

**DATED 15 JANUARY 2008**

**EII REAL ESTATE SECURITIES ADVISORS LIMITED**

**AND**

**BNY TRUST COMPANY (IRELAND) LIMITED**

**DEED OF AMENDMENT AND RESTATEMENT OF  
THE TRUST DEED CONSTITUTING  
EII PROPERTY FUNDS  
(FORMERLY KNOWN AS GLOBAL PROPERTY FUND)**

**A&L Goodbody**

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**THIS DEED OF AMENDMENT AND RESTATEMENT is dated as of 15 January 2008**

**BETWEEN**

- (1) **EII REAL ESTATE SECURITIES ADVISORS LIMITED** whose registered office is at 25 – 28 North Wall Quay, Dublin 1, Ireland (the **Manager**); and
- (2) **THE BNY TRUST COMPANY (IRELAND) LIMITED** having its registered office at Guild House, Guild Street, IFSC, Dublin 1, Ireland (the **Trustee**).

**WHEREAS:**

- A. This Deed is supplemental to a Trust Deed dated 10 July 1998, as supplemented by a Supplemental Trust Deed dated 10 August 1999, a Deed of Retirement and Appointment dated 14 December 1999, a Supplemental Trust Deed dated 14 December 1999, a Supplemental Trust Deed dated 30 November 2000, a Deed of Retirement and Appointment dated 30 March 2001, a Supplemental Trust Deed dated 31 July 2001, a Deed of Retirement and Appointment dated 31 August 2006 and a Supplemental Trust Deed dated 31 August 2006 (together the **Trust Deed**) constituting the Global Property Fund (the **Trust**) being a unit trust authorised by the Irish Financial Services Regulatory Authority pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003, (as amended) (the **Regulations**).
- B. The Manager and the Trustee have agreed to amend and replace the Trust Deed and bind themselves by this Trust Deed such that the terms of this Trust Deed shall be considered binding and of full effect in respect of the Trust as and from the date hereof in substitution for the terms of the Trust Deed. The terms of the Trust Deed shall be treated as altered and amended as is set out herein.
- C. The Trustee hereby certifies pursuant to clause 10(1)(a) of the Trust Deed that modifications contained in this Deed do not materially prejudice the interests of Holders, do not operate to release to any material extent the Trustee or the Manager from any responsibility under the Trust Deed and (with the exception of the payment of fees and expenses incurred in relation to the preparation and execution of this Deed) will not result in any increase in the amount of costs and charges payable from the Trust.
- D. The Financial Regulator has given its prior approval to the provisions of this Deed of Amendment.
- E. The declaration of trust contained in the Trust Deed shall continue in effect (as now set out in Clause 2.4 below) and subject thereto the Manager and the Trustee hereby agree to be bound, in respect of the Trust by the terms and provisions of the Deed which are as follows:-

**1. INTERPRETATION**

**1.1. Definitions**

Except where the context otherwise requires words and expressions used in this Deed shall have the respective meanings ascribed to them in, or (as the case may be) shall be construed in accordance with, the provisions of this Clause.

**Accounting Date** means (subject to Clause 6.5 hereof) 30th November in each year or (if no Units shall have been issued or be in issue) the date on which the Trust is terminated pursuant to Clause 8 hereof.

**Accounting Period** means a period commencing on the creation of Units pursuant to Clause 3.3 or on the day following the expiry of the preceding Accounting Period (as the case may require) and ending on the next succeeding Accounting Date.

**Accumulation Unit** means a Unit carrying no right to any distribution of income and which represents an undivided share in the assets of a Fund subject to the following provisions:-

- (i) The Manager may, in accordance with this Trust Deed designate separate classes of Accumulation Units;

- (ii) On each occasion when Accumulation Units are in issue in a Fund or deemed to be in issue as from the commencement of the day following each Distribution Date in respect of which pursuant to Appendix G hereto cash falls to be transferred from the relevant Fund to the Distribution Account in respect of Income Units in that Fund either by way of interim distribution or final distribution the proportion of the assets of the Fund represented by the Accumulation Units then in issue or deemed to be in issue shall be increased to such extent that the Net Asset Value that of an Accumulation Unit shall not in any way be affected by the transfer in respect of the relevant distribution.

**Administrator** means any person or company appointed by the Manager in accordance with the requirements of the Financial Regulator to carry out the day to day administration of the Trust and each Fund on its behalf.

**Auditors** means the accountant or accountants for the time being appointed as auditor or auditors of the Trust by the Manager, with the prior approval of the Trustee, pursuant to the provisions of Clause 6.1 hereof.

**Base Currency** means in relation to each Fund such currency as the Manager may determine and set out in the Investment and Operational Guidelines and the Supplement for the relevant Fund.

**Business Day** means in relation to each Fund, such day or days as the Manager (may with the consent of the Trustee), determine.

**Certificate** means a certificate issued or to be issued in accordance with the provisions of this Deed.

**collective investment scheme** means:-

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

which, in any such case, has in issue units, shares or other interests (howsoever described) which are redeemable at the option of the holders thereof and:

- (i) in the case of any such arrangement or investment vehicle the assets of which are divided into two or more separate funds (whether described as funds, sub-funds or by any other name) in which an investor may separately invest, each such fund shall be deemed to be a separate collective investment scheme; and
- (ii) in relation to any such collective investment scheme, **unit** means any unit, share or other interest (howsoever described) of similar nature in that collective investment scheme.

**Commencement Date** means in respect of each class of Units in a Fund the Business Day immediately following the last day of the Initial Offer Period.

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

- (i) any person beneficially owning, directly or indirectly, twenty per cent, or more of the ordinary share capital of the relevant person or able to exercise, directly or indirectly, twenty per cent, or more of the total voting rights attributable to the voting share capital of the relevant person;
- (ii) any company controlled by any such person as is described in paragraph (i) above and for this purpose **control** of a company means:-
  - (1) control (either direct or indirect) of the composition of the board of directors of that company; or
  - (2) control (either direct or indirect) of more than half the voting rights attributable to the

voting share capital of that company; or

- (3) the holding (either directly or indirectly) of more than half of the issued share capital (excluding any part of it which confers no right to participate beyond a specified amount in a distribution of either profits or capital),
- (iii) any company twenty per cent or more in aggregate of whose ordinary share capital is beneficially owned, directly or indirectly, by the relevant person and any company twenty 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
- (iv) any director or other officer of the relevant person or of any company which is a Connected Person of the relevant person pursuant to paragraph (i), (ii) or (iii) above.

**Contract for Differences** means a contract the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or any other factor designated for that purpose in the contract.

**Currency Unit Class** means a class of Units denominated in a currency other than the Base Currency of the relevant Fund.

**Dealing Day** means in relation to each Fund, such day or days as the Manager may determine and set out in the Investment and Operational Guidelines for the Fund and the Prospectus and/or such other day(s) as the Manager may, with the approval of the Trustee, determine provided that there shall be at least two Dealing Days per month.

**Dealing Deadline** means in relation to each Fund, such time on such day as the Manager may determine and set out in the Investment and Operational Guidelines for the Fund and the Prospectus and/or such other time(s) as the Manager may, with the approval of the Trustee determine, although the Manager may in each case agree to waive these notice periods at its discretion.

