice or information. Neither the Depositary nor the Managers shall be responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any such banker, accountant, broker, lawyer, dealer, agent or other person as aforesaid. Any such advice or information may be obtained or sent by letter, telegram, telex message or cablegram and neither the Depositary nor the Managers shall be liable for acting on any advice or information purported to be conveyed by any such letter, telegram, telex message or cablegram although the same contains some error or is not authentic.

(H) Except if and so far as herein otherwise expressly provided the Depositary and the Managers shall as regards all the trusts, rights, powers, authorities and discretions vested in each of them have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and the time for the exercise thereof and other than in respect of any matter for which they would be liable under Clause 32(B), 32(C) or Clause 35 hereof, neither of them shall be in any way responsible for any losses, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

(I) Neither the Depositary nor the Managers shall be responsible for acting upon any resolution purporting to have been passed at any meeting of the Holders or any of them in respect whereof minutes shall have been made and signed even though it may be subsequently found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not binding upon all the Holders or the relevant class thereof as the case may be.

(J) Nothing herein contained shall be construed so as to prevent the Depositary or the

Managers from contracting or entering into any financial, banking or other transaction with one another or any Holder or any company or body any of whose securities form part of a Portfolio or from being interested in any such contract or transaction and neither the Depositary nor the Manager shall be in any way liable to account to the Trust or the Holders or any of them for any profit or benefit made or derived thereby or in connection therewith.

(K) The Depositary or the Managers or any other person on behalf of the Depositary shall (subject as hereinafter provided and subject to the provisions of the UCITS Requirements) be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of 6 years from the date of registration thereof and all Certificates which have been cancelled at any time after the expiration of 3 years from the date of cancellation thereof and all notifications of change of address after the expiration of 3 years from the date of the recording thereof and all forms of proxy in respect of any meeting of Holders after the expiration of 3 years from the date of the meeting at which the same are used and all registers, statements and other records and documents relating to the Trust at any time after the expiration of 6 years from the termination of the Trust. Neither the Depositary nor the Managers nor any such other person as aforesaid shall be under any liability whatsoever in consequence thereof and unless the contrary be proved every instrument of transfer so destroyed shall be deemed to have been a valid and effective instrument duly and properly registered and every Certificate duly and properly cancelled and every register, statement or other record or document hereinbefore mentioned so destroyed shall be deemed to have been valid and effective in accordance with the recorded particulars thereof PROVIDED THAT:-

1. the provisions of this sub-clause (K) shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;
2. nothing in this sub-clause (K) shall be construed as imposing upon the Depositary or the Managers or any such other person as aforesaid any liability in respect of the destruction of any document earlier than as aforesaid or in any case where the conditions of proviso (1) above are not fulfilled; and
3. references herein to the destruction of any document include references to the disposal thereof in any manner.

#### **RESTRICTIONS ON DEALING AND CONFLICTS OF INTEREST**

29. (A) Subject to the provisions of the UCITS Regulations nothing in this Deed contained shall prevent (i) the Depositary or the Managers or any investment adviser, any Connected Person or delegate of any of them (in this Sub-Clause (A) of this Clause 29 called the "Interested Party") from selling Investments to or from vesting Investments in the Depositary for the account of the Trust with the same rights which they would have had if they were not a party to or a Connected Person of a party to this Deed or (ii) any Interested Party from purchasing Investments from the Depositary for account of the Trust with the same rights which they would have had if they were not a party to or a Connected Person of a party to this Deed. The Interested Party shall not be liable to account either to



the other or others of them or to the Holders or any of them for any profits or benefits made or derived by or in connection with any such transaction, subject to the provisions of sub-Clause 29 (C) and the UCITS Requirements. Nothing in this Deed contained shall prevent the Managers or any Connected Person of either of the Managers or the Depositary, from becoming the owners of Units and holding, disposing of or otherwise dealing with the same, with the same rights which they would have had if they had not been a party to this Deed; and the Depositary, the Managers or any Connected Person of either the Managers or the Depositary may buy, hold and deal in any Investments upon their respective individual accounts notwithstanding that similar Investments may be held under this Deed as part of a Portfolio. The Depositary, the Managers or any Connected Person of either shall not be liable to account either to any other of them or the Holders or any of them for any profits or benefits made or derived from or in connection with any such transaction.

(B) PROVIDED HOWEVER THAT any such sale or purchase of Investments or other transaction as referenced in this Clause 29 (A) or (B) is negotiated on an arm's length basis and is in the best interests of Holders. Transactions will be deemed to have been negotiated at arm's length if:-

- (1) the value of the transaction is certified by either (i) a person who has been approved by the Managers as being independent and competent or (ii) a person who has been approved by the Managers as being independent and competent in the case of transactions involving the Managers, or
- (2) the transaction is executed on best terms on an organised investment exchange in accordance with the rules of the relevant exchange; or
- (3) the transaction is executed on terms which the Managers or, in the case of a transaction involving the Managers, the Managers are satisfied are negotiated at arm's length and are in the best interests of Holders.

The Managers or, in the case of a transaction involving the Managers, the Managers shall document how it complied with the requirements of paragraphs (i), (ii) or (iii) above. Where transactions are conducted in accordance with paragraph (iii) above, the Managers or, in the case of a transaction involving the Managers, the Managers, shall document its or their rationale for being satisfied that the transaction conformed to the principles outlined here.

(C) Subject as provided in this Deed, no Units shall at any time be quoted or issued or sold by or for account of the Managers at a price higher than the Issue Price for the time being applicable to Units issued pursuant to Clause 13 hereof plus the Preliminary Charge. No Units shall at any time be quoted or purchased by or for the account of the Managers at a price lower than the Realisation Price for the time being applicable to Units purchased or cancelled by the Managers pursuant to Clause 17 hereof.

(D) It is understood that directors, officers, agents and Holders of the Trust are or may be interested in the Depositary as shareholders, that shareholders and agents of the Depositary are or

may be interested in the Trust as directors, officers, shareholders or otherwise and it is hereby acknowledged that no person so interested shall be liable to account for any benefit to any other party by reason solely of such interest. The Depositary shall not carry out activities with regard to the Trust or the Managers on behalf of the Trust that may create conflict of interests between the Trust, the Holders, the Managers and itself unless the Depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the Holders.

### **PROPER INSTRUCTIONS**

30. (A) The Depositary shall be entitled to act on Proper Instructions received in accordance with this Clause 30 in relation to Investments and in accordance with any other procedures agreed between the Depositary and the Managers or its delegates from time to time.

(B) The Depositary shall accept Proper Instructions and shall act on them on the basis and provided as follows:-

- (1) Proper Instructions shall continue in full force and effect until cancelled or superseded;
- (2) the Depositary may treat any apparent Proper Instructions as new Proper Instructions unless they are clearly indicated to be confirmations of earlier Proper Instructions;
- (3) if any Proper Instructions are incomplete, unclear, in conflict with other Proper Instructions or are not given in the form consistently used by the Managers, the Depositary may in its absolute discretion, refuse to act on such Proper Instructions until any incompleteness, lack of clarity, conflict or inconsistency has been resolved to its satisfaction;
- (4) the Depositary may refuse to act on Proper Instructions where such Proper Instruction are not communicated prior to any deadlines agreed between the parties from time to time;
- (5) Proper Instructions shall be carried out subject to the rules, operating procedures and market practice of any relevant stock exchange or market, Securities System or Sub-Custodian ("Rules"). The Depositary may refuse to carry out Proper Instructions if in the Depositary's reasonable opinion they are contrary to any Rules or any applicable law, or other regulatory or fiscal requirements or if they are in conflict with the relevant provisions of the Prospectus or this Trust Deed but it is under no duty to investigate whether any such Proper Instructions comply with any Rules or any applicable law, or other regulatory or fiscal requirements or if they are in conflict with the relevant provisions of the Prospectus or this Trust Deed. Nonetheless, the Depositary shall be entitled in its absolute discretion to amend Proper Instructions so that they comply with applicable Rules, provided such amendments do not affect materially the nature

of the Proper Instructions and are only immaterial or technical in nature and provided further that copies of any such amendment(s) made are provided to the Managers or its delegate provided such amendments do not alter the overall intention or investment decision conveyed in such Proper Instruction and provided such further copies of any such amendments made are provided to the Depositary or the Manager;

- (6) any Proper Instructions (notwithstanding any error in the transmission thereof or that such Proper Instructions may not be genuine), shall, be conclusively deemed to be valid Proper Instructions from the Managers to the Depositary if believed by the Depositary to be genuine, provided however the Depositary may in its discretion decline to act upon any Proper Instructions where the Depositary has reasonable grounds for concluding that the same has not been accurately transmitted or are not genuine. The relevant Portfolio shall be responsible for any loss, claim or expense incurred by the Depositary for following or attempting to follow the Proper Instructions;
- (7) the Depositary shall be under no duty to challenge or make any enquiries concerning valid Proper Instructions or apparently valid Proper Instructions provided that the Depositary adhered to such agreed procedures in place between the parties.

(C) Provided that the Depositary acts in accordance with this Clause and subject and without prejudice to Clauses 30(B) and 30(C), it shall incur no liability in respect of acting or failing to act on Proper Instructions and provided further than the Depositary adhered to such agreed procedures in place between the parties.

## **DUTIES OF THE DEPOSITARY**

### **Custody Services**

31. (A) The Depositary shall be responsible for providing the Depositary Services and for performing such other duties as are imposed on it pursuant to this Trust Deed or by the UCITS Regulations.

(B) The assets of the Trust and each Portfolio shall be entrusted to the Depositary for safekeeping as follows:

- (i) For Financial Instruments that can be held in custody, the Depositary shall hold in custody all Financial Instruments that can be registered in a financial instruments account opened in the Depositary's books and all Financial Instruments that can be physically delivered to the Depositary.
- (ii) The Depositary shall ensure that all those Financial Instruments that can be registered in a financial instruments account opened in the Depositary's books are registered in the Depositary's books within segregated accounts in accordance with

the principles set out in Article 16 of the MiFID Implementing Directive, opened in the name of the Trust or the Managers acting on behalf of the Trust, so that they can be clearly identified as belonging to the Trust in accordance with the applicable law at all times.

- (iii) The Depositary shall otherwise perform the Custody Services in accordance with the provisions of Article 22(5)(a) of the UCITS Directive and Articles 12 & 13 of the Delegated Regulation.

#### **Asset Verification Services**

- (C) For Other Investments, the Depositary shall
  - (i) verify the ownership by the Trust or by the Managers acting on behalf of the Trust of such Other Investments by assessing whether the Trust or the Managers acting on behalf of the Trust holds the ownership based on information or documents provided by the Managers on behalf of the Trust and, where available, on external evidence;
  - (ii) maintain a record of those Other Investments for which it is satisfied that the Trust or the Managers acting on behalf of the Trust holds the ownership and keep that record up-to-date.
  - (iii) The Depositary shall otherwise perform the Asset Verification Services in accordance with the provisions of Article 22 (5) (b) of the UCITS Directive and Article 14 of the Delegated Regulation.

#### **Oversight Services**

- (D) (1) During the continuance of its appointment, the Depositary shall:
  - (i) ensure that the sale, issue, repurchase, redemption, and cancellation of Units are carried out in accordance with the UCITS Regulations and this Deed;
  - (ii) ensure that the value of Units is calculated in accordance with the UCITS Regulations and this Deed;
  - (iii) carry out the Proper Instructions of the Managers and its delegates unless they conflict with this Deed or the UCITS Regulations;
  - (iv) ensure that in transactions involving any Investments of the Trust, any consideration is remitted to the relevant Portfolio within the usual time limits (i.e. the time limits which accord with acceptable market practice in the context of the particular transaction and, where transactions do not take place on a regulated market, within the usual time limits assessed having regard to the conditions attached to the transactions);

- (v) ensure that each Portfolio's income is applied in accordance with the AIFMD Regulations and this Deed;
- (vi) The Depositary shall enquire into the conduct of the Managers in relation to the Trust in each annual accounting period and report thereon to the Holders. The Depositary's report shall be delivered to the Managers in good time to enable the Managers to include a copy of the report in the Trust's annual report. The Depositary's report shall state whether in the Depositary's opinion the trust has been managed in that period:-
  - (a) in accordance with the limitations imposed on the investment and borrowing powers of the Trust by this Deed and the UCITS Regulations; and
  - (b) otherwise in accordance with the provisions of this Deed and the UCITS Regulations.

If the Trust not complied with the limitations set out in (i) and (ii) above, the Depositary must state why this is the case and outline the steps which the Depositary has taken to rectify the situation.

- (vii) perform the Oversight Services in accordance with the provisions of the Central Bank Requirements and notify the Central Bank promptly of any material breach by the Depositary or the Managers of the UCITS Regulations or the Delegated Regulation, the requirements imposed on the Trust or the Managers of the Trust or the Depositary itself by the Central Bank or provisions of the Prospectus
  - (viii) in performing its Oversight Duties, perform ex-post controls and shall, where applicable, verify processes and procedures that are under the responsibility of the Managers on behalf of the Trust or an appointed third party. The Depositary shall be entitled to conduct ex-ante verifications where it deems appropriate, and in agreement with the Managers.
  - (ix) ensure that an appropriate verification and reconciliation procedure exists which is implemented and applied and frequently reviewed.
- (2) The Oversight Services may not be delegated by the Depositary and must be performed in Ireland.
  - (3) The Depositary shall perform the functions set out above in accordance with the provisions of Article 22(3) of the UCITS Directive and Articles 3 to 8 of the Delegated Regulation.

- (4) The Depositary shall notify the Central Bank promptly of any non-material breach by the Managers or the Depositary of any requirement, obligation or document to which Regulation 114(2) of the Central Bank Regulations relates where such breach is not resolved within 4 weeks of becoming aware of such non-material breach.
- (5) Without prejudice to any other provisions of this Deed, the Depositary shall provide the Managers on behalf of the Trust or its delegates with at least the information specified in Schedule D – “provisions on exchange of information” in accordance with the procedures set out in Schedule D.

#### **Cash-Flow Monitoring Services**

(E) The Depositary shall ensure that the Trust's cash flows are properly monitored and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of Units have been received and that all cash of the Trust has been booked in cash accounts: (i) opened in the name of the Managers on behalf of the Trust or of the Depositary acting on behalf of the Trust (ii) at an Eligible Credit Institution; and (iii) maintained in accordance with the principles set out in Article 16 of the MiFID Implementing Directive.

(F) Where the cash accounts are opened in the name of the Depositary acting on behalf of the Trust, no cash of the Eligible Credit Institution and none of the Depositary's own cash shall be booked on such accounts.

(G) The Depositary in connection with its provision of Cash Flow Monitoring Services shall implement effective and proper procedures to perform such reconciliations on a daily basis or, in case of infrequent cash movements, when such cash flow movements occur.

(H) The Depositary shall otherwise perform the Cash Flow Monitoring Services in accordance with the provisions of Article 22(4) of the UCITS Directive and Articles 9 to 11 of the Delegated Regulation.

(I) In the absence of Proper Instructions in relation to the same, funds held by the Depositary for the Trust shall be deposited by the Depositary to its credit or the Trust's credit in such Eligible Credit Institutions, including Affiliates, as it may deem necessary or appropriate, to the extent such temporary placements do not involve material discretion on the part of the Depositary.

(J) In performing its duties hereunder, the Depositary shall observe and comply with the UCITS Regulations and any requirements or conditions imposed on the Depositary by the Central Bank relating to the Trust and in particular relating to the Oversight Services of the Depositary. The Depositary shall at all times act honestly, fairly, professionally, independently and in the best interests of the Trust and the Holders in its provision of Depositary Services and other duties as are imposed upon it under this Deed. In discharging its duties and obligations under this Deed, the Depositary shall exercise due skill, care and diligence.

### **Other Functions, Powers and Duties of the Depositary**

(K) Northern Trust shall upon receipt of Proper Instructions, release, transfer, exchange or deliver or authorise the release, transfer, exchange or delivery of Assets owned by the Company in respect of each Sub-Fund and held by Northern Trust only in the following cases:-

- (i) in connection with the sale of such Assets in accordance with prevailing market practice; or
- (ii) in the case of a sale effected through a Securities System, in accordance with the UCITS Regulations or customary practice thereof; or
- (iii) upon conversion of such Assets for any reason other than sale into other securities, assets or cash; or
- (iv) for delivery as collateral in respect of any derivatives contract entered into by the Company, provided that Northern Trust shall not be responsible pursuant to this Agreement for such Assets transferred or delivered to any third party for such purpose provided always that such transfer or delivery is effected on a full title transfer basis and that the value of Assets so delivered is the appropriate amount required by any third party pursuant to the terms on which such contract is entered into by the Company to secure the Company's obligations thereunder and provided that any such transfer and delivery is in accordance with the requirements of the Central Bank or
- (v) for the purpose of exercising any Rights with respect to such Assets; or
- (vi) upon receipt of payment in connection with any repurchase agreement or in connection with stock lending transactions entered into for the account of the Company; or
- (vii) upon the termination of this Agreement to the succeeding depositary (if any) or as directed by the liquidator of the Company in the event of the winding up of the Company; or
- (viii) for payment of interest and payment of principal on all borrowings as permitted by the Articles and the Prospectus;
- (ix) for any other purpose permitted under this Agreement and permitted by this Deed and the UCITS Requirements where the Proper Instructions specify the Assets to be delivered, set forth the purpose for which such delivery is to be made and name the person or persons to whom the delivery of such securities or financial instruments should be made.

(L) Northern Trust shall, upon receipt of Proper Instructions, and in so far as funds held by it on behalf of the Trust or the relevant Portfolio are available for the purpose, pay or cause to be paid out the cash in its custody hereunder only in the following circumstances:-

- (i) upon purchase for the account of the Trust or relevant Portfolio of Financial Instruments and only against delivery of such Assets provided that, in the case of Financial Instruments in respect of which payment is required to be made prior to allotment, or in order to comply with prevailing market practice with respect to settlement procedures, payment may be made prior to delivery of the Financial Instruments. Subject and without prejudice to Clauses 32(B) and 32(C) hereof, Northern Trust shall not be liable for losses arising out of effecting delivery or payment against an expectation of receipt, save where such delivery or payment was contrary to market practice; or
- (ii) upon purchase for the account of the Trust of any Portfolio of Other Investments, subject and without prejudice to Clauses 32(B) and 32(C) hereof, Northern Trust shall not be liable for losses arising out of effecting free payment against an expectation of receipt by the relevant Portfolio of Other Investments in circumstances where such settlement procedures are in accordance with prevailing market practice; or
- (iii) in connection with the subscription for, release, conversion, exchange, tender or surrender of Financial Instruments as set forth above; or
- (iv) in the case of a purchase effected through a Securities System, upon receipt of advice from the Securities System that such Financial Instruments have been transferred to the account of Northern Trust or its authorised agent with the Securities System; or
- (v) as margin deposits in respect of options, futures or other financial derivatives contracts entered into by the Managers on behalf of a Portfolio, provided that the relevant Portfolio shall bear the risk of any default of any counterparty, futures and options exchange or other party to whom such cash is transferred; or
- (vi) for the payment of any management fees or any other disbursements owed by the Trust in connection with the management of the Trust; or
- (vii) for the making of any disbursements for the account of the Trust of relevant Portfolio or the payment of any expense or liability of the Trust or relevant Portfolio; or
- (viii) for deposit to the account of the Trust or relevant Portfolio with such Eligible Credit Institution or in connection with making time deposits in such Eligible Credit Institution and in such amounts as shall be notified to Northern Trust by Proper Instructions provided that any amounts so held by such Eligible Credit Institution shall represent a



debt due by such Eligible Credit Institution to the Company and the Company shall bear the risk of any default of such Eligible Credit Institution; or

- (ix) in connection with the repurchase of Units; or
  - (x) for payments in connection with any stock lending transactions or repurchase agreements entered into for the account of a Portfolio in accordance with the Central Bank Requirements; or
  - (xi) upon the termination of this Deed to the succeeding depositary (if any); or
  - (xii) to any other depositary appointed to succeed Northern Trust as depositary of the Trust; or
  - (xiii) for any other purpose, provided such purpose is not inconsistent with this Deed, the Prospectus, the UCITS Requirements and the Legislation.
- (M) Further the Depositary:-
- (i) shall collect, receive and transfer to such account as directed by Proper Instructions, and in the absence of Proper Instructions as determined by the Depositary in its absolute discretion, provided that such account constitutes a Third Party Cash Account listed in Schedule E hereof, all income and other payments of whatever kind accruing to the account of the relevant Portfolio in respect of the Financial Instruments and, at the request of the Managers in respect of the Financial Instruments, the Depositary shall execute or procure the execution of appropriate ownership and other certificates and affidavits in connection with the collection of such income, setting forth if required in any such certificates or affidavits the name of the relevant Portfolio as beneficial owner of such securities and, subject to Clause 32 (B) and (C) do or instruct its agent to do all other things reasonably necessary or proper in connection with the collection, receipt and deposit of such income, including the presentation for payment of all coupons and other items as appropriate, the presentation for payment of all Financial Instruments which may be called, redeemed, withdrawn or otherwise become payable and endorsing for collection in the name of the relevant Portfolio cheques, drafts or other negotiable or transferable instruments;
  - (ii) any clearing broker with or to which margin monies or other Investments which are utilised as margin assets are deposited or paid by Depositary pursuant to specific Proper Instructions in respect of any currency futures contract or other hedging contract shall not, while it holds such margin monies or assets, be a sub-custodian, nominee, agent or delegate of Depositary for such purposes and Depositary shall not be liable for the acts or omissions or any loss in respect of such margin monies or assets directly or indirectly caused by any such clearing broker.

- (iii) shall on receipt from the Managers or its delegate of a statement of repurchase of Units specifying the number of Units to be repurchased, the relevant repurchase price(s), the total amount payable and the currency or currencies in which the relevant payments are to be made, pay the amount due in the relevant currency (on behalf of the relevant Portfolio) to the persons entitled thereto at the direction of the Administrator or to the Administrator to pay to those persons entitled thereto out of the monies held in the name of and on behalf of the relevant Fund provided that the Depositary shall then be holding sufficient cash for the account of such Fund;
- (iv) The Managers, or any of its delegates, may from time to time instruct the Depositary to prepare reports, statements and other information relating to the Trust and to transmit these via electronic mail. The Depositary agrees to send such reports to the Managers or any of its delegates via electronic mail provided that the recipient(s) of such reports provides to the Depositary in writing details of the relevant email address to which such report should be sent. The Managers agree that, where any such reports are to be received by multiple recipients, the Managers or its delegates will supply the Depositary with a single "group" email address and the Depositary will have fully discharged its reporting responsibilities pursuant to this Clause where it has sent such report to this address. In the absence of fraud, wilful default or negligence in the discharge of its duties set forth in this Clause, the Depositary will not be liable for any direct or indirect loss, damages, claims or expenses suffered by the Trust as a result of the transmission of any report via electronic mail.
- (v) shall keep or cause to be kept such books, records and statements as may be reasonably necessary to give a complete record of all the cash and Financial Instruments and documents held and transactions carried out by it on behalf of each Portfolio, and otherwise keep such records as are necessary otherwise to enable it to comply with the UCITS Requirements and to demonstrate that such compliance has been achieved. The Depositary shall permit the Central Bank, the Managers or the Administrator or the Auditors to inspect such books, records and statements at all reasonable times in order to allow the Managers to have a timely and accurate overview of the accounts opened on behalf of the Trust. The Depositary shall respond in a timely manner to all reasonable queries and requests from the Auditors in respect of the cash and Financial Instruments in connection with the preparation of the Trust's annual accounts;
- (vi) shall on receipt of any prior notice or documentation relating to any of the Investments and Rights relating thereto forthwith forward the same to the Managers or in the case of Financial Instruments, deal with same in accordance with Schedule H hereof or deal with the same in accordance with Proper Instructions given by the Managers from time to time;

- (vii) may procure the provision of banking facilities or procure an Affiliate (whether direct or indirect) to act as banker and provide banking facilities (including foreign exchange transactions both at spot and on a forward basis as required) for the Trust; and
- (viii) shall, if so instructed by Proper Instructions, pay or claim any tax charges or reliefs as the Depositary has been advised by the Managers in advance in writing are payable or available to be claimed on behalf of a Portfolio, provided that, in the case of any payment so required, the Depositary shall then be holding sufficient cash for the account of the Portfolio.

(N) Subject and without prejudice to the Depositary's obligations in respect of Financial Instruments as set out in Clause 31 (B) hereof, Financial Instruments held pursuant to this Trust Deed may be treated as fungible with all other securities of the same type and issue so that the Depositary shall have no right to any specific securities but will instead be entitled to an amount of securities that is equivalent to the amount of such securities credited to the relevant Portfolio's account, and the Depositary's obligation with respect to such Portfolio will be limited to effecting such entitlement.

#### **Reporting and Recordkeeping**

(O) The Depositary shall retain, in a readily accessible form, for a period of at least six years, all records, reports, logs and other documentation as required under the terms of this Deed. Original documentation should be retained where appropriate and the records must be retained in a medium that allows the storage of information in a way accessible for future reference by the Central Bank. At the request of the Managers on behalf of the Trust, the Depositary shall supply copies of such records to the Managers or its delegates, as the case may be, for inspection by the Central Bank within a reasonable period of time (or make such records available for inspection directly by the Central Bank). Where such records are not retained in legible form, such records must be capable of being reproduced in that form. In the event of the termination of the Trust's authorisation by the Central Bank, the Depositary shall be required to retain the records for the outstanding term of the six year period. The Depositary must have adequate procedures for the maintenance, security, privacy and preservation of records and working papers relating to the Trust so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.