**derivative contract** means includes a futures contract, an option, a contract or any other type of contract relating to or deriving its value from an interest in securities.

**Directors** mean the Directors of the Manager for the time being and any duly constituted committee thereof.

**Distribution Account** means the Distribution Account referred to in paragraph 1.1 of Appendix F.

**Distribution Date** means a date on which the Manager has determined to make distributions with the approval of the Trustee in respect of each Accounting Period during the continuance of the Trust.

**Electronic Communication** shall have the same meaning as is given to it in the Irish Electronic Commerce Act 2000.

**EU** means the European Union.

**Euro** means the lawful currency of Ireland.

**Extraordinary Resolution** means a resolution proposed as such at a meeting of Holders or of the Holders of Units in a Fund convened and held in accordance with the provisions of Appendix K and passed as such at such meeting by a majority consisting of 75 per cent. or more of the total number of votes cast for and against such resolution.

**Financial Regulator** means the Irish Financial Services Regulatory Authority or any successor thereto as regulator of the Trust.

**Fiscal and purchase charges** or **Fiscal and sale charges** means all stamp and other duties, taxes, governmental charges, brokerage, bank charges, transfer fees, registration fees and other duties and charges whether in connection with the constitution of a Fund or the creation, issue, sale, conversion or realisation of Units or the sale or purchase of Investments or otherwise which may have become or may be payable in respect of or prior to or upon the occasion of the transaction or dealing in respect of which such duties and charges are payable.

**Foreign Person** means a person that is neither resident nor ordinarily resident in Ireland for tax purposes who has provided the Manager with the appropriate declaration under Schedule 2B of the TCA and in respect of whom the Manager is not in possession of any information that would reasonably suggest that the declaration is incorrect or has at any time being incorrect.

**Fund** means the funds named in clause 2.1 or any additional fund designated by the Manager from time to time with consent of the Trustee constituting that part of the Trust Assets referable to any particular class or classes of Units as the case may be.

**futures contract** means any financial futures contract (including a share price index futures contract) which is traded on an organised exchange.

**Hedged Currency Unit Class** means a Currency Unit Class in respect of which the relevant Fund will conduct currency hedging transactions the benefits and costs of which will accrue solely to Holders of Units of that class.

**Holder** means the person for the time being entered on the Register as the holder of a Unit including (where the context so admits) persons jointly so registered.

**Income** means all net interest, dividends and other receipts and income (including taxation repayments) derived from the Investments and considered by the Manager after consulting the Auditors to be in the nature of income and attributable thereto for the relevant period;

**Initial Offer Period** means a period in respect of each class of Units in a Fund during which such Units are initially offered commencing on such date and ending on such date as the Manager may determine and specify in the Investment and Operational Guidelines and the Supplement for the relevant Fund.

**Investment** means any share, stock, money market instrument, transferable security, cash, derivatives, debenture, loan stock, warrant, bond, security, commercial paper, acceptance, trade bill, treasury bill, futures contract, options contract, other financial derivative instrument, certificate of deposit, instrument or note of, or issued by or under the guarantee of, any body, whether incorporated or unincorporated, or of any government or local government authority or supranational body, whether paying interest or dividends or not and whether involving liability or not, unit or sub-unit of a unit of a unit trust scheme or collective investment scheme or similar scheme which is permitted under the Regulations and includes (notwithstanding and without prejudice to the generality of the foregoing):-

- (i) any right, option (whether put or call) or other interest (howsoever described) in or in respect of any of the foregoing;
- (ii) any certificate of interest or participation in, temporary or interim certificate for, receipt for or warrant to subscribe or purchase any of the foregoing;
- (iii) any instrument commonly known or recognised as a security;
- (iv) any receipt or other certificate or document evidencing the deposit of a sum of money or any rights or interests arising under any such receipt, certificate or document;
- (v) any bill of exchange and any promissory note; and
- (vi) any participation as a partner or participant (in each case with limited liability) in any partnership or firm or other unincorporated association;

**PROVIDED** always that any such Investment shall be permitted under the Regulations.

**Investment and Operational Guidelines** means the investment and operational guidelines for each Fund determined in accordance with the provisions of clause 3 and as amended from time to time.

**Issue Price** means the price (excluding any Preliminary Charge) per Unit at which the Units are to be issued, which price shall be ascertained in accordance with the provisions of paragraph 1.3 of Appendix B.

**Management Fee** means any sum to which the Manager may become entitled pursuant to the

provisions of Clause 7.1 hereof.

**Manager** means EII Real Estate Securities Advisors Limited or any other person or persons for the time being duly appointed manager of the Trust in succession thereto with the prior approval of the Financial Regulator.

**margin** means cash or other property paid, transferred or deposited under the terms of a margined contract.

**margined contract** means a contract rights under which constitute options, futures, or contracts for differences being a contract the terms of which are such that property of the relevant Fund will or may be required to be paid, transferred or deposited as security for the performance of an obligation to deliver or receive property which will or may arise under the contract whether at the option of the Manager or the Trustee or of the other party to the contract or otherwise and includes an option purchased for the relevant Fund under which the total amount of premium which may be payable for the option is not payable on purchase but may be demanded before expiry of the option.

**Market** means the stock exchanges and other regulated markets listed in Appendix M as amended by supplemental deed from time to time (with the prior approval of the Financial Regulator).

**may** shall be construed as permissive.

**Member State** means a member state of the European Union.

**Minimum Holding** means such number of Units or Units having such value as the Manager in any particular case or generally may from time to time prescribe and specify as the minimum holding of Units.

**Minimum Initial Subscription** means such number of Unit or Units having such value as the Manager in any particular case or generally may from time to time prescribe and specify in the Investment and Operational Guidelines and the Supplement for the relevant Fund as the minimum initial subscription by any investor in any particular class of Units.

**Minimum Net Asset Value** means in respect of the Trust or any Fund such value as the Manager may determine and specify by reference to which the Manager may, in the circumstances described in Clause 8.3, terminate the Trust or the Fund.

**Money market instruments** means instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time.

**month** means calendar month.

**Net Asset Value** means the net asset value of the Trust or of a Fund or of a Unit ascertained in accordance with the provisions of Appendix A.

**OECD** means the Organisation for Economic Co-Operation and Development.

**option** means any right to buy from or sell to the person who granted or created that right a specified quantity of the property the subject of such right at an agreed price on or before a specified date and includes an option linked to a securities index.

**Preliminary Charge** means the charge (if any) payable on the subscription for Units which shall not exceed 7% of the Issue Price.

**premium** means in relation to an option the total amount which the purchaser of the option is or may be required to pay in consideration for the purchase of the option.

**Proper Instructions** means any written or telefaxed instructions and includes any instruction transmitted by Electronic Communication agreed to by the Trustee and the Manager or by such other means as may from time to time be agreed between the parties hereto received by the Trustee in respect of any of the matters referred to in this Trust Deed which the Trustee reasonably believes, or which purport, to have been given by the Manager or such one or more person or persons as the Manager has from time to time authorised in writing to give instructions and in the case of any

Electronic Communication which has been transmitted subject to such test or security procedures as may from time to time be agreed between the parties hereto.

**Prospectus** means the prospectus of the Trust (including each Supplement) issued by the Manager as same may be amended or supplemented from time to time in accordance with the requirements of the Financial Regulator.

**qualified corporation** means a body corporate acceptable to the Financial Regulator as the trustee or (as the case may be) the manager of a unit trust authorised under the Regulations.

**Realisation Price** means the price per Unit at which Units are from time to time realised or to be realised, which price shall be ascertained in accordance with the provisions of paragraph 1.3 of Appendix F.

**Register** means the register of holders of Units referred to in Clause 3.5.

**Registration Number** means a number(s) and/or letter(s) or a combination of number(s) and letter(s) given to each Holder or to each Holder who has not requested the issue of a Certificate in respect of all of the Units registered in his name.

**Registrar** means the person or firm by whom the Register is for the time being and from time to time kept.

**Regulations** means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003 (S.I. No 211 of 2003) as amended by the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations, 2003 (S.I. No 212 of 2003), the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) No. 2 Regulations, 2003 (S.I. No 497 of 2003) and the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment No 3) Regulations, 2003 (S.I. No 623 of 2003) and as may be further amended or supplemented from time to time.

**Realisation Fee** means the Realisation Fee (or any amount equivalent thereof) referred to in paragraph 1.4 of Appendix F and specified in the Investment and Operational Guidelines and the Supplement for the relevant Fund.

**Settlement Date** means in respect of subscription for, and realisation of, Units in each Fund, such day or days as the Manager may determine and set out in the Investment and Operational Guidelines for the relevant Fund and in the Prospectus, and/or such other day or days as the Manager may, with the approval of the Trustee, determine provided that, in the case of realisation of Units the Settlement Date shall be no later than ten Business Days after the relevant Dealing Deadline subject to receipt of the duly signed realisation documents and to realisation of Units in the relevant Fund not being suspended.

**shall** shall be construed as obligatory.

**Specific Investment** means:

(i) any Investment in different transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, non-Member States or public international bodies of which one or more Member States are members; and

(ii) any Investment issued or guaranteed by any of the following:

OECD governments (provided the relevant issues are investment grade)  
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  
 Inter American Development Bank  
 International Bank for Reconstruction and Development (the **World 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 (**FHLB**)  
 Federal Farm Credit Bank (**FFCB**)  
 Tennessee Valley Authority (**TVA**)

provided that a Fund must hold securities from at least 6 different issues, with securities from any one issue not exceeding 30% of the net assets of the Fund.

**Stock Exchange** means The Irish Stock Exchange Limited.

**Taxable Irish Person** means any person, other than

- (i) Any non Irish resident person who was a Holder on 1 April 2000 or became a Holder on or before 30 September 2000;
- (ii) a Foreign Person;
- (iii) an intermediary, including a nominee, for a Foreign Person ;
- (iv) the Manager and the Administrator for so long as each of the Manager and the Administrator is a qualifying management company within the meaning of section 734 TCA;
- (v) a specified company within the meaning of section 734 TCA;
- (vi) an investment undertaking within the meaning of section 739(B) of the TCA;
- (vii) an exempt approved scheme or a retirement annuity contract or trust scheme within the provisions of sections 774, 784 or 785 TCA;
- (viii) a company carrying on life business within the meaning of section 706 TCA;
- (ix) a special investment scheme within the meaning of section 737 TCA;
- (x) a unit trust to which section 731(5)(a) TCA applies;
- (xi) a charity entitled to an exemption from income tax or corporation tax under section 207(1)(b) TCA;
- (xii) a person entitled to exemption from income tax and capital gains tax under section 784A(2) TCA , section 787I TCA or section 848E TCA and the units held are assets of an approved retirement fund, an approved minimum retirement fund, a special savings incentive account or a personal retirement savings account (as defined in section 787A TCA);
- (xiii) the Courts Service;
- (xiv) a Credit Union;
- (xv) a company within the charge to corporation tax under section 739G(2) TCA, but only where the Fund is a money market fund;
- (xvi) a company within the charge to corporation tax under section 110(2) TCA;
- (xvii) the National Pensions Reserve Fund Commission; and
- (xviii) any other person as may be approved by the Manager from time to time provided the holding of Units by such person does not result in a potential liability to tax arising to the relevant Fund in

respect of that Holder under section 739 TCA

in respect of each of which the appropriate declaration set out in Schedule 2B TCA and such other information evidencing such status is in the possession of the Manager on the appropriate date.

**TCA** means the Taxes Consolidation Act, 1997, as amended;

**Transferable Securities** means

- (i) shares in companies and other securities equivalent to shares in companies;
- (ii) bonds and other forms of securitised debt; and
- (iii) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange, excluding the techniques and instruments referred to in Regulation 48A of the Regulations.

**Trust** means the Trust constituted by this Deed and collectively known as EII Property Funds or such other name as the Trustee and the Manager may with the approval of the Financial Regulator from time to time determine.

**Trust Assets** means all (or if the context so requires that part referable to a Fund) of the assets and investments for the time being and from time to time held or deemed to be held upon the trust of this Deed.

**Trustee** means BNY Trust Company (Ireland) Limited or any other person or persons for the time being duly appointed trustee or trustees hereof in succession thereto with the prior approval of the Financial Regulator.

**Trustee Fee** means any sum to which the Trustee may become entitled pursuant to the provisions of Clause 7.1.

**UCITS** means an undertaking for collective investment in Transferable Securities and/or liquid financial assets pursuant to the UCITS Directive.

**UCITS Directive** means the EC Council Directive 85/611 EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to UCITS, as amended, supplemented or replaced from time to time;

**Unhedged Currency Unit Class** means a class of Units where typically, Units may be subscribed for and dividends calculated and paid and realisation proceeds paid in a currency other than the Base Currency of the relevant Fund on the basis of a currency conversion at the prevailing spot currency exchange rate of the relevant Base Currency of the relevant class of Unit.

**Unit** means one undivided share in the relevant Fund and includes any fraction of a Unit, which shall represent the corresponding fraction of an undivided share in the relevant Fund.

**United States** means the United States of America, its territories, possessions and all areas subject to its jurisdiction (including the Commonwealth of Puerto Rico).

**United States Person** means any citizen or resident of the United States, any corporation, trust, partnership or other entity created or organised in or under the laws of the United States, any state thereof or any estate or trust the income of which is subject to United States federal income tax, regardless of source.

**Valuation Point** means such point(s) in time in such place or places as the Manager may from time to time determine by reference to which the Net Asset Value is calculated provided that there shall be at least one Valuation Point every fortnight for each Fund.

**Value** in relation to any asset or liability means the value thereof determined in accordance with Appendix A.

**VAT** means value added tax.

**warrant** means any right to acquire any Investment at a pre-determined or ascertainable price on or before a future date by way of subscription of a fixed sum of money.

**year** means calendar year.

References herein to **US Dollars** or **US\$** are to the currency of the United States of America.