#### **Depositary Discretion**

(P) The Depositary may without seeking Proper Instructions but subject to Proper Instructions to the contrary:-

- (a) release, surrender or exchange Financial Instruments in temporary form or interim receipts for securities in definitive form;
- (b) endorse for collection, on behalf of a Portfolio, cheques, drafts and other negotiable instruments;

- (c) in general, attend to all non-discretionary details in connection with the sale, exchange, substitution, purchase, transfer and other dealings with Financial Instruments, except as directed by the Managers;
- (d) make payments to itself or others for expenses of handling securities or otherwise relating to its duties under this Trust Deed including but not limited to payments in respect of transaction charges, brokerage fees, local taxes and commissions, provided that all such payments shall be accounted for to the Portfolio; and
- (e) execute or instruct the appropriate Sub-Custodian to execute on behalf of the relevant Portfolio such ownership and other certificates as may be required to obtain payment or exercise any Rights in respect of any Financial Instruments and accept and open all mail directed to the Managers in the care of the Depositary or such Sub-Custodian.

(Q) In performing its duties hereunder the Depositary may be entitled to refuse to effect any investment, realisation or other transaction of whatsoever nature on behalf of the Trust if in the reasonable opinion of the Depositary:-

- (a) such investment, realisation or other transaction would contravene the investment policies or restrictions adopted by the Managers on behalf of a Portfolio for the time being, the Trust Deed or the Prospectus or would be unlawful; or
- (b) liabilities to be incurred in the course of such investment, realisation or other transaction may not be adequately covered by the cash and Financial Instruments of a Portfolio held for the time being by the Depositary on its behalf; or
- (c) personal liability may be incurred by the Depositary pursuant to such investment, realisation or other transaction; or
- (d) Proper Instructions given to effect such transaction either (i) are inadequate, (ii) are unclear, (iii) do not make fully apparent the intention of the Managers, or (iv) are not communicated to the Depositary prior to any dealing deadlines agreed between the parties from time to time.

provided that the Depositary will notify the Managers as soon as reasonably practicable of a refusal to effect any transaction pursuant to this Clause and the reasons therefor.

#### **Miscellaneous**

(R) Forthwith after each acquisition or disposal of Investments for the account of a Portfolio, the Managers shall cause the Depositary to be given Proper Instructions for the transmission of funds or the receipt or delivery of the documents of title to or evidencing ownership of the assets in question specifying such information as may be agreed between the Managers and the Depositary from time to time. Such Proper Instructions as aforesaid shall be given without delay and

in the event of a delay or the Depositary having to obtain clarification or unclear or incomplete Proper Instructions the Depositary, shall, subject and without prejudice to Clauses 32(B) and (C) not be liable for any consequence arising therefrom provided that the Depositary shall as soon as practicable seek such clarification upon it becoming aware that such Proper Instructions were inadequate for the purposes for which they were intended.

(S) Where the Depositary has been instructed by the Managers or its delegate to effect an acquisition of shares or units in an underlying collective investment scheme for the account of a Portfolio, such transaction will be carried out by the Depositary subject to the terms of Sub-Clause 32 (H) below.

(T) The Depositary and the Managers each acknowledge and agree that it is a "designated person" for the purposes of The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "AML Act") and shall perform such tasks as are necessary to discharge its obligations under anti-money laundering and counter terrorist financing laws and regulations that apply to it. Examples of the tasks required of a designated person under the AML Act include, identification and verification of customers and beneficial owners, reporting of suspicious transactions and transactions involving certain places and training of staff.

#### **Re-Use of Investments**

(U) The Investments held in custody by the Depositary shall not be reused by Northern Trust or by any Sub-Custodian for their own account. Reuse comprises any transaction of Investments held in custody including, but not limited to transferring, pledging, selling and lending.

Investments held in custody by the Depositary are allowed to be reused only where:

- (i) the reuse of the Investments is executed for the account of the Trust or relevant Portfolio;
- (ii) the Depositary carrying out the instructions of the Managers;
- (iii) the reuse is for the benefit of the Managers and in the interest of the Holders;
- (iv) the transaction is covered by high-quality and liquid collateral received by the Trust or relevant Portfolio under a title transfer agreement;
- (v) the market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium;
- (vi) the Managers on behalf of the Trust shall ensure that any reuse of Investments shall be in accordance with the requirements of the UCITS Regulations.

(V) For the avoidance of doubt, the Depositary shall be entitled to exercise at any time all the rights and powers conferred upon it as depositary of the Trust by the UCITS Requirements and by

this Trust Deed.

#### **LIABILITY OF THE DEPOSITARY**

32. (A) The Depositary shall be responsible only for the performance or non-performance of its duties as provided for under the UCITS Requirements and in this Deed.

(B) The Depositary shall be liable to the Trust and the Holders for the loss of Financial Instruments by the Depositary or a Third Party(s) to whom the custody of Financial Instruments held in custody in accordance with Article 22(5)(a) of the UCITS Directive has been delegated. In the case of such a loss of a Financial Instrument held in custody, the Depositary shall return a Financial Instrument of an identical type or the corresponding amount to the Trust, or the Managers acting on behalf of the Trust without undue delay. The Depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(C) The Depositary shall be liable to the Trust or the Holders for all other losses suffered by it or them as a result of the Depositary's negligent or intentional failure to properly fulfil its obligations pursuant to the UCITS Regulations.

(D) Subject and without prejudice to Clauses 32(B) and 32(C), the Depositary shall not be liable to the Trust or the Unitholders or any other person for any indirect, special or consequential losses or damages arising out of or in connection with the performance or non-performance by the Depositary of its duties and obligations under this Agreement.

(E) The Managers on behalf of the Trust shall indemnify and keep indemnified and hold harmless the Depositary (and each of its directors, officers and employees) out of the assets of the relevant Portfolio from and against any and all third party actions, proceedings, claims, costs, demands and expenses which may be brought against or incurred by the Depositary other than in circumstances where the Depositary is liable pursuant to Clause 32(B) and Clause 32(C) hereof.

(F) Any indemnity expressly given to the Depositary by the Trust in this Deed shall be in addition to, and without prejudice to, any indemnity to which the Depositary may be entitled at law. The Depositary may extend the benefit of the indemnity provided for in this Clause to any Sub-Custodian, nominee, agent or Securities System appointed or used by it.

(G) Subject and without prejudice to Clauses 32(B) and Clause 32(C) herein, the Depositary shall not be liable for acting on any Proper Instruction, or for any delay by the Managers on behalf of the Trust or its agents or employees in the delivery or non-delivery of such Proper Instruction or any error in its transmission.

(H) The Depositary shall be responsible for the execution of subscription documentation in connection with the purchase of units or shares on behalf of the Trust in collective investment

schemes or limited partnership agreements, deeds of adherence or deeds of assignment in connection with the purchase of limited partnership interests on behalf of the Trust ("investor documentation"). The Depositary shall not be responsible for modifications made to any investor documentation made by the Managers or its delegates. The Depositary or its nominee shall execute such investor documentation pursuant to Proper Instructions solely in its capacity as depositary of the Trust and shall incur no personal liability arising out of any such investment in the relevant collective investment scheme or limited partnership nor any liability for any representation or warranty given by the Depositary on behalf of the Trust to such collective investment scheme or limited partnership pursuant to the provisions of the investor documentation nor any modifications made to any investor documentation made by the Managers on behalf of the Trust or its delegates, other than in circumstances where the Depositary is liable pursuant to Clause 32(B) and Clause 32(C). To the extent that the Managers on behalf of the Trust or its delegates have requested modifications to any investor documentation, the Depositary shall deliver such documentation executed in a form that includes such modifications to the collective investment scheme or limited partnership. If the collective investment scheme or limited partnership objects or questions any requested modification, the Depositary shall refer such objections or questions to the Managers for appropriate resolution, and shall act on the Managers' instructions with respect to any resolution. Furthermore, the Managers on behalf of the Trust shall indemnify the Depositary and its nominee out of the assets of the relevant Portfolio for any loss, damage, claims, costs and expenses that may accrue to the Depositary as a consequence of its execution of any such investor documentation on the Trust's behalf other than in circumstances where the Depositary is or would be liable pursuant to Clause 32(B) and Clause 32(C). Any indemnity provided by the Depositary or its nominees on behalf of the Trust in any investor documentation of a collective investment scheme or limited partnership in which the Trust proposes to invest shall be met out of the assets of the relevant Portfolio and not by the Depositary's or the nominee's own personal assets or any other assets that it holds in custody for other clients.

(I) Where an error or omission has occurred under this Deed, the Depositary may take such remedial action as it considers appropriate under the circumstances (but in the consultation of the Managers or its delegates) and, provided that the affected party is put in the same or equivalent position as it would have been in if the error or omission had not occurred, any consequences of Depositary's remedial action shall be solely for the account of the Depositary, without any duty to report to the affected party any loss assumed or benefit received by it as a result of taking such action.

(J) For the avoidance of doubt it is hereby agreed and declared that references to the Depositary in this Clause shall be deemed to include references to the officers, employees of the Depositary and Sub-Custodians (provided that such Sub-Custodians are appointed in accordance with Clause 33 hereof).

(K) The Depositary's liability shall not be affected by any delegation of its custody functions under Clause 33 of this Deed.

(L) Liability to Holders of the Trust may be invoked directly or indirectly through the Managers of the Trust, depending on the legal nature of the relationship between the Depositary, the Managers of the Trust and Holders provided that this does not lead to a duplication of redress or to unequal treatment of the Holders.

(M) The liability of Depositary pursuant to the UCITS Regulations shall not be excluded or limited by agreement and the parties agree that any agreement that would purport to contravene this shall be void.

(N) In no event shall the Depositary be bound to make any payment to the Managers or any Holder except out of the funds held by it for that purpose under the provisions of this Deed.

(O) The Depositary shall not be under any obligation to appear in, prosecute or defend any action or suit in respect of the provisions hereof or in respect of a Portfolio or any part thereof or any corporate or shareholders' action which in its opinion would or might involve it in expense or liability unless the Managers shall so request in writing.

(P) Subject as herein provided the Depositary shall be entitled, for the purpose of indemnity against any actions, costs, claims, damages, expenses or demands other than where it would be liable pursuant to 32(B) and Clause 32(C) of the Deed (other than those arising out of any liability or obligation to the Holders imposed on the Depositary pursuant to the law of Ireland or this Deed but including those resulting from the Depositary appearing in, prosecuting or defending any action or suit in respect of the provisions hereof or in respect of the Deposited Property or any part thereof or any corporate or shareholders' action) to which it may be put as Depositary, to have recourse to a Portfolio or any part thereof.

(Q) The Depositary shall not be responsible for verifying or checking any valuation of a Portfolio or any part thereof or any calculation of the prices at which Units are to be issued or realised except as herein expressly provided.

#### **DELEGATION BY THE DEPOSITARY**

33. (A) The Depositary shall not delegate to Third Parties its Oversight Services or Cash Flow Monitoring Services. The Depositary may only delegate to third parties all or part of the Custody Services or Asset Verification Services subject to the provisions of this Clause 33, the Delegation Criteria in Schedule G hereto and the UCITS Requirements.

(B) The liability of the Depositary will not be affected by any delegation of Custody Services or Asset Verification Services.

(C) Each party shall notify the other promptly of any person to whom it intends delegating functions (or to whom functions have been sub-delegated) and, promptly upon request, provide the other with such information as it may reasonably request with respect to such delegation (including without limitation the criteria used to select such third party and the steps envisaged to monitor the



activities of such person). The Depositary will make available at all times the details of all of its delegates via the Atlas bulletins available on NT Passport.

(D) A Sub-Custodian to whom all or part of the Custody Services or Asset Verification Services have been delegated under this Clause 33 may, in turn, sub-delegate those functions, subject to same requirements as apply to any delegation by the Depositary namely, the provisions of this Clause 33, the Delegation Criteria in Schedule G hereto and the UCITS Requirements. Pursuant to Article 22(a)(3) of the UCITS Directive, where the law of a third country requires that certain Financial Instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the Depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

- (i) the Holders must be duly informed prior to their investment of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation; and
- (ii) the Managers on behalf of the Trust, must instruct the Depositary to delegate the custody of such Financial Instruments to such local entity.

In providing the instruction referred to in paragraph (ii) above, the Managers on behalf of the Trust confirms that it is solely responsible for ensuring compliance with the requirement in paragraph (i.e. to provide advance notice to Holders of any such delegation).

(E) The Depositary shall notify the Managers when it becomes aware that the segregation of assets is not, or is no longer sufficient to ensure protection from insolvency of a third party, to whom safekeeping duties are delegated in accordance with Article 22a of Directive 2009/65/EC in a specific jurisdiction, in accordance with this Clause. On receipt of such information from the Depositary, the Managers shall immediately notify the Central Bank of such information and shall consider all the appropriate measures in relation to the relevant assets of the Trust including their disposal, taking into account the need to act in the best interests of the Trust and the Unitholders.

(F) For the purposes of this Deed, engaging the services of an operator of a securities settlement system as designated for the purpose of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems or a third-country securities settlement systems (each a "Securities Settlement System") shall not be considered to be a delegation of Custody Services by the Depositary other than where it involves the Investments being provided by the Depositary or a Sub-Custodian to the operator of the Securities Settlement System in order to be held in custody in accordance with Article 22(5) of the UCITS Directive.

## **FORCE MAJEURE AND BUSINESS CONTINUITY**

34. (A) Northern Trust shall not be liable under Clause 32 for any loss (other than a loss of Financial Instruments held in custody) or for any failure to fulfil its duties hereunder if such loss or failure shall be caused by or directly or indirectly due to a Force Majeure Event.