Words importing the singular number only shall include the plural and vice versa.

Words importing any particular gender shall include any other gender.

Words importing persons shall include corporations.

The words **written** or **in writing** shall include printing, engraving, lithography or other means of visible reproduction or partly one and partly another.

References to any statute or part thereof shall be deemed to be references to that statute as from time to time amended or re-enacted.

## 1.2. **References to this Deed**

References herein to this Deed and words of similar import shall mean this Deed and the appendices as from time to time amended by deed expressed to be supplemental to, and made pursuant to the provisions of, this Deed.

## 1.3. **References to Clauses, Appendices etc.**

Except where the context otherwise requires:-

- 1.3.1. references to Clauses and Appendices shall be construed as references to the Clauses of, and the Appendices to, this Deed; and
- 1.3.2. references to sub-clauses, paragraphs and sub-paragraphs shall be construed as references to the relevant sub-clause of the Clause, the relevant paragraph of the Appendix or (as the case may be) the relevant sub-paragraph of the paragraph in which such references appear.
- 1.3.3. **Headings** The headings in this Deed are for convenience only and shall not affect the construction of this Deed.

## 2. **CONSTITUTION OF THE TRUST**

### 2.1. **Nature of Trust**

The Trust is an umbrella unit trust scheme constituted under the laws of Ireland comprising separate trusts known as Funds. The portfolio of assets and the Units relating thereto in existence immediately prior to the execution of this Deed comprise the assets of, and Units in, the EII Property World Invest (ex – U.S.) Fund.

The second Fund to be established shall be the EII Global Property Fund.

Further Funds may be established by the Manager with the consent of the Trustee and the prior approval of the Financial Regulator. The sole object of each Fund of the Trust is the collective investment in transferable securities and/or in other liquid financial assets referred to in the Regulations of capital raised from the public while operating on the principle of risk-spreading.

### 2.2. **Constitution of Trust Assets**

The Trust Assets of each Fund including those listed above shall initially be constituted out of the proceeds of the issue of the first Units of the class or classes as the case may be to which the Fund relates and shall thereafter be constituted out of the Investments, cash and other property held or

received by or on behalf of the Trustee for the account of the relevant Fund but less any amount standing to the credit of the Distribution Account. The Manager may issue and request the Trustee to create more than one class of Units which participate in a Fund which may be nominated by the Manager in the same or different currencies. Where a class of Units is denominated in a currency other than the Base Currency of the relevant Fund the Manager shall at the time of creation of such class determine if such class of Units shall be constituted as a Hedged Currency Unit Class or an Unhedged Currency Unit Class. Notwithstanding anything contained in this Deed, costs and gains/losses of any hedging transactions relating to a Hedged Currency Unit Class shall accrue solely to the Holders of Units in such class and shall not form part of the assets of the relevant Fund or constitute a liability of the relevant Fund. Any currency hedging transaction relating to a Hedged Currency Unit Class shall be valued in accordance with the provisions of paragraphs 2.3, 2.4 and 2.9 of appendix A. The Trust Assets shall belong exclusively to the Trust. The Trustee will ensure that in transactions involving the Trust Assets, any consideration is remitted to it within time limits which are acceptable market practice in the context of the particular transaction.

### **2.3. Provisions relating to each Fund**

The Trustee, as instructed by the Manager, shall establish a Fund for each class of Units in issue from time to time or, if there is more than one class of Units in issue in a particular Fund, for all such classes and the following provisions shall apply thereto:-

- 2.3.1. the records and accounts of each Fund shall be maintained separately in the Base Currency;
- 2.3.2. the proceeds from the issue of each class of Units (excluding the Preliminary Charge) shall be applied in the records and accounts of the relevant Fund and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Fund subject to the provisions of this Deed;
- 2.3.3. where any asset is derived from any other asset (whether cash or otherwise), the derived asset shall be applied in the records and accounts of the same Fund 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 Fund;
- 2.3.4. in the case of any asset of the Trust (or amount treated as a notional asset) which the Trustee does not consider as attributable to a particular Fund or Funds, the Manager shall have discretion, subject to the approval of the Trustee and the Auditors, to determine the basis upon which any such asset shall be allocated between Funds (including conditions as to the subsequent re-allocation thereof if circumstances so permit) and the Manager shall have the power at any time and from time to time, subject to the approval of the Trustee and the Auditors, to vary such basis, provided that the approval of the Trustee and the Auditors, shall not be required in any case where the asset is allocated between all Funds pro rata to their Net Asset Values at the time when the allocation is made;
- 2.3.5. each Fund shall be charged with the liabilities, expenses, costs, charges or reserves in respect of or attributable to that Fund. In the case of any liability of the Trust (or amount treated as a notional liability) which the Manager does not consider as attributable to a particular Fund or Funds the Manager shall have discretion, subject to the approval of the Trustee and the Auditors, to determine the basis upon which any liability shall be allocated between Funds (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, subject to the approval of the Trustee and the Auditors, to vary such basis, provided that the approval of the Trustee and the Auditors shall not be required in any case where a liability is allocated between all the underlying Funds pro rata to their Net Asset Values at the time when the allocation is made;
- 2.3.6. subject to the approval of the Trustee and the Auditors, the Manager may transfer any assets (or amounts treated as notional assets) to and from Funds 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 sub-clause 2.3.5 above or in any similar circumstances; and
- 2.3.7. subject to sub-clause 2.3.6 above, the assets of each Fund shall belong exclusively to that Fund, shall be segregated from the assets of other Funds, shall not be used to discharge directly or indirectly the liabilities of or claims against any other Fund and shall not be available

for any such purpose.

#### **2.4. Declaration of Trust**

The Manager hereby appoints the Trustee to be, and the Trustee hereby agrees to act as, Trustee of all the securities and all other Trust Assets (including cash) of each Fund. The Trustee shall be responsible for the safe keeping of all of the Trust Assets in accordance with the provisions of this Deed and shall, subject to the provisions of this Deed and the Prospectus, stand possessed of the Trust Assets of each Fund upon trust exclusively for the Holders of the Units of the class or classes to which such Fund relates *pari passu* and, with effect from the Commencement Date of a class of Units, any moneys forming part of the Trust Assets of the relevant Fund shall from time to time be invested at the direction of the Manager (which shall act exclusively in the interests of Holders) in accordance with the provisions of this Deed.

#### **2.5. Binding nature of terms and conditions**

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 thereto.

#### **2.6. Copies of Trust Deed**

A copy of this Deed shall be made available for inspection at the principal offices in Dublin of the Trustee and of the Manager during usual business hours and shall be supplied by the Manager to any person on application at such charge as the Manager may from time to time determine.

#### **2.7. Additional liability of Holder**

The liabilities of the Holder shall be limited to the amount agreed to be contributed by him or her for the subscription of Units. 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 Trustee or the Manager in respect of the Units held by him.

#### **2.8. Ownership of Assets**

The assets of the Trust belong exclusively to the Trust and shall be segregated from the assets of either the Trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for such purpose.