(B) As soon as possible after the commencement of the Force Majeure Event, (save where Northern Trust has already advised the Managers through the Escalation Procedures of that Force Majeure Event, as applicable and of the matters set out in this Clause 34) Northern Trust shall notify the Managers in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Agreement.

(C) If Northern Trust is prevented, hindered or delayed from or in performing any of its obligations under this Deed by a Force Majeure Event then:-

- (1) its obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent Northern Trust is so prevented, hindered or delayed;
- (2) as soon as possible after the cessation of the Force Majeure Event, Northern Trust shall notify the Company in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement; and
- (3) Northern Trust will use its reasonable efforts to minimise the effect of any Force Majeure event.

(D) Northern Trust shall establish, implement and maintain a business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities. Northern Trust confirms that it periodically tests its business continuity procedures and maintains a log of all business continuity events and shall make an annual presentation to the Company thereon. In the event that a business continuity event occurs that causes or, in the reasonable opinion of Northern Trust, is likely to cause a material disruption to its provision of services, Northern Trust shall advise the Company as soon as practicable of such event and the steps proposed to deal with any such interruption.

For the avoidance of doubt it is hereby agreed and declared that references to Northern Trust in this Clause shall be deemed to include references to the delegates of Northern Trust.

## **CONCERNING THE MANAGERS**

35. (A) The Managers on behalf of the Trust shall:-

- (1) provide the Depositary with copies of this Deed and the Prospectus and any other document relevant to the Depositary Services (where such document is reasonably requested by the Depositary); and
  - (2) provide the Depositary with reasonable notice of:-
    - (i) any proposed amendment to this Deed and the Prospectus or any other document relevant to the Depositary Services provided to the Depositary in accordance with this Clause on the provision of relevant documents;
    - (ii) any change to the Directors of the Managers;
    - (iii) any change to the Investment Manager;
    - (iv) any change to the Auditors;
    - (v) changes to fees or charges which are to be paid out of the assets of each Portfolio where such changes require the approval of the Holders;
    - (vi) termination of a Class or Portfolio; and
    - (vii) any matter that would reasonably be considered material in connection with the performance by the Depositary of its duties hereunder,
  - (3) and, where Depositary's rights or duties are materially affected, obtain the Depositary's prior written consent to any such amendments or matter referred to at (i) or (vii) above with such consent not to be unreasonably withheld or delayed;
  - (4) provide the Depositary with a current copy of the Prospectus or other document, as applicable, as soon as reasonably practicable following such change; and
  - (5) notify the Depositary as soon as reasonably practicable following (and shall endeavour where reasonably practicable to provide such notice in advance of) the suspension of the issue, cancellation, sale and redemption of Shares.
- (B) The Managers shall:
- (1) deliver, or procure the delivery of, all sums representing the subscription monies for Units to the account of the relevant Portfolio;
  - (2) deliver to the Depositary any management letter prepared by the Auditors;
  - (3) provide the Depositary (or procure the provision of) such access to the papers, records, books and premises and all other information The Depositary may reasonably require to ensure it has the ability to enquire into the conduct of the

Managers and to assess the quality of information transmitted to it by or on behalf of the Managers by way of having access to the books of the Trust and, as the case may be, or the Managers, or by way of on-site visits.

- (4) provide the Depositary with copies of notices of and resolutions passed at general meetings and class meetings of the Portfolio; and
- (5) notify the Depositary promptly upon becoming aware of any actual or potential breach of the Prospectus or Trust Deed or any other documents relevant to the Depositary Services.

(D) The information to be provided by the Managers under this Clause 35 shall include at least the items specified in Part 1 of Schedule D in accordance with the procedures set out in Part 3 of Schedule E and the Managers shall make available to the Central Bank upon request, all information which it has obtained in performing its duties hereunder and that may be necessary for the Central Bank.

(E) The Managers hereby undertakes to transfer to the Depositary forthwith on receipt all sums (if any, less any initial charge(s) payable to the Managers or their delegate or any distributor in respect thereof) received by it representing subscription application monies for Units and cash and all payments of income, principal or capital distributions received by it in relation to all Investments owned by the Trust from time to time. The Managers have provided the Depositary details of all Third Party Cash Accounts as at the Effective Date. The Managers acting on behalf of the Trust shall give the Depositary reasonable prior notice in writing of any new or further Third Party Cash Accounts, and shall procure that any persons with whom they are held provide the Depositary with such information as it may reasonably require in respect of those Third Party Cash Accounts. The procedures for notifying the Depositary of any additional Third Party Cash Accounts to be opened on behalf of the Trust or the Managers acting on behalf of the Trust in respect of each of Funds is set out in Schedule E.

(F) The Managers shall ensure that any reuse of the Investments shall be in accordance with Article 22(7) of the UCITS Directive and the UCITS Requirements.

(G) The Managers on behalf of the Trust agrees that it will not cause cash to be required to be maintained in any market in which a cash account meeting the requirements outlined in Clause 31(E)-(J) cannot be established.

(H) It shall be the duty of the Managers to prepare all cheques, warrants, statements and notices which the Depositary has to issue, send or serve as hereby provided, to stamp the same as necessary and, where authorised by the Depositary, to sign the same on behalf of the Depositary and to despatch them on the proper day or, otherwise, to deposit the same (with the necessary stamped addressed envelopes) with the Depositary so as to afford the Depositary ample time to examine and sign the same and despatch them on the proper day. It shall also be the duty of the Managers to prepare all Certificates required to be issued and to deposit the same with the Depositary for

signature.

(I) In the absence of fraud or negligence by the Managers they shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done by them in good faith under the provisions of this Deed.

(J) The Managers shall not be under any liability except such liability as may be expressly assumed by them under this Deed nor shall the Managers (save as herein otherwise expressly provided) be liable for any act or omission of the Depositary.

(K) The Managers shall keep or cause to be kept at their specified office proper books of account and records in accordance with the UCITS Regulations in which shall be entered all transactions effected by the Managers for account of the Trust and shall permit the Depositary from time to time on demand to examine at reasonable hours and take copies of or extracts from any such books. The Managers shall also keep or cause to be kept at their specified office proper books of account and records of the Managers in relation to the Trust so as to enable the accounts referred to in Clause 32 hereof to be prepared.

(L) The Managers shall not be held liable for and shall be indemnified and held harmless from any actions, proceedings, claims, costs, demands, charges, losses, damages or expenses suffered or incurred on behalf of the Trust or of any of its Portfolios, a Unitholder or the Depositary or any other person, as a result of the performance or non-performance by the Managers of its obligations including, without limitation, any error of judgement or for any loss suffered by any person as a result of the acquisition, holding or disposal of any Investment, unless the same arises as a result of the Managers' negligence, fraud, bad faith or wilful default in the performance of its obligations.

(M) The Managers may, with the prior written approval of the Depositary, appoint such person or persons at such places as the Managers may deem fit to act as investment managers, investment advisers or as an Administrator or otherwise as agents of the Managers for such purposes in relation to the investment of the Deposited Property or any Portfolio and/or the administration of the Trust by the Managers as the Managers may determine. The Managers may, and shall at the request of the Depositary, revoke any such appointment. In the absence of negligence, fraud, bad faith or wilful default of the Managers in the selection and appointment of delegates, the Managers shall not be held liable for and shall be indemnified and held harmless from and against any actions, proceedings, claims, costs, demands, charges, losses, damages or expenses howsoever arising as a result of the acts or omissions of its delegates or, where applicable, for its own acts or omissions in bona fide following the advice or recommendations of its delegates including without limitation any investment manager or investment adviser or delegate of an investment manager or adviser. The remuneration of any investment manager, Administrator or other agent so appointed shall be the responsibility of the Managers and (subject to Clause 27(C) hereof) no part thereof shall be borne by any Portfolio.

(N) In any agreement appointing an investment manager, investment adviser or other

delegate, the Managers (as agent of the Depositary on behalf of the Trust and its Portfolios) shall be entitled to extend the indemnity contained in Clause 34 (E) to any investment manager, investment advisor or other delegate as if reference to the "Managers" were references to the investment manager or other delegate.

### **ANNUAL ACCOUNTS**

36. (A) The Managers shall procure to be forwarded to Holders and to the Central Bank not more than four months, after the end of each Accounting Period accounts in respect of such Accounting Period in accordance with the UCITS Regulations and in such form as the Depositary and Managers shall from time to time decide and containing such further information as the Central Bank and the Commission may from time to time require or as may be necessary to ensure that the Trust does not cease to be authorised pursuant to the UCITS Regulations or the Securities and Futures Ordinance of Hong Kong. Such accounts shall include, or have annexed thereto, a statement showing, as at the relevant Accounting Date, the Value of each Investment or other asset forming part of each Portfolio and the amount of each Portfolio represented by cash.

(B) Such accounts shall be audited by the Auditors and shall be accompanied by a certificate of the Auditors to the effect that the accounts and statements attached thereto have been examined with the books and records of the Trust and of the Managers in relation thereto and that the Auditors have obtained all the explanations and information they have required. The Auditors shall further report whether the accounts are in their opinion properly drawn up in accordance with such books and records to disclose the profits or losses accruing to the Managers from the Trust.

(C) The Depositary shall issue to the Holders a report to be included in any report accompanying the accounts as to whether in the opinion of the Depositary, the Managers have managed the Trust in accordance with the provisions of this Deed during the relevant Accounting Period and, if relevant, the respects in which the Managers have not done so and the steps the Depositary has taken in respect thereof.

(D) In the event of the Managers determining, pursuant to the relevant provision of Clause 1(A)(1) hereof, an Accounting Date and/or an Annual Distribution Date and/or an Interim Distribution Date, the Managers shall within 21 days thereafter give notice in writing of such determination to Holders.

### **INTERIM REPORTS**

37. The Managers shall procure to be forwarded to Holders and to the Central Bank not more than two months after each six month period after an Accounting Date an unaudited report in respect of such six month period, such unaudited report to be in accordance with the UCITS Regulations and in such form and with such information as the Depositary and the Managers shall from time to time decide and containing such further information as the Central Bank may from time to time require. Each such report shall include, or have annexed thereto, a statement showing, as at the end of the relevant six month period, the Value of each Investment or other asset forming part of each Portfolio

and the amount of each Portfolio represented by cash.

### **AUDITORS**

38. The Managers, with the prior written approval of the Depositary, shall from time to time appoint the Auditors of the Trust and the Managers may from time to time, with prior written approval of the Depositary, and shall, if the Depositary shall withdraw an approval previously given, remove any Auditors and, with the prior written approval of the Depositary, appoint in his or their stead another person or persons. Any such Auditors so appointed shall be independent of the Depositary and the Managers.

### **RETIREMENT AND REMOVAL OF DEPOSITARY**

39. (A) The Depositary shall not be entitled to retire voluntarily except upon the appointment of a new depositary of the Trust. In the event of the Depositary desiring to retire the Depositary shall find a new depositary which is a qualified corporation to act as depositary of the Trust and provided that such new depositary is acceptable to the Central Bank and the Managers and is approved by an Extraordinary Resolution the Managers shall by deed supplemental hereto appoint such new depositary to be the Depositary in place of the retiring Depositary. The Depositary shall as soon as practicable thereafter give notice to the Holders specifying the name and the address of the office of the new Depositary.

(B) Notwithstanding sub-clause (A) of this Clause, the Depositary may at any time with the prior approval of the Central Bank and the Managers retire in favour of an associated company of the Depositary.

### **REMOVAL OR RETIREMENT OF MANAGERS**

40. (A) The Managers shall be subject to removal by notice in writing given by the Depositary in any of the following events:-

1. if the Managers go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Depositary) or if a receiver is appointed over any of their assets; or
2. if for good and sufficient reasons the Depositary is of opinion and so states in writing to the Managers that a change of Managers is desirable in the interests of the Holders; or
3. if the Holders of at least 50 per cent in value of the Units for the time being outstanding deliver to the Depositary a request in writing that the Managers should retire PROVIDED THAT for this purpose Units held or deemed to be held by the Managers shall not be regarded as being outstanding.

In any of such cases the Managers shall upon notice by the Depositary as aforesaid (but subject as in

paragraph (2) of this sub-clause (A) provided) ipso facto cease to be the Managers and as soon as possible thereafter the Depositary shall by writing under its seal appoint as Managers some other qualified corporation approved by the Central Bank upon and subject to such corporation entering into such deed or deed as the Depositary may be advised to be necessary or desirable to be entered into by such corporation in order to secure the due performance of its duties as Managers, which deed shall provide that the Managers to be appointed thereunder shall purchase from the retiring Managers at the Realisation Price all Units of which they are the Holder or deemed to be the Holder; but this provision shall not prejudice the right of the Depositary herein contained to terminate the Trust in any of the events in which in accordance with the provisions herein contained the right of terminating the Trust is vested in the Depositary.

(B) The Managers shall have power to retire in favour of some other qualified corporation approved by the Central Bank and the Depositary upon and subject to such corporation entering into such deed or deeds as are mentioned in sub-clause (A) of this Clause 40. Upon such deed or deeds being entered into and upon payment to the Depositary of all sums due by the retiring Managers to the Depositary under this Deed at the date thereof the retiring Managers shall be absolved and released from all further obligations hereunder but without prejudice to the rights of any Holder, former Holder or other person in respect of any act or omission prior to such retirement.