#### **2.9. Covenant to comply with the Regulations**

The Manager and the Trustee covenant to carry on the Trust in compliance with the provisions of the Regulations, and, in the case of the Trustee, in accordance with the terms of the Financial Regulator's notice UCITS 4. The Trustee will carry out the instructions of the Manager unless they conflict with the Regulations or this Trust Deed.

### **3. UNITS AND HOLDERS**

#### **3.1. Interest of Holder**

The interest in any Fund of each Holder shall be represented by the Units of the class or classes as the case may be referable to that Fund for the time being held by such Holder which Units represent individual shares in the property of that Fund and no Holder shall be entitled to any interest or share in any particular part of the property of that Fund.

#### **3.2. Issue of Units by Manager**

The Manager and/or any person appointed by the Manager for such purpose shall have the exclusive right to effect for the account of the relevant Fund or on its own account the issue of Units and to request the Trustee to create Units (including fractions of not less than 1/1000 or such other fraction as the Manager may determine of a Unit) in the following Funds:-

EII Property World Invest (ex-U.S.) Fund

## EII Global Property Fund

and, such other class or classes of Units in those Funds (in accordance with the requirements of the Financial Regulator) or in such other Funds as the Manager with the approval of the Trustee (and the approval of the Financial Regulator) may determine to be appropriate, subject to and in accordance with the provisions of Appendix B and for such purpose to accept subscription monies and/or Investments for the account of the relevant Fund **PROVIDED THAT** the Manager shall before the initial issue of Units in a Fund determine its Investment and Operational Guidelines. Each Fund shall be given a name by the Manager (or such other name as the Manager in its sole discretion determines) and all Units in such Funds shall be identified by such name. The Manager shall have absolute discretion to accept or reject in whole or in part any application for Units.

### 3.3. Creation of Units

Subject to the provisions of this Clause and **PROVIDED THAT** the Manager has not suspended the issue and realisation of Units pursuant to Clause 4.3, the Trustee shall create Units upon the receipt by it of Proper Instructions given by the Manager stating the number of Units and the class of Units to be created, the issue price on the relevant Dealing Day of a Unit of the class concerned, and the creation price on the relevant Dealing Day of a Unit of the class concerned being the issue price on the relevant day less, as included therein, the Preliminary Charge and any adjustment which is permitted to be retained by the Manager for its own benefit. The Manager shall pay the aggregate amount of the creation prices of the Units created in accordance with those instructions to the Trustee in cash or cleared funds within such period as may be agreed between the Manager and the Trustee.

**PROVIDED THAT** the Trustee shall be entitled to refuse to create Units if at any time the Trustee is of the opinion that the provisions of this Clause in regard to the issue of Units are being infringed; but nothing in this Clause shall subject to Clause 8 of Appendix J impose upon the Trustee any responsibility for satisfying itself before creating Units that the Manager has complied with the terms and conditions of this Trust Deed.

### 3.4. Investment and Operational Guidelines

- 3.4.1. In relation to each Fund, Investment and Operational Guidelines shall be established by the Manager in consultation with the Trustee and shall set out (i) the investment objective and policies of the Fund (ii) investment restrictions applicable to the Fund (if any), (iii) the investment manager(s) and/or investment adviser(s) to the Fund (if any), (iv) the Preliminary Charge, (v) the amount of the Management Fee and the Trustee Fee, (vi) the Business Day(s), (vii) the Minimum Holding, (viii) the Minimum Initial Subscription, (ix) the Minimum Additional Investment Amount (x) the Minimum Net Asset Value, (xi) the Initial Offer Period, (xii) the initial subscription price (xiii) the distribution policy and where appropriate the Distribution Date(s), (xiv) Dealing Day(s), (xv) Dealing Deadline(s), (xvi) Valuation Point(s), (xvii) the Base Currency, (xviii) the Settlement Date, (xix) the Borrowing Powers of the Fund, (xx) the Accounting Period, (xxi) the class or classes of Units, (xxii) the Realisation Fee and such other matters as the Manager thinks appropriate **PROVIDED THAT** such Investment and Operational Guidelines may not impose upon the Holders any liability not expressly provided for or contemplated hereunder unless the same shall be approved by an Extraordinary Resolution of the Holders of Units in the relevant class or classes in the relevant Fund.
- 3.4.2. The Investment and Operational Guidelines in respect of each Fund (as amended from time to time) shall form part of this Deed and shall be binding upon the Manager, the Trustee and the Holders of Units in such Fund from time to time.
- 3.4.3. In relation to each Fund, the Investment and Operational Guidelines will be set forth in writing by the Manager and made available to potential Holders upon request for a reasonable fee (if any) and made available for inspection at the Manager's and the Administrator's registered office and made available to all new Holders of Units in respect of such Fund at no cost.
- 3.4.4. Investment and Operational Guidelines of a Fund may be amended by the Manager in consultation with the Trustee and subject to the prior approval of the Financial Regulator. Notice of such amendment will be given to the Holders of Units in the relevant Fund as soon as practicable unless in the opinion of the Manager, having consulted with the Trustee it is not of material significance.

### 3.5. **Register of Holders**

A register of holders of Units in each Fund shall be kept by or under the supervision of the Manager in a form and manner approved by the Manager and otherwise in accordance with the provisions of Appendix C.

### 3.6. **Power to issue Certificates or written confirmations**

The Manager and the Trustee will either issue Certificates in respect of Units, or alternatively, the Manager will issue written confirmations of entry in the Register. The Manager will at its absolute discretion determine which method is to be adopted. A Registration Number may at the discretion of the Manager be assigned to each Holder in respect of any Units or in respect of any Units for which he has received a written confirmation as aforesaid.

### 3.7. **Issue of Certificates**

No Certificate shall be issued in respect of any Unit unless and until the Manager has received from the relevant Holder a request in writing for the issue of one or more Certificates in respect of his Units. Certificates shall be prepared, issued, exchanged and/or replaced subject to and in accordance with the provisions of Appendix D, but so that in the event of Units being held jointly by several persons delivery of a Certificate to one of such persons shall be sufficient delivery to all and, subject to such provisions, none of such persons shall be entitled to a second Certificate in respect of any such Units.

### 3.8. **Recognition of interest**

The Holder shall be the only person to be recognised by the Trustee or by the Manager as having any right, title or interest in or to Units registered in his name and the Trustee and the Manager may recognise such Holder as the 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 Units.

### 3.9. **Realisation of Units by Holder**

Each Holder (other than the Manager) shall, subject to and in accordance with the provisions of Appendix E, be entitled on a Dealing Day to realise all or some of the Units held by him in the relevant Fund and realisation of Units shall (subject as aforesaid) be effected (at the absolute discretion of the Manager) on the relevant Dealing Day:-

3.9.1. by the purchase by the Manager of the relevant Units at a price not lower than the Realisation Price applicable to Units on such Dealing Day; or

3.9.2. by the cancellation of the relevant Units and the payment out of the Trust of the Realisation Price applicable on such Dealing Day; or

3.9.3. partly in one manner and partly in the other.

### 3.10. **Receipt for moneys payable**

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 Trustee and the Manager and, if several persons are registered (or in consequence of the death of a Holder are entitled to be registered) as joint Holders, any one of them may give an effectual receipt for any such moneys.

### 3.11. **Sub-division of Units**

The Manager may at any time or times with the approval of the Trustee and upon the Manager or the Trustee giving to each Holder not less than twenty-one days' previous notice determine that each Unit in any one or more classes in a Fund shall be sub-divided into two or more Units, whereupon each Unit shall stand sub-divided accordingly. The Trustee shall thereupon either require each Holder concerned (who shall be bound accordingly) to deliver up his Certificate (if any) for endorsement or enfacement with the number of Units thereby represented as a result of such sub-division or (but only where the

Units which have been sub-divided are Units in respect of which a Certificate is then in issue) send or cause to be sent to each such Holder at his risk a Certificate or Certificates representing the number of additional Units to which he is entitled by reason of the sub-division. If the sub-division of the Units results in a variation of a Holder's rights approval for the change will be required from a majority of the relevant class of Holder.

### 3.12. **Manager deemed Holder of Units**

The Manager 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 and shall be entitled to receive any distribution in respect of Units to which it is entitled or deemed to be entitled, notwithstanding that no Certificate in respect thereof is in issue.

### 3.13. **Qualified Holders and compulsory transfer or realisation**

The Manager shall have power (but shall be under no obligation) to impose such restrictions and/or require the production of such evidence (including the giving of appropriate undertakings) as it may think necessary for the purpose of ensuring that no Units are acquired or held directly or beneficially by:-

- 3.13.1. any United States Person (unless permitted under certain exceptions under the laws of the United States);
- 3.13.2. any individual under the age of 18 (or such other age as the Manager may think fit);
- 3.13.3. 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 persons, connected or not, or any other circumstances appearing to the Manager to be relevant), in the opinion of the Manager, might result in the Trust or any Fund incurring any liability to taxation or suffering any other pecuniary disadvantage which the Trust or the Fund might not otherwise have incurred or suffered; or
- 3.13.4. any person who appears to be 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 Units;

and the following provisions shall apply:-

- 3.13.5. if it shall come to the notice of the Manager that any Units are owned directly or beneficially by any person in contravention of any such restrictions as are referred to above in this sub-clause (the **Restrictions**) or if any evidence or undertaking requested by the Manager is not produced in a form which is, in the absolute discretion of the Manager, satisfactory within 30 days of such request, the Manager may give notice to such person requiring him to transfer such Units to a person who would not thereby be in contravention of any of the Restrictions or may give a request in writing for the realisation of such Units in accordance with the provisions of Appendix F. If any person upon whom such a notice is served pursuant to this sub-clause does not within 30 days after such notice transfer his Units as aforesaid or establish to the satisfaction of the Manager (whose judgement shall be final and binding) that the Units are not held in contravention of any of the Restrictions, he shall be deemed upon the expiration of 30 days to have given a request in writing for the realisation of all his Units pursuant to the provisions of Appendix F, whereupon he shall be bound forthwith to deliver to the Manager or its duly authorised agent the Certificate or Certificates for his Units (if a Certificate or Certificates has been issued in respect of such Units) and the Manager shall be entitled to appoint any person to sign on his behalf such documents as may be required for the purpose of the realisation of the said Units;
- 3.13.6. a person who becomes aware that he is holding or owning Units in contravention of any of the Restrictions shall forthwith, unless he has already received a notice pursuant to paragraph (1), either transfer all his Units to a person who would not thereby be in contravention of any of the Restrictions or give a request in writing for the realisation of all his Units pursuant to the provisions of Appendix F. If a Certificate has been issued in respect of any of such Units, such request shall be accompanied by such Certificate;
- 3.13.7. payment of the realisation moneys payable in respect of the realisation of any such Units will



(subject to any requisite exchange control or other governmental consents first having been obtained by the Manager) be made in the Base Currency of the relevant Fund or such other currency as the Manager may determine and will be held by the Trustee for payment to the person who was the Holder of such Units against surrender of the Certificate or Certificates representing the Units previously held by such person (if any such Certificate or Certificates has been issued) and such person shall have no further interest in such Units or any of them or any claim against the Manager or the Trustee in respect thereof except the right to receive the moneys so held (without interest) from the Trustee upon surrender of the said Certificate or Certificates;

3.13.8. the exercise by the Manager of the powers conferred by this sub-clause shall not be questioned or invalidated in any case on the ground that there was insufficient evidence of ownership of Units by any person or that the true ownership of any Units was otherwise than appeared to the Manager at the relevant date, provided that the said powers shall have been exercised in good faith; and

3.13.9. notwithstanding any other provisions of this Deed, where the Manager on behalf of a Fund is required to pay tax on the transfer of Units of the Fund by a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person, the Manager shall be entitled to realise and cancel a sufficient portion of the Holder's Units in the Fund and to appropriate the proceeds thereof as necessary to discharge the amount of taxation payable in respect of the transfer.

#### **4. CANCELLATION OF UNITS BY MANAGER**

##### **4.1. Power of Manager to effect reductions of a Fund**

Subject as mentioned in sub-clause 4.3, the Manager shall have the right on a Dealing Day of the relevant Fund by notice in writing delivered to the Trustee, to effect reductions of a Fund by the surrender of Certificates to the Trustee for cancellation of some or all of the Units represented thereby or by requiring the Trustee to cancel Units of which it is or is treated as the Holder and in respect of which no Certificate is outstanding. Such notice shall state the number of Units to be cancelled in a relevant Fund and includes the Dealing Day on which such cancellations are to be effected. Before exercising such right it shall be the duty of the Manager to ensure that the Trust Assets of the relevant Fund includes (or will upon the completion of the sale of Investments or other property agreed to be sold include) cash sufficient to pay the amount payable to the Manager upon such reduction. In respect of each Unit so cancelled the Manager shall be entitled to receive out of the Trust Assets of the relevant Fund the Realisation Price per Unit applicable to the realisation of Units of the relevant class in the relevant Fund on the Dealing Day specified by the Manager in the notice referred to above.

##### **4.2. Payment to the Manager**

Any amount payable to the Manager under sub-clause 4.1 shall be payable as soon as practicable against surrender to the Trustee of the Certificates (if any) to be cancelled or against delivery to the Trustee 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.

##### **4.3. Suspension of power to require cancellation**

The right of the Manager to require the 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 paragraph 6 of Appendix F or when the number of Units that can be realised by any Holder is limited pursuant to paragraph 7 of Appendix F.

##### **4.4. Verification of amount payable to Manager**

The Trustee shall be under no obligation to check the calculation of the amount payable to the Manager in respect of the cancellation of Units on any Dealing Day but shall be entitled if it so desires to require the Manager to justify the same at any time before audited accounts of the Trust have been prepared for any period which includes such Dealing Day.