(C) On the appointment of new Managers, unless Baring International Fund Managers (Ireland) Limited otherwise agrees by confirmation in writing delivered to the Depositary, the new Managers and/or the Depositary shall change the name of the Trust to a name not including the word "Baring".

(D) In this Clause 40 hereof the expression "qualified corporation" means a corporation acceptable to the Commission in relation to a unit trust authorised pursuant to the Securities and Futures Ordinance of Hong Kong.

(E) The Depositary shall, as soon as practicable after the appointment of new Managers pursuant to the provisions of sub-clause (A) or (B) of this Clause 40 give notice to the Holders specifying the name and address of the registered office of the new Managers.

#### **ADVERTISEMENTS**

41. (A) No advertisement, announcement, circular or other document of that nature (including, without limitation, any explanatory memorandum or other printed document, any form of the application for the subscription or purchase of Units or any statement, report or accounts prepared pursuant to the terms of this Deed but excluding any announcement referred to in sub-clause (B) of this Clause 37) containing information relating to the Trust shall be issued to any person (including a Holder) without the prior written approval of the Depositary.

(B) The Managers may issue any announcement relating only to the Net Asset Value and/or Issue Price and/or the Realisation Price of a Unit and/or the yield from Units PROVIDED THAT the Depositary has had a reasonable opportunity of considering the terms of the announcement and



no such announcement shall be so issued without the approval of the Depositary or unless within seven days after the announcement first comes under the Depositary's consideration the Depositary has not notified its disapproval of the terms thereof in writing to the Managers.

(C) In all letters, circulars, advertisements or other publications referring to the issue or sale of Units reference shall only be made to the Depositary in terms previously approved by the Depositary.

#### **METHODS OF TERMINATION**

42. (A) The Trust may be terminated by the Depositary by notice in writing as hereinafter provided in any of the following events, namely:

1. if the Managers shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Depositary) or if a receiver is appointed over any of their assets; or
2. if in the opinion of the Depositary the Managers shall be incapable of performing or shall in fact fail to perform their duties satisfactorily or shall do any other thing which in the opinion of the Depositary is calculated to bring the Trust into disrepute or to be harmful to the interest of the Holders; or
3. if the Trust shall cease to be authorised or otherwise officially approved pursuant to the UCITS Regulations or if any law shall be passed which renders it illegal or in the opinion of the Depositary impracticable or inadvisable to continue the Trust.

Subject as mentioned in paragraph (2) of this sub-clause (A) the decision of the Depositary in any of the events specified in this sub-clause (A) shall be final and binding upon all the parties concerned but the Depositary shall be under no liability on account of any failure to terminate the Trust pursuant to this Clause 42 or otherwise. Subject as aforesaid, the Managers shall accept the decision of the Depositary and relieve the Depositary of any liability to the Managers therefor and hold the Depositary harmless from any claims whatsoever on the part of the Managers for damages or for any other relief.

(B) The Trust may be terminated by the Managers in their absolute discretion by notice in writing as hereinafter provided:-

1. one year from the date hereof or any date thereafter if on such date the aggregate Net Asset Value of the Deposited Property shall be less than US\$20,000,000 or its equivalent; or
2. if any law shall be passed which renders it illegal or in the opinion of the Managers impracticable or inadvisable to continue the Trust.

(C) Any Portfolio may be terminated by the Managers in its absolute discretion by notice in writing to the Holders of Units of the class to which that Portfolio relates as hereinafter provided if

one year from the date hereof or from the date of the first issue of Units of that class or any date thereafter the Net Asset Value of that Portfolio shall be less than US\$20,000,000 or its equivalent.

(D) The party terminating the Trust or any Portfolio shall give notice thereof to the Holders in the manner herein provided and by such notice fix the date at which such termination is to take effect which date shall not be less than six weeks after the service of such notice.

(E) The Trust or any Portfolio may at any time after the date hereof be terminated by Extraordinary Resolution of a meeting of the appropriate Holders and such termination shall take effect from the date on which such Extraordinary Resolution is passed or such later date (if any) as such Extraordinary Resolution may provide.

### **PROCEDURE UPON TERMINATION**

43. Upon the Trust or any Portfolio being terminated the Depositary shall proceed as follows:-

(A) the Depositary shall sell all Investments then remaining in its hands as part of the Deposited Property or of the relevant Portfolio whichever is the case and such sale shall be carried out and completed in such manner and within such period after the termination of the Trust as the Depositary thinks advisable; and

(B) the Depositary shall from time to time distribute to the relevant Holders in proportion to their respective interests in the relevant Portfolio all net cash proceeds derived from the realisation of that Portfolio and available for the purposes of such distribution PROVIDED THAT the Depositary shall not be bound (except in the case of final distribution) to distribute any of the moneys for the time being in its hands the amount of which is insufficient to pay the equivalent of \$1.00 in respect of each Unit and PROVIDED ALSO THAT the Depositary shall be entitled to retain out of any moneys in its hands as part of the Deposited Property or the relevant Portfolio full provision for all costs, charges, expenses, claims and demands. Every such distribution shall be made only against production of the Certificates (if issued) relating to the Units in respect of which the same is made and upon delivery to the Depositary of such form of request for payment as the Depositary shall in its absolute discretion require. All Certificates shall in the case of an interim distribution be encased by the Depositary with a memorandum of the payments made and in the case of the final distribution shall be surrendered to the Depositary. Any unclaimed proceeds or other cash held by the Depositary under the provisions of this Clause 39 may at the expiration of 12 months from the date on which the same were payable be paid into Court subject to the right of the Depositary to deduct therefrom any expenses it may incur in making such payment.

### **UNTRACED UNITHOLDERS**

44. The Managers shall be entitled to (1) realise any Unit of a Unitholder or any share to which a person is entitled by transmission (2) to forfeit any dividend which is declared and remains unpaid or any cheque payment which remains unclaimed for a period of six years if and provided that:-

(A) for a period of six years no cheque, Unit certificate or confirmation of ownership of Units sent by the Managers through the post in a pre-paid letter addressed to the Unitholder or to the person entitled by transmission to the Unit at his address on the Register or the last known address given by the Unitholder or the person entitled by transmission to which cheques, Unit certificates or confirmations of the ownership of Units are to be sent, has been cashed or acknowledged and no communication has been received by the Managers from the Unitholder or the persons entitled by transmission;

- i. at the expiration of the said period of six years by notice sent by pre-paid letter addressed to the Unitholder or to the person entitled by transmission to the Unit at his address on the Register or to the last known address given by the Unitholder or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in which the Unitholder is located the Managers has given notice of its intention to realise such Unit;
- ii. during the period of three months after the date of the advertisement and prior to the exercise of the power of realise the Managers has not received any communication from the Unitholder or person entitled by transmission; and
- iii. if the Units are quoted on a stock exchange the Managers has first given notice in writing to the appropriate section of such stock exchange of its intention to realise such Unit, if it is required to do so under the rules of such stock exchange.

(B) The proceeds of such realisation shall form part of the assets of the Trust and neither the Managers nor the Depositary shall be deemed to be considered a depositary in respect thereof for any Unitholder or any other person. In respect of unclaimed cheque payments, the Managers shall be entitled to make such payments to charity or dispose of such payments with the consent of the Depositary.

## NOTICES

45. (A) Any notice or other document required to be served upon or sent to a Holder shall be given in the case of Holders entered on the Register if sent by pre-paid post, telex or by transmitting the same by fax or other means of electronic communication to a fax number, e-mail address or other electronic identification provided to the Managers or their delegates or left at the Holder's address as appearing on the Register (and in the case of joint Holders if so sent to or left at the address of the first named Holder on the Register) or if issued or published in such manner as the Managers shall determine subject to the approval of the Depositary or by such other means as the Managers may determine and notify in advance to Holders. Any notice sent by post as provided in this Clause shall be deemed to have been duly given 2 days after posting and any notice sent by facsimile or by telex or left as stated in this Clause shall be deemed to have been duly given on receipt of a positive transmission receipt, on receipt of an answerback or on the Business Day on which it was so left, only if the notice has been left during usual business hours on such Business Day, and if the notice is left outside usual business hours, it shall be deemed to have been left on the next following Business

Day. Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting. Any notice sent by electronic communication shall be deemed to have been duly given when it has been transmitted to the electronic information system designated by the Holder for the purpose of receiving electronic communications and otherwise as determined by the Manager and notified in advance to Holders and in the case of joint Holders shall be deemed duly given if so done upon or to the first named on the Register. Any notice issued or published shall be deemed to have been duly given on the date of such notice's first issue or publication.

(B) Service of a notice on or delivery of a document to any one of several joint Holders shall be deemed effective service on or delivery to the other joint Holders.

(C) Any notice or document sent to a Holder in pursuance of this Deed shall notwithstanding that such Holder be then dead or bankrupt and whether or not the Depositary or the Managers have notice of his death or bankruptcy be deemed to have been duly served and such service shall be deemed a sufficient service on all persons interested (whether jointly with or as claiming through or under him) in the Units concerned.

(D) All documents sent by post shall be sent at the risk of the person entitled thereto.

(E) Any notice or other communication to be given to the Managers or the Depositary shall be sent to it at its specified office for the time being and the provision of sub-clause 41(A) shall apply.

#### **MODIFICATION OF TRUST DEED**

46. (A) The Depositary and the Managers shall subject to the prior approval of the Central Bank be entitled by deed supplemental hereto to modify, alter or add to the provisions of this Deed in such manner and to such extent as they may consider expedient for any purpose PROVIDED THAT, unless the Depositary shall certify in writing that in its opinion such modification, alteration or addition either:-

1. does not materially prejudice the interests of the Holders, does not operate to release to any material extent the Depositary or the Managers or any other person from any responsibility to the Holders and will not result in any increase in the amount of costs and charges payable from the Deposited Property; or
2. is necessary in order to make possible compliance with any fiscal statutory or official requirement (whether or not having the force of law); or
3. is solely for the purpose of enabling Units to be issued in bearer form,

no such modification, alteration or addition shall be made without the sanction of an Extraordinary Resolution and PROVIDED ALSO THAT no such modification, alteration or addition shall impose upon any Holder any obligation to make any further payment in respect of his Units or to accept liability in respect thereof.

(B) The Depositary shall, as soon as practicable after any modification or alteration of or addition to the provisions of this Deed in respect of which the Depositary shall have certified in accordance with the provisions of paragraph (1), (2) or (3) of the first proviso to sub-clause (A) of this Clause 39, give notice of such modification, alteration or addition to the Holders except where, in the opinion of the Depositary, such modification, alteration or addition is not of material consequence to the Holders or was made to correct a manifest error.

(C) In the event of any such modification alteration or addition as aforesaid in the provisions of this Deed, the Managers shall, within 21 days of the execution of such supplemental deed, deposit with the Central Bank a copy of this Deed as so modified altered or added to, or containing the said modifications alterations or additions.

#### **MEETINGS OF HOLDERS**

47. The provisions set out in Schedule B hereto shall have effect as if the same were included herein.

#### **COVENANTS OF MANAGERS AND DEPOSITARY**

48. (A) The Managers and Depositary mutually covenant that at all times during the continuance of the Trust, the Trust will be carried on in compliance with the provisions of the UCITS Regulations and the UCITS Requirements and any conditions set out in this Deed for the time being in force hereunder.

(B) The provision of this Deed shall be binding on the Depositary, the Managers and the Holders and all persons claiming through them respectively as if such Holders and persons had been party to these presents.

#### **CONFIDENTIALITY**

49. (A) Neither of the parties to this Trust Deed shall (except to such an extent as may be agreed between the parties or as may be required by law or regulation, any stock exchange or regulatory or self-regulatory organisation or Securities System or any order or decree of any court or administrative body to which (i) the disclosing party; or (ii) any Affiliate or (iii) any sub custodian or (iv) a Securities System or (v) the terms of the organisational documents of the issuer of any security or (vi) the terms of issue of any security itself, is subject) either before or after the termination of this Agreement disclose to any person not authorised by the other party to receive the same any Confidential Information relating to such other party or to the affairs of such party of which the party disclosing the same shall have become possessed during the term of this Trust Deed and each party shall use all reasonable endeavours to prevent any such disclosure by its officers, employees or agents. Furthermore, the provisions of this Clause shall not apply to:

- (1) disclosures to relevant employees, servants, and agents;

- (2) disclosures to Holders and to the Auditors;
- (3) any information in the public domain otherwise than by breach of this Trust Deed;
- (4) information in the possession of the receiving party thereof before divulgence as aforesaid;
- (5) information required to be disclosed by a court of competent jurisdiction or regulatory authority in accordance with whose requirements the relevant party is obliged or accustomed to act;
- (6) any information provided to their respective professional advisers in relation to the Trust or its administration; or
- (7) any information provided to an Affiliate of either party in relation to the Trust or its Investments.

Notwithstanding any other provision herein, the Depositary may disclose and share any information with the duly appointed Administrator to the Trust.

(B) Neither party shall knowingly do or suffer any act or matter or thing which would or might reasonably be expected to prejudice materially or bring into disrepute the business or reputation of the other party.