## **5. BORROWINGS**

### **5.1. Power of Trustee to borrow**

Subject to the Regulations and the limits laid down by the Financial Regulator the Trustee may at any time at the request of the Manager concur with the Manager in making and varying arrangements for the borrowing by the Trustee for the account of any Fund of any currency. For the purposes of or in connection with any such borrowing the following provisions shall apply:-

### **5.2. Permitted lenders/rate of interest**

The borrowing may be effected subject to the provisions of the Central Bank Acts, 1942 to 2004 as amended from time to time from any person approved by the Manager (with the consent of the Trustee) including, if a banker, the Manager, the Trustee, the Administrator any investment adviser appointed by the Manager or any Connected Person of any of them, provided that, in the case of any borrowing effected from the Manager, the Trustee, the Administrator any investment adviser appointed by the Manager or any Connected Person of any of them (a **relevant lender**) the rate of interest on that borrowing and any fee or premium payable to the relevant lender in relation to the arrangement, repayment or termination of the borrowing are not higher than the relevant lender would, in accordance with normal banking practice, charge on an arms length basis for a loan of a similar size and duration in circumstances similar to those then prevailing in relation to the relevant Fund.

### **5.3. Deposits with lenders in connection with borrowings**

The Trustee may on the instructions of the Manager or pursuant to an arrangement approved by the Manager in pursuance of any borrowing arrangements place on deposit with the lender or any nominee of the lender an amount out of the relevant Fund which the Trustee considers to be equivalent to the amount borrowed upon terms providing for the repayment of the deposit at the same time or times (and, if more than once, so that on each occasion the proportion which the deposit bears to the loan is maintained) as the borrowing is repayable. In the event of fluctuations in the rates of exchange whereby the said deposit falls below the amount borrowed the Trustee shall not be bound immediately to effect an increase in the amount maintained on deposit as aforesaid but shall effect the requisite increase as expeditiously as seems to the Trustee to be reasonable. For the purposes of determining for the purpose of any provision of this Deed the principal amount of all borrowings for the account of any Fund, (i) what would otherwise constitute borrowings for the account of the Trust shall be reduced by any amount for the time being so deposited with any lender or its nominee and (ii) any amount borrowed from any particular lender shall be reduced by any balance standing to the credit of any account of the relevant Fund (or the Trustee for the account of the Trust) with such lender.

### **5.4. Deposits in connection with borrowings**

Whilst any borrowings subsist the Trustee may from time to time and at any time in its absolute discretion require such amount as it may determine to be maintained 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, provided that the Trustee may not require there to be so maintained on deposit an amount exceeding the aggregate amount of all borrowings for the account of the relevant Fund for the time being outstanding.

### **5.5. Borrowings repayable on termination of the Trust**

Every borrowing shall be made upon the terms that the borrowing shall become repayable in the event of the termination of the relevant Fund.

### **5.6. Expenses of borrowing**

Any interest on any borrowing effected under this Clause, any expenses incurred in negotiating, entering into, varying and carrying into effect with or without variation and in terminating the borrowing

arrangements shall be payable out of the relevant Fund.

**5.7. Security for borrowings**

For the purposes of securing any borrowing and interest and expenses thereon the Trustee shall be entitled with the concurrence of the Manager to charge or pledge in any manner all or any part of the assets of the relevant Fund provided that the value of the assets so delivered is the minimum amount required to secure or to continue the borrowing as appropriate. 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 circumstances will it pledge or charge any of such part of the Trust Assets to any other person or use any part of it for the purpose of providing margin or to guarantee, secure, discharge or settle any borrowing, trades or contracts, or dispose of any part of it, or treat it as if any person other than the Trustee has any interest in it and that no step shall be taken to enforce the security thereby constituted until after seven days notice in writing shall have been given to the Trustee demanding repayment of the moneys thereby secured. If such a notice shall be given the Trustee shall promptly advise the Manager who shall promptly effect such sales of Investments or other property as may be necessary to enable such repayment to be effected in due time.

**5.8. Trustee not liable for borrowing related losses**

The Trustee shall not incur any liability by reason of any loss which a Holder may suffer by reason of any depletion in the Net Asset Value of the relevant Fund which may result from any borrowing arrangements made hereunder by reason of fluctuations in rates of exchange or otherwise and (save as herein otherwise expressly provided) the Trustee shall be entitled to be indemnified out of and have recourse to the relevant Fund in respect of any liabilities, costs, claims or demands which it may suffer arising directly or indirectly from the operation of this Clause and the arrangements referred to herein.

**5.9. Borrowings from Trustee, Manager or any Connected Person of any of them**

In the event that any arrangements for borrowing or making deposits under this Clause shall be made with any of the Trustee, the Manager, the Administrator or any Connected Person of any of them then such person shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom.

**6. AUDITORS, ACCOUNTS AND REPORTS**

**6.1. Manager's power to appoint/remove Auditors**

The Manager, with the prior approval of the Trustee, shall from time to time appoint to be the auditor or auditors of each Fund an accountant or accountants being qualified to act as auditor or auditors under the Regulations and the Manager may from time to time with the prior approval of the Trustee (and, if the Trustee shall withdraw any approval previously given, shall) remove any such auditor or auditors and, with the prior approval of the Trustee, appoint in his or their stead another person or persons qualified as aforesaid. Any such auditor or auditors so appointed shall be independent of the Trustee and the Manager.

**6.2. Manager's duty as to the reports**

Reports shall be prepared and published by the Manager in accordance with the Regulations.

**6.3. Trustee's report**

The annual accounts shall include the Trustee's report required to be prepared under the Regulations. The Trustee will enquire into the conduct of the Manager in each accounting period and report thereon to the Holders. The Trustee's report shall be delivered to the Manager in good time to enable the Manager to include a copy of the report in its annual report. The Trustee's report shall state whether in the Trustee's opinion the Trust has been managed in that period in accordance with the limitations imposed on the investment and borrowing powers of the Manager and Trustee by this Deed and the Regulations; and otherwise in accordance with the provisions of this Deed and the Regulations. The Trustee cannot delegate this duty.

**6.4. Audit**

The Manager shall procure that all annual accounts of each Fund shall be audited by the Auditors and shall be accompanied by a certificate of the relevant Auditors to the effect that the accounts and statements attached thereto have been examined with the books and records of the relevant Fund and of the Manager 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 and the accompanying statement are in their opinion properly drawn up in accordance with such books and records to disclose the profits or losses accruing to the relevant Fund.

**6.5. Power of Manager to fix new Accounting Date**

The Manager, with the prior approval of the Trustee, may from time to time fix a new Accounting Date for a Fund on which the then current and/or any succeeding Accounting Period for that Fund shall end, in which event the Manager shall give notice thereof to the Holders of Units in that Fund and to the Financial Regulator.

**7. FEES AND EXPENSES**

**7.1. Management Fee and Trustee Fee**

7.1.1. The Manager and the Trustee shall, in addition to any other amounts which they are respectively entitled to receive or retain for their own respective use and benefit under this Deed, be entitled to receive for their own respective accounts out of each Fund as soon as practicable after the last Dealing Day of the relevant Fund in each month the amount of Management Fee or Trustee Fee (as the case may be) accrued and remaining unpaid.