The provisions of this Clause 49 shall not impair the ability of the Central Bank to have access to the relevant documents and information.

#### **APPLICABLE LAW**

50. The Trust shall be subject to and governed by the law of Ireland and this Deed shall (subject as aforesaid) be construed according to the law of Ireland.

#### **AMALGAMATION**

51. (A) The Managers and the Depositary shall have the power to propose and implement a scheme of amalgamation of the Trust or any Portfolio or Portfolios in the Trust on such terms and conditions as are approved by the Managers and the Depositary and subject to the following conditions namely:-

- (1) that it be in accordance with the requirements of the Central Bank; and
- (2) that the Holders in the Trust or the relevant Portfolio or Portfolios shall have been circulated with particulars of the scheme of amalgamation in a form approved by the Managers and the Depositary and an Extraordinary Resolution(s) of the Holders of

Units in the Trust or the relevant Portfolio or Portfolios has or have been passed approving the said scheme.

(B) The scheme of amalgamation shall take effect upon such conditions being satisfied or upon such later date as the scheme may provide or as the Managers may determine, whereupon the terms of such scheme shall be binding upon all the Holders and the Managers shall have the power to and shall do all such acts and things as may be necessary for the implementation thereof.

IN WITNESS whereof this Deed has been entered into the day and year first above written.

## SCHEDULE A

above referred to

### VALUATION RULES

1. The Net Asset Value per Unit of each class and the Issue Price and Realisation Price of Units of each class as at each Dealing Day shall be calculated by the Managers as at the relevant Valuation Point in accordance with the following Rules.
2. The Net Asset Value of each Portfolio shall be calculated in the currency of account referred to in clause 11(B)(1) by valuing the assets of the Portfolio and deducting the liabilities of the relevant Portfolio. The resultant sum shall be divided by the number of Units of the relevant class in issue at the relevant Valuation Point and the resultant amounts shall be the Net Asset Value of a Unit of the relevant class.

Where sub-classes are in issue, the Net Asset Value of each Portfolio calculated as above shall be allocated between each sub-class in accordance with the respective values in the currency of account of the Portfolio of the subscriptions and redemptions of Units of each sub-class received or made from time to time. The portion of the Net Asset Value of each Portfolio allocated to each sub-class shall be then be divided by the number of Units of the relevant sub-class in issue on the relevant Dealing Day, and the resultant amount shall be the Net Asset Value of a Unit of the relevant sub-class. Rule 3 shall then apply to the calculation of Issue and Realisation prices of each sub-class as if such sub-class were classes as referred to in rule 3.

3. (A) With the exception of the initial issue of Units of any class, the Issue Price of Units of a particular class as at each Dealing day shall be the amount equal to the Net Asset Value (calculated at the relevant Valuation Point as provided in this Schedule) of one Unit plus at the discretion of the Managers a charge determined by the Managers and not exceeding one per cent of such Net Asset Value (in respect of fiscal and purchase charges which would have been incurred on the assumption that all the Investments held in the relevant Portfolio at the relevant Valuation Point had been purchased at the Valuation Point). Where the resultant total is not a whole multiple of the smallest unit of currency in the currency of account of the relevant Portfolio such amount shall be rounded to such number of decimal places as the manager in their discretion may determine.
- (B) The Realisation Price of Units of any class as at each Dealing Day shall be the amount equal to the Net Asset Value (calculated at the relevant Valuation Point as provided in this Schedule) of one Unit less at the discretion of the Managers a charge determined by the Managers and not exceeding one per cent of such Net Asset Value (in respect of fiscal and sale charges which would have been incurred on the



assumption that all Investments held in the relevant Portfolio at the relevant Valuation Point had been sold at the Valuation Point). Where the resultant total is not a whole multiple of the smallest unit of currency in the currency of account of the relevant Portfolio such amount shall be rounded to such number of decimal places as the Managers in their discretion may determine.

4. Where payments received by the Managers in respect of the issue of Units are not an exact multiple of the Issue Price a fraction of a Unit shall be allotted to the incoming Holder who shall be registered as the Holder of such fraction provided that any holding of Units is a multiple of 1/1,000 part of a Unit.
5. (A) The Value of the assets comprised in each Portfolio shall be determined as follows:
  - (i) Quoted investments are valued at their last traded price (or, if no last traded price is available, at mid-market prices);
  - (ii) Unquoted investments are valued on the probable realisable value estimated with care and in good faith by the Managers or a competent person, firm or corporation selected by the Managers and approved by the Depositary;
  - (iii) Cash deposits and similar investments shall normally be valued at face value (together with accrued interest);
  - (iv) Certificates of deposit shall be valued by reference to the best bid price for certificates of deposit of like maturity, amount and credit risk on the relevant Dealing Day and treasury bills and bills of exchange shall be valued with reference to prices ruling in the appropriate markets for such instruments of like maturity, amount and credit risk on the relevant Dealing Day.;
  - (v) Collective investment schemes are valued, where appropriate, on the basis of the last published net assets per share, or the last published bid price per share excluding any preliminary charges. Interest and other income and liabilities are, where practicable, accrued from day-to-day;
  - (vi) Forward foreign exchange contracts shall be valued with reference to the prevailing market maker quotation, namely, the price at which a new forward contract of the same size and maturity could be undertaken or, if unavailable, at the settlement price as provided by the counterparty;
  - (vii) Derivatives traded on a regulated market shall be valued at the settlement price as determined by the market. If the settlement price is not available, the value shall be the probable realisation value estimated with care and in good faith by the Managers or a competent person, firm or corporation (including the Investment Manager) selected by the Managers and approved by the

Depository. OTC derivative contracts will be valued daily either (i) on the basis of a quotation provided by the relevant counterparty and such valuation shall be approved or verified at least weekly by a party who is approved for the purpose by the Depository and who is independent of the counterparty (the "Counterparty Valuation"); or (ii) using an alternative valuation provided by a competent person appointed by the Managers or the Managers and approved for the purpose by the Depository (the "Alternative Valuation"). Where such Alternative Valuation method is used the Managers will follow international best practice and adhere to the principles on valuation of OTC instruments established by bodies such as IOSCO and AIMA and will be reconciled to the Counterparty Valuation on a monthly basis. Where significant differences arise these will be promptly investigated and explained.

- (viii) Notwithstanding any of the foregoing sub-paragraphs, the Managers may with the approval of the Depository (i) value the assets at lowest market dealing bid prices where on any Dealing Day, the value of all realisation requests received exceeds the value of all applications for Units or (ii) at highest market dealing offer prices where on any Dealing Day the value of all applications for Units received for that Dealing Day exceeds the value of all realisation requests received on that Dealing Day, provided that in each case, the valuation policy by the Managers shall be applied consistently through the various categories of assets and will be applied consistently (with effect from the date of this Amended and Restated Trust Deed) through the lifetime of the Unit Trust or each Fund, for as long as the Unit Trust or each Fund is operated on a going concern basis. The calculation of such prices shall take into account any provision for market spreads, duties and charges and other dealing costs related to the adjustment or disposal of investments and to preserve the value of the underlying assets of the relevant Portfolio.

(B) Notwithstanding the foregoing provisions, the Managers may with the consent of the Depository adjust the Value of any Investment or other property if, having regard to currency, applicable rate of interest, maturity, marketability and/or such other considerations as they may deem relevant, they consider that such adjustment is required to reflect the fair Value thereof. Fair value pricing may be used by the Managers to adjust the Value of any Investment. Fair value pricing (FVP) may be defined as the application of the Managers' best estimate of the amount a Portfolio might receive on a sale, or expect to pay on a purchase, of one or more Investments, at the Valuation Point in respect of a Portfolio, with the intention of producing a fairer dealing price, and with the objective of acting in the best interests of Unitholders. The Managers may at their discretion apply FVP in respect of Investments in circumstances including but not limited to the following: (i) where market conditions may be such that the last applicable real time quoted price of an Investment or the Valuation Point does not capture the best reflection of the buying and selling price of an Investment; (ii) where market quotations are deemed by the Managers in their opinion, to be unreliable; (iii) where Investments have been suspended for trading on a particular market; (iv) where the prices of Investments have

been affected by significant events or financial irregularities; or in the event of a market on which Investments are listed or traded remains closed.

(C) Where any investment or any options do not fall to be valued in accordance with any of the foregoing paragraphs they shall be valued by such method available to the Managers as they with the consent of the Depositary shall determine.

6. In calculating the Net Asset Value of each Portfolio:-

(A) every Unit agreed to be issued by the Managers prior to the date as at which the valuation is made and not subsequently cancelled shall (subject to the provisions of Clause 13(L)) be deemed to be in issue and the relevant Portfolio shall (subject as aforesaid) be deemed to include not only cash and any other property in the hands of the Depositary but also the Value of any cash or other property to be received in respect of Units agreed to be issued prior to the date as at which the valuation is made after deducting therefrom or providing thereout the Preliminary Charge (if any) and any additional amount charged by the Managers pursuant to the provisions of Clause 13(F) provided that the relevant Portfolio shall not include the Issue Price or (as the case may be) the Fixed Price of Units to be issued on the date as at which the valuation is made.

(B) where, in consequence of any notice or request in writing given pursuant to Clause 16 or 17 hereof, a reduction of the Trust by the cancellation of Units has been effected but payment in respect of such reduction has not been completed, the Units in question shall be deemed not to be in issue and the Realisation Price thereof shall be deducted. No deduction shall be made in respect of Units to be cancelled on the date as at which the valuation is made.

(C) where Investments have been agreed to be purchased or otherwise acquired or sold but such purchase, acquisition or sale has not been completed, such Investments shall be included or excluded and the gross purchase or acquisition or net sale consideration excluded or included (as the case may be) as if such purchase, acquisition or sale had been duly completed;

(D) there shall be included in the assets an amount equal to the appropriate portion of the expenses incurred in establishing the Trust and the initial issue of Units in the relevant Portfolio and referred to in Clause 18(G)(7) hereof less the amount thereof which has been amortised as at the immediately preceding Accounting Date and less a further amount (calculated on a straight-line basis during the then current Accounting Period) on account of the amortization of such expenses to be effected as at the end of the then current Accounting Period;

(E) the liabilities attributable to each Portfolio shall include (without limitation):-

- (i) any amount of Management Fee, Administration Fee and Depositary Fee accrued but remaining unpaid;
- (ii) the amount of tax (if any) on capital gains accrued up to the end of the immediately preceding Accounting Period remaining unpaid;

- (iii) the aggregate amount for the time being outstanding of any borrowing effected under Clause 20(C) hereof and the amount of any interest and expenses accrued pursuant to Clause 20(C)(5) hereof but not paid;
- (iv) any other costs or expenses payable but not paid which are expressly authorised by the terms of this Deed to be paid out of the Deposited Property; and
- (v) an appropriate allowance for any contingent liabilities;

(F) there shall be taken into account such sum (if any) as in the estimate of the Managers will fall to be paid or reclaimed in respect of taxation related to income and transactions down to the date as at which the valuation is made;

(G) any Value (whether of a liability or of an Investment, cash or other property) otherwise than in the currency of account of the relevant Portfolio and any borrowing not in such currency shall be converted into such currency of account (whether official or otherwise) which the Managers shall deem appropriate in the circumstances having regard to the premium or discount which may be relevant and to costs of exchange;

(H) where the current price of an Investment is quoted "ex" any dividend (including stock dividend), interest or other rights to which the relevant Portfolio is entitled but such dividend, interest or the property to which such rights relate has not been received and is not taken into account under any other provisions of this definition, the amount of such dividend, interest, property or cash shall be taken into account;

(I) liabilities shall (where appropriate) be treated as accruing from day to day;

(J) where hedging strategies are used in relation to a sub-class of Units while the financial instruments used to implement such strategies shall be deemed to be assets or liabilities of the class as a whole the assets or liabilities together with gains/losses on and costs of the relevant financial instruments will accrue solely to the relevant sub-class of Unit;

(K) the Net Asset Value per sub-class of Unit will be adjusted to reflect the expenses, liabilities or assets attributable to such sub-class of Unit (including the gains/losses on the costs of the financial instruments employed for currency hedging transactions between the base currency and a designated currency).

## **SCHEDULE B**

above referred to

### **MEETINGS OF HOLDERS**

1. The Depositary or the Managers may (and the Managers shall at the request in writing of Holders holding Units representing not less than one-tenth in value of the Units in issue) at any time convene a meeting of Holders at such time and place (subject as hereinafter provided) as may be thought fit and the following provisions of this Schedule shall apply thereto. The Managers shall be entitled to receive notice of and attend any such meeting but subject as hereinafter provided shall only be entitled to vote or be counted in the quorum thereof to the extent that Units are, at the date thereof, held or deemed to be held by the Managers. Any director and any other duly authorised official and the solicitors of the Depositary and any director and the secretary and the solicitors of the Managers and any other person authorised on their behalf by the Managers shall be entitled to attend the meeting. Any such meeting shall be held in Dublin or at such other place as the Depositary shall determine or approve. All expenses incurred by the Depositary or the Managers in connection with the holding of a meeting of Holders shall be charged against the Deposited Property.

2. A meeting of Holders duly convened and held in accordance with the provisions of this Schedule shall be competent by Extraordinary Resolution to sanction any modification, alteration or addition to the provisions of this Deed which shall be agreed by the Depositary and the Managers as provided in Clause 41(A) of this Deed or to increase any or all of the appropriate percentages referred to in sub-clauses (A), (B) and (C) of Clause 27 of this Deed or to terminate the Trust as provided in Clause 42(E) of this Deed but shall not have any further or other powers.

3. At least 21 days' notice (inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of every meeting shall be given to the Holders in the manner provided in this Deed. The notice shall specify the place, day and hour of meeting and the terms of the resolutions to be proposed. A copy of the notice shall be delivered to the Depositary unless the meeting shall be convened by the Depositary. The accidental omission to give notice to or the non-receipt of notice by any of the Holders shall not invalidate the proceedings at any meeting.

4. At any meeting Holders present in person or by proxy and holding or representing one-tenth of the Units for the time being in issue shall form a quorum for the transaction of business except for the purpose of passing an Extraordinary Resolution. The quorum for passing an Extraordinary Resolution shall be Holders present in person or by proxy and holding or representing not less than one-quarter of the Units for the time being in issue. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

5. If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to such day and time not being less than 15 days thereafter and to such places as may be appointed by the Chairman; and at such adjourned meeting the Holders

present in person or by proxy shall be a quorum. Notice of any adjourned meeting of Holders shall be given in the same manner as for an original meeting and such notice shall state that the Holders present at the adjourned meeting, whatever their number and the number of Units held by them, will form a quorum.

6. Some person, who need not be a Holder, nominated in writing by the Depositary shall preside as Chairman at every meeting and if no such person is nominated or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting the Holders present shall choose one of their number to be Chairman.

7. The Chairman may with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. At such adjourned meeting the Holders present in person or by proxy shall be a quorum.

8. For so long as the Trust or any Portfolio is authorised by the Securities and Futures Commission in Hong Kong, at any meeting a resolution put to the vote of the meeting shall be conducted by poll; otherwise at any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or by one or more Holders present in person or by proxy and holding or representing one-twentieth of the Units for the time being in issue. Unless a poll is so demanded a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or loss shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

9. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and place as the Chairman directs. A demand for a poll may be withdrawn at any time.

10. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

11. At any meeting (a) on a show of hands every Holder who being an individual is present in person or by proxy or being a corporation is present by one of its duly authorised representatives shall have one vote and (b) on a poll every Holder who is present in person or by representative as aforesaid or by proxy shall have one vote for every Unit of which he is the Holder. Any person entitled to more than one vote need not use all his votes or cast all the votes to which he is entitled in the same way.

12. A Holder may attend and vote in person or on a poll by proxy. A corporation, being a Holder, may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of Holders and the person so authorised shall, upon production of a copy of such resolution certified by a director of the corporation to be a true copy, be entitled to

exercise the powers on behalf of the corporation so represented as the corporation could exercise in person if it were an individual Holder.

13. In the case of joint Holders the vote of the senior who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of the other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the appropriate Register, the first named being the senior.

14. A proxy need not be a Holder.

15. The instrument appointing a proxy in respect of Units shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation either under its common seal or under the hand of an officer or attorney so authorised.

16. The instrument appointing a proxy in respect of units and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power of authority shall be deposited at such place as the Depositary or the Managers with the approval of the Depositary may in the notice convening the meeting direct or if no such place is appointed then at the specified office of the Managers not less than 48 hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date named in it as the date of its execution.

17. An instrument of proxy in respect of Units may be in any usual or common form or in any other form which the Depositary shall approve.

18. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, insanity or revocation shall have been received by the Depositary before the commencement of the meeting or adjourned meeting at which the proxy is used.

19. Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books from time to time to be provided for that purpose by, and at the expense of, the Managers and any such minute as aforesaid if purporting to be signed by the Chairman of the meeting shall be conclusive evidence of the matters therein stated and until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat to have been duly passed.

20. For the purpose of this Schedule an Extraordinary Resolution means a resolution proposed as such and passed as such by a majority consisting of 75 per cent, or more of the total number of votes cast for and against such resolution. Any resolution other than an Extraordinary Resolution shall be passed if the total number of votes cast for such resolution exceeds the total number of votes

cast against such resolution.

21. With regard to the respective rights and interests of Holders of Units of different classes, the foregoing provisions of this Schedule shall have effect subject to the following modifications:-

- (a) a resolution which in the opinion of the Depositary affects one class only of Units shall be deemed to have been duly passed if passed at a separate meeting of the Holders of the Units of that class;
- (b) a resolution which in the opinion of the Depositary affects more than one class of Units but does not give rise to a conflict of interests between the Holders of the Units of the respective classes shall be deemed to have been duly passed if passed at a single meeting of the Holders of the Units of those classes;
- (c) a resolution which in the opinion of the Depositary affects more than one class of Units and gives or may give rise to a conflict of interests between the Holders of Units of the respective classes shall be deemed to have been duly passed only if, in lieu of being passed at a single meeting of the Holders of the Units of those classes, it shall be passed at separate meetings of the Holders of Units of those classes; and
- (d) to all such meetings as aforesaid all the provisions of this Schedule shall, mutatis mutandis, apply as through references therein to Units and Holders were references to the Units of the class in question and to the Holders for the time being of such Units respectively.

22. Subject to all other provisions contained in this Deed, the Depositary may without the consent of the Holders prescribe such further regulations regarding the holding of meetings of Holders and attendance and voting thereat as the Depositary may in its absolute discretion determine.

23. Notwithstanding any other provision of this Schedule, neither the Depositary nor the Managers (nor any Connected Person of the relevant one of them) shall cast any vote in respect of Units beneficially owned by it in relation to any resolution in which it or any of its Connected Persons has a material interest and in relation to such a resolution all Units beneficially owned by the Depositary or (as the case may be) the Managers and, in either case, Connected Persons shall be ignored for all purposes on establishing whether or not a quorum is present as if such Units were not then in issue.



## **SCHEDULE C**

above referred to

### **THE MATTERS REFERRED TO IN CLAUSE 10(B) OF THE TRUST DEED**

1. That the Registrars shall keep the Registers in all respects in accordance with the requirements of this Deed.
2. That the Registrars shall maintain and conduct the Registers in such form and in such manner as the Registrar may from time to time direct and shall permit no alteration in the form of the Registers or their conduct without the consent in writing of the Managers, which the Managers shall be entitled to give or to withhold in its absolute discretion.
3. That the Registrars shall promptly comply with all requirements which may be notified to it from time to time by the Registrar as to the form and conduct the Registers.
4. That the Registrars shall at all times at the request of the Registrar supply to the Registrar all such information and explanations in relation to the Registers and the conduct thereof as the Managers may require.
5. That the Registrars shall permit the Registrar or any person representing it to have access at all times to the Registers and to all subsidiary records and all documents, orders, transfers, cancelled Certificates or other papers relating to the conduct of the Registers.
6. That the Registrar, its authorised officials or any person representing it shall be entitled to attend at the Registrars' premises at any time with or without previous notice to inspect any documents the Managers may wish to have inspected and to carry out such checks as may seem to the Managers to be desirable.

## SCHEDULE D

### INFORMATION REQUIREMENTS

#### Part 1 - Information to be provided to the Depositary

1. The Managers on behalf of the Trust shall in a timely manner provide to the Depositary prior to the commencement of its duties and on an on-going basis, with all relevant information the Depositary reasonably requires and has requested in order to comply with its obligations pursuant to UCITS Requirements, including information to be provided to the Depositary by third parties. In particular the Managers on behalf of the Trust shall, or it shall direct that its delegate(s) or any third party appointed by it or by the Managers, shall:
  - (a) provide the Depositary with all information necessary for the Depositary to fulfil its Cash Monitoring Services;
  - (b) provide the Depositary with all necessary information in relation to: (a) Financial Instruments; and (b) Other Investments to enable it to fulfil its Custody Services and Asset Verification Services;
  - (c) ensure that the Depositary shall have access, without undue delay, to all relevant information it needs in order to perform its recordkeeping duties;
  - (d) provide the Depositary with all necessary information in its possession relating to the sale, subscription, redemption, issue, cancellation and re-purchase of Units;
  - (e) provide the Depositary with all necessary information in its possession to enable the Depositary to perform its Oversight Services;
  - (f) provide the Depositary with such declarations, information or other documentation with respect to the Trust's tax status as the Depositary may reasonably request.

#### Part 2 - Information to be provided by the Depositary

1. The Depositary will provide reporting to the Managers on behalf of the Trust. Such reports will provide a summary of the Depositary's duties in respect of Cash Flow Monitoring Services, subscriptions, redemptions, income distributions, valuation of Units, Custody Services, Asset Verification Services, Oversight Services, timely settlement of transactions and due diligence. In addition the Depositary shall provide such other reports and information as the Managers may reasonably request, from time to time, to allow the Managers to review the Depositary's performance of its obligations under this Agreement.

### **Part 3 - Procedures for provision of Information**

1. The Managers will ensure that the Depositary is provided with the information required by the Depositary, to complete its Depositary Services from its appointed service providers, independent valuers, financing counterparties and brokers.
2. The Managers on behalf of the Trust will ensure that the Trust's service providers facilitate the transfer of data electronically to the Depositary to facilitate the cash monitoring and oversight requirements.
3. The Managers will pursue service providers, independent valuers, financing counterparties and brokers that are not providing information in the required format and / or on a timely basis.
4. The Depositary will advise the Managers of material or significant issues that it is advised of or identifies as part of its Oversight Services.
5. On identification of a breach, the Depositary will inform the Managers of identified breaches. The Depositary will request details from the Managers on why the breach arose and the steps that will be taken to rectify the breach. The Managers will outline the timeline for returning the Trust to compliance in the best interests of Holders.
6. All reports and other relevant information to be provided by the Depositary, or to the Depositary (including where such reports or information are provided by persons other than the Managers) will be transmitted via email, in client meetings or through Passport or by any other means as agreed by the Managers and the Depositary from time to time. Any requests for information (as referred to above) should be provided for in writing (including email) or in person to the relevant contact person in the Managers or the Depositary as appropriate.

## **SCHEDULE E**

### **Part I**

#### **THIRD PARTY CASH ACCOUNTS**

The Managers have provided the Depositary with information on all Third Party Cash Accounts as at the date hereof.

The Managers on behalf of the Trust shall notify the Depositary by fax or otherwise in writing in advance of any intention to open a Third Party Cash Account in writing.

### **Part II**

1. The Depositary will oversee the cash reconciliation process on a daily basis. The Depositary will review any unexplained differences. The Depositary will also focus on material differences and aged reconciling items.
2. The Depositary will receive reports from the Managers or its delegate to confirm subscription proceeds are booked in Third Party Cash Accounts opened in the name of the Depositary on behalf of the Trust.

The Depositary will monitor all the Trust's cash flows on a daily basis. The cash flows will be checked against parameters designed to identify significant and inconsistent cash flow activity.

## SCHEDULE F

### ESCALATION PROCEDURES

1. In the event that potential irregularities are detected by the Depositary in relation to the Trust in the course of its Oversight Services or that the Depositary in its provision of Depositary Services identifies any matter in relation to the management of the Trust or the Managers (a "Management Issue") which the Depositary, believes, acting in good faith and at all times in the best interests of the Unitholders, requires explanation and/or remedial action, the Depositary shall provide written notification of the details of the Management Issue, including, but not necessarily limited to:-
  - 1.1 a summary of the circumstances giving rise to the matter in question;
  - 1.2 details of why the Depositary believes the relevant matter requires the attention of the Managers on behalf of the Trust or its duly appointed agents; and
  - 1.3 where appropriate, a recommendation regarding any remedial action that the Depositary believes should be taken to remedy such matter.
2. The written notification shall be provided in the first instance to the Managers. The Managers shall have two (2) Business Days after initial notification (or such longer period as the Depositary may agree) in which to advise the Depositary of any necessary remedial action (the "Action Plan") to be taken by the Managers. The Depositary may provide its comments on the Action Plan no later than two (2) Business Days after it has received a copy of the Action Plan. The Managers shall then complete and implement the Action Plan as soon as possible but in any event on or before five (5) Business Days (or such longer period as the Depositary may agree) from the date of receipt of the Depositary's comments on the Action Plan developed pursuant to this paragraph 2. Full details of the Action Plan shall be provided to the Directors of the Managers on behalf of the Trust at the next succeeding board meeting following such event.
3. In the event that the Management Issue has not been resolved by the Managers within the time frame specified in paragraph 2 above, the Depositary shall formally notify the board of Directors of the Managers by providing it with a copy of the Action Plan previously provided by the Managers pursuant to paragraph 1 above and requiring completion of the Action Plan within a further five (5) Business Days (or such longer period as the Depositary may agree).
4. In such a situation, the Directors of the Managers shall be responsible for addressing the Management Issue to the complete satisfaction of the Depositary and within such reasonable time-frame as is specified by the Depositary in the notice given under paragraph 3 above.
5. If the Management Issue is not resolved pursuant to paragraph 4 above to the reasonable satisfaction of and within the time-frame specified by the Depositary, the Depositary shall be

entitled to write to Unitholders to inform them of the failure of the Managers on behalf of the Trust to resolve the Management Issue.

6. The Managers on behalf of the Trust shall, upon request, provide the Depositary with all Unitholders' contact details as soon as reasonably practicable upon the Depositary's request for purposes of any notification under paragraph 5 above and the Depositary shall:-
  - (a) comply with all applicable provisions of the Data Protection Acts, 1988 and 2003 (as amended) in its processing of any personal data contained in such Unitholders' details; and
  - (b) treat such information as confidential and adhere to the requirements of Clause 49 in its handling of same.
7. The Depositary reserves the right at all times to report any Management Issue to the Central Bank provided that the Depositary shall at all times act in a commercially reasonable manner and provided further that the Depositary shall notify the Managers on behalf of the Trust of its intention to make any such notification to the Central Bank.
8. Notices issued under this Schedule F may be issued by electronic mail or fax as follows:-

**To the Managers on behalf of the Trust**

**Name:** John Burns

**Address:** 155 Bishopsgate, London EC2M 3XY

**Email:** [john.burns@barings.com](mailto:john.burns@barings.com)

**Fax:** +44 207 214 1624

## SCHEDULE G

### DELEGATION CRITERIA

The Depositary may delegate all or part of the Custody Services or Asset Verification Services ("Services") subject to Clause 33 and the following conditions:

1. the relevant Services are not delegated with the intention of avoiding the requirements of the UCITS Regulations;
2. the Depositary can demonstrate that there is an objective reason for the delegation;
3. the Depositary has exercised all due, skill, care and diligence in the selection and appointment of any third party to whom it wants to delegate parts of the Depositary Services, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of the Depositary Services and of the arrangements of the third party in respect of the matters delegated to it (in accordance with the requirements of Article 15(i) of the Delegated Regulation); and
4. the Depositary must devise contingency plans for each market in which it appoints a Sub-custodian to perform safekeeping duties on its behalf. Such a contingency plan shall include the identification of an alternative provider, where such eligible alternative provider is available.
5. the Depositary shall comply with the requirements of Article 17 of the Delegated Regulation and shall ensure that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
  - (a) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the Trust which have been entrusted to it;
  - (b) for custody tasks referred to in Article 22(5)(a) of the UCITS Directive the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
  - (c) the third party segregates the assets of the Depositary's clients from its own assets and from the Depositary's assets in such a way that they can at any time be clearly identified as belonging to clients of the Depositary (in accordance with the requirements of Article 16 of the Delegated Regulation);
  - (d) the third party takes all necessary steps to ensure that in the event of insolvency of the third party, the assets of the Trust held by the third party in custody are

unavailable for distribution among or realisation for the benefit of creditors of the third party;

- (e) the third party complies with the general obligations and prohibitions in respect of the provisions of Custody Services set out in Article 22(2), (5), and (7) and in Article 25 of the UCITS Directive.
6. The Depositary shall comply with the requirements set out in Article 15(ii) and 15(iii) of the Delegated Regulation.
  7. The Depositary shall have in place a decision-making process for choosing third parties to whom it may delegate the safekeeping functions, which shall be based on objective pre-defined criteria and meet the sole interest of the Trust and the Holders.



## SCHEDULE H

### INVESTMENTS AND PROVISION OF SERVICES

The Depositary evaluates the regulatory and operational infrastructures of each market prior to offering custody and related asset servicing services in such.

Through its analysis the Depositary will determine if there is a legal, taxation or operational requirement for client assets to be maintained in segregated accounts in the name of the relevant Portfolio or Trust. In accordance with market practice, if there is such a requirement, the Depositary will establish segregated client accounts accordingly. If there is no such requirement, and the regulatory and operational infrastructure recognises the market practice of operating with omnibus accounts, the Depositary will establish tax-effective omnibus accounts through Sub-Custodians.

The Depositary provides safekeeping in the markets listed below in relation to Financial Instruments listed below as set forth in the Prospectus. Changes in the markets listed below will be agreed in writing from time to time between the parties.

| <b>Market</b>                                | <b>Security A/c Type at Third Party</b> |
|--|---|
| <b>Australia</b>                             | Omnibus                                 |
| <b>Austria</b>                               | Omnibus                                 |
| <b>Bahrain</b>                               | Client Name                             |
| <b>Bangladesh</b>                            | Client Name                             |
| <b>Belgium</b>                               | Omnibus                                 |
| <b>Bermuda</b>                               | Omnibus                                 |
| <b>Bosnia-Herzegovina</b>                    | Client Name                             |
| <b>Botswana</b>                              | Omnibus                                 |
| <b>Brazil</b>                                | Client Name                             |
| <b>Bulgaria</b>                              | Client Name                             |
| <b>Canada</b><br>(for depository securities) | Client Name                             |
| <b>Canada</b><br>(for physical securities)   | Omnibus                                 |
| <b>CD's-EURO</b>                             | Omnibus                                 |
| <b>CD's - USD</b>                            | Omnibus                                 |

|   |   |
|---|---|
| <b>CD's - STG</b>                         | Omnibus   |
| <b>Chile</b>                              | Client Name   |
| <b>China</b>                              | Client Name   |
| <b>China</b><br>(Hong Kong Stock Connect) | Client Name   |
| <b>Colombia</b>                           | Client Name   |
| <b>Costa Rica</b>                         | Client Name   |
| <b>Croatia</b>                            | Omnibus   |
| <b>Cyprus</b>                             | Client Name   |
| <b>Czech Republic</b>                     | Client Name   |
| <b>Denmark</b>                            | Client Name (Omnibus for any Securities Lending assets) |
| <b>Egypt</b>                              | Client Name   |
| <b>Estonia</b>                            | Client Name   |
| <b>Euroclear</b>                          | Omnibus   |
| <b>Finland</b>                            | Omnibus   |
| <b>France</b>                             | Omnibus   |
| <b>Germany</b>                            | Omnibus   |
| <b>Ghana</b>                              | Omnibus   |
| <b>Greece</b>                             | Client Name   |
| <b>Hong Kong SAR</b>                      | Omnibus   |
| <b>Hungary</b>                            | Client Name   |
| <b>India</b>                              | Client Name   |
| <b>Indonesia</b>                          | Client name   |
| <b>Ireland</b>                            | Client Name   |
| <b>Israel</b>                             | Client Name   |
| <b>Italy</b>                              | Omnibus   |
| <b>Japan</b>                              | Equities: Omnibus                                       |

|                    | JGBs and FOL stocks: Client Name |
|--------------------|----------------------------------|
| <b>Jordan</b>      | Client Name                      |
| <b>Kazakhstan</b>  | Client Name                      |
| <b>Kenya</b>       | Omnibus                          |
| <b>Kuwait</b>      | Client Name                      |
| <b>Latvia</b>      | Client Name                      |
| <b>Lebanon</b>     | Client Name                      |
| <b>Lithuania</b>   | Client Name                      |
| <b>Luxembourg</b>  | Omnibus                          |
| <b>Malaysia</b>    | Client Name                      |
| <b>Mauritius</b>   | Client Name                      |
| <b>Mexico</b>      | Client Name                      |
| <b>Morocco</b>     | Client Name                      |
| <b>Namibia</b>     | Omnibus                          |
| <b>Netherlands</b> | Omnibus                          |
| <b>New Zealand</b> | Omnibus                          |
| <b>Nigeria</b>     | Client Name                      |
| <b>Norway</b>      | Omnibus                          |
| <b>Oman</b>        | Client Name                      |
| <b>Pakistan</b>    | Client Name                      |
| <b>Palestine</b>   | Client Name                      |
| <b>Panama</b>      | Omnibus                          |
| <b>Peru</b>        | Client Name                      |
| <b>Philippines</b> | Omnibus                          |
| <b>Poland</b>      | Client Name                      |

|                                |             |
|--------------------------------|-------------|
| <b>Portugal</b>                | Omnibus     |
| <b>Qatar</b>                   | Client Name |
| <b>Republic of Korea</b>       | Client Name |
| <b>Romania</b>                 | Client Name |
| <b>Russian Federation</b>      | Client Name |
| <b>Saudi Arabia</b>            | Client Name |
| <b>Serbia &amp; Montenegro</b> | Client Name |
| <b>Singapore</b>               | Omnibus     |
| <b>Slovakia</b>                | Client Name |
| <b>Slovenia</b>                | Client Name |
| <b>South Africa</b>            | Omnibus     |
| <b>Spain</b>                   | Omnibus     |
| <b>Sri Lanka</b>               | Client Name |
| <b>Sweden</b>                  | Both        |
| <b>Switzerland</b>             | Omnibus     |
| <b>Taiwan</b>                  | Client Name |
| <b>Tanzania</b>                | Client Name |
| <b>Thailand</b>                | Omnibus     |
| <b>Tunisia</b>                 | Client Name |
| <b>Turkey</b>                  | Client Name |
| <b>Uganda</b>                  | Client Name |
| <b>United Arab Emirates</b>    | Client Name |
| <b>United Kingdom</b>          | Client Name |
| <b>United States</b>           | Client Name |
| <b>Uruguay</b>                 | Omnibus     |
| <b>Vietnam</b>                 | Client Name |

|               |                        |
|---------------|------------------------|
| <b>Zambia</b> | Client Name or Omnibus |
|---------------|------------------------|

### **Other Investments**

In order to meet the safekeeping duties, the Managers on behalf of the Trust are required to provide the Depositary all relevant information the Depositary needs in order to comply with its obligations. This information must be made available to the Depositary both upon the commencement of its duties and on an ongoing basis. The Managers must also ensure the Depositary is provided with all relevant information by third parties.

#### **Asset Type the Trust may invest:**

- shares in private companies
- Exchange Traded Financial Derivative Instruments
- Financial Derivative Instruments
- Collective Investment Schemes
- Repurchase Agreements / Reverse Repurchase Agreements
- Sub-Custodian Deposits
- Money Market Instruments

#### **Financial Derivative Instruments**

The Depositary will ensure financial derivative positions are verified, in each jurisdiction/geographical location listed above, to broker / counterparty statements and are recorded in the Trust's books and records.

#### **Repurchase Agreements / Reverse Repurchase Agreements**

The Depositary will ensure Repurchase Agreements / Reverse Repurchase Agreement are verified to counterparty statements.

#### **Sub-Custodian Deposits**

The Depositary will ensure third party deposits are verified to bank statements and are recorded in the Trust's books and records.

#### **Collective Investment Schemes**

The Depositary will ensure units in collective investment schemes are verified, in each jurisdiction/geographical location listed above, to confirmations obtained from the entities responsible for maintaining the share register of the underlying collective investment schemes and are recorded in the Trust's books and records

### **Changes to Asset Types and Jurisdictions**

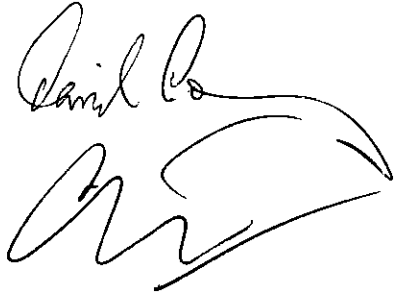
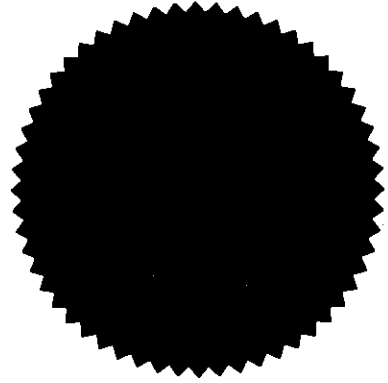
Prior to investing in any assets types or jurisdictions other than those listed above, and prior to withdrawing asset types or jurisdictions from those eligible for investment listed above, the Managers will notify the Depositary and such investment shall not be made until all amendments to this Schedule are agreed in writing.

The Depositary will notify the Managers of all Market Risk updates via Atlas Bulletins, (an e-mail notification service) informing them of any changes or significant events occurring within the network of markets. The Depositary will also provide the Managers on behalf of the Trust with an inventory of all of its assets on a regular basis via Atlas Bulletins

### **Oversight Services**

In relation to the performance of its Oversight Services, the Depositary will put in place verification and reconciliations procedures. In relation to the settlement of transactions, it will detect the non-remittance of due consideration within usual time limits through various procedures. The Depositary will, through its checks and reconciliation procedures, ensure the issue, sale, repurchase, redemption and cancellation of Shares are in order. The Depositary will ensure that valuation policies are effectively implemented and reviewed by verifying on an ongoing basis that adequate procedures are established and applied. The Depositary will conduct on site visits and have access to the books of the Managers and any applicable services provider, and review reports and statements of recognised external certifications by qualified independent auditors or other experts to ensure the adequacy and relevance of the procedures in place. The Depositary has established a clear and comprehensive set of escalation procedures (as set out in Schedule C) to deal with irregularities that are detected in the course of its Oversight Services.

PRESENT when the Common Seal  
of **BARING INTERNATIONAL FUND MANAGERS (IRELAND) LIMITED**  
was affixed hereto:-

A handwritten signature in black ink, appearing to be 'David Co', written in a cursive style.

PRESENT when the Common Seal  
of **NORTHERN TRUST FIDUCIARY SERVICES (IRELAND) LIMITED**  
was affixed hereto:-

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, written in a cursive style.