7.1.2. The Management Fee and the Trustee Fee shall accrue on each Dealing Day of the relevant Fund in respect of the period since and excluding the Commencement Date or (if later) the last preceding Dealing Day of such Fund up to (and including) such Dealing Day and the amount accruing on any particular Dealing Day (the **relevant day**) shall be such amount or (as the case may be) aggregate amount together with any VAT payable thereon as is produced by applying, in relation to the Net Asset Value of each Fund or (as the case may be) each part thereof, the following formula:-

$$\frac{a \times b \times c}{d}$$

where:-

- a = such number of days (if any), and inclusive of the relevant day, as intervened between the relevant day and such immediately preceding Dealing Day or (in the case of the first Dealing Day of the relevant class of Units) the Commencement Date;
- b = the appropriate percentage;
- c = the Net Asset Value of the relevant Fund as at the Valuation Point occurring on or immediately prior to the relevant day; and
- d = 365 (or 366 in the case of a leap year)

**PROVIDED THAT**, if on the relevant day the relevant Fund includes any unit of any collective investment scheme managed by the Manager or any Connected Person of the Manager (a **connected fund**), the amount of Management Fee which would otherwise accrue on the relevant day shall be reduced by an amount in respect of each interest of the Fund in any connected fund equal to the Management Fee which would notionally accrue on the relevant day on the Value of the units of such connected fund held by the Fund 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 the relevant day falls or (if lower) a rate per annum equal to the appropriate percentage.

7.1.3. The appropriate percentage shall be:-

- (1) in the case of the Manager, in respect of each Fund, such percentage(s) as shall be specified in the relevant Investment and Operational Guidelines and outlined in the Prospectus but not exceeding 1% per annum (subject to a minimum of US\$60,000 per annum) of the Net Asset Value of each Fund or such higher percentage as may be fixed by an Extraordinary Resolution or such other percentage as may be fixed by deed supplemental hereto sanctioned by an Extraordinary Resolution, provided that the Manager may from time to time by notice in writing to the Trustee fix as the appropriate percentage some smaller percentage than that hereinbefore provided, 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 Trustee, and not less than two months' notice in writing shall be given to the Holders' cancelling the previous notice) such smaller percentage shall be the appropriate percentage but any such notice shall be ipso facto cancelled upon the Manager who gave such notice in writing as aforesaid ceasing to be the Manager. For the avoidance of doubt, any change in the fees payable to the Manager as set in the relevant Investment and Operational Guidelines and the Supplements up to a maximum limit of 1% will not require the approval of the Holders by means of an Extraordinary Resolution;
- (2) in the case of the Trustee, in respect of each Fund, such percentage(s) as shall be specified in the relevant Investment and Operational Guidelines and outlined in the Prospectus of each Fund but not exceeding 1% per annum (subject to a minimum of US\$25,000 per annum) or such higher percentage as may be fixed by an Extraordinary Resolution or such other percentage as may be fixed by deed supplemental hereto sanctioned by an Extraordinary Resolution, provided that the Trustee may from time to time by notice in writing to the Manager fix as the appropriate percentage some smaller percentage than that hereinbefore provided, 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 Manager, and not less than two months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage shall be the appropriate percentage but any such notice shall be ipso facto cancelled upon the Trustee who gave such notice in writing as aforesaid ceasing to be the Trustee; and
- (3) for the avoidance of doubt, the Management Fee described above does not include any performance fee (if any) payable to the Manager or any investment manager or investment adviser which performance fee shall be outlined in the Investment and Operational Guidelines and specified in the Prospectus for the relevant Fund.

**7.2. Charges against Trust Assets**

Without prejudice to any other charges, fees, expenses or liabilities authorised by this Deed to be charged against Holders or against the Trust Assets there shall (unless otherwise determined by the Manager from time to time) be payable out of the Trust Assets and attributed to each Fund (together with VAT thereon where applicable)

- 7.2.1. all fees and expenses incurred by the Manager and/or the Trustee in connection with the establishment of the Trust and the marketing of Units;
- 7.2.2. all fees (if any) paid by the Manager to the Financial Regulator in connection with or arising out of the Trust and all fees payable to any other regulatory authority;
- 7.2.3. all stamp and other duties, taxes, governmental charges, brokerages, commissions, exchange costs and commissions, bank charges, legal expenses, such transactional fees of the Trustee as may be agreed by the Manager in relation to transactions involving the whole or any part of a Fund, transfer fees and expenses, registration fees and expenses, sub-custodian and proxy fees and expenses, warehousing and storage fees and expenses, collection fees and expenses, insurance and security costs, paying agency or conversion agency fees and expenses in relation to any part of a Fund and any other costs, charges and expenses payable in respect of the acquisition, holding and realisation of any Investments or other property 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 Trustee or the

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

- 7.2.4. any performance fee of the Manager or the investment adviser/manager appointed by the Manager provided that the basis and manner of calculation of such fee is approved by the Trustee;
- 7.2.5. the fees and expenses of the Auditors;
- 7.2.6. the fees and expenses of the Registrar, including those of the Trustee or the Manager where either of them is also the Registrar;
- 7.2.7. the fees and expenses in connection with the management and trusteeship of the Trust authorised by this Deed to be payable out of a relevant Fund;
- 7.2.8. expenses incurred by the Trustee wholly and exclusively in the performance of its duties hereunder;
- 7.2.9. expenses incurred by the Manager wholly and exclusively in the performance of its duties hereunder;
- 7.2.10. all professional fees relating to the agreeing and/or contesting of taxation liabilities or recoveries to be discharged out of or paid into the Trust Assets;
- 7.2.11. the expenses incurred by the Manager and the Trustee in obtaining the authorization or other official approval or sanction of the Trust or any Fund under the Regulations or any other law or regulation in any part of the world;
- 7.2.12. all costs, charges, fees and expenses necessarily incurred in the preparation of any deed supplemental to this Deed;
- 7.2.13. all costs incurred in respect of the publication of the Net Asset Value per Unit, the Issue Price and/or the Realisation Price in such newspaper or newspapers in such jurisdiction as the Manager may from time to time think fit;
- 7.2.14. the fees and expenses of any investment manager/adviser and/or investment broker appointed by the Manager or the Trustee in respect of the Trust;
- 7.2.15. all fees and costs relating to a scheme of reconstruction and amalgamation;
- 7.2.16. without prejudice to the generality of the foregoing, all costs of preparing, translating into any language, printing and distributing any prospectuses or other sales or marketing literature in relation to the Trust or any Fund, all statements, accounts, reports and notices pursuant to the provisions of or otherwise in connection with this Deed and of convening and holding meetings of Holders and all other costs and expenses deemed by the Manager, after consulting the Auditors, to have been incurred in compliance with, or in connection with any change in or introduction of, any law, regulation or requirement (whether or not having the force of law) of any governmental or other regulatory authority or any undertaking given to, or agreement entered into with, any such authority.

### **7.3. Charge of Trustee Fee and Management Fee against income or capital**

Except to such extent as the Manager may from time to time determine that the whole or any part of the Management Fee, the Trustee Fee or any costs, charges, fees or expenses (including, without limitation, any interest and expenses referred to in Clause 5.5) that may be charged against the relevant Fund shall be charged against capital, the same shall be charged against income.

### **7.4. Amortisation of charges and expenses**

The Manager shall be entitled to determine in relation to any costs, charges, fees and expenses that may be charged against a Fund that the same shall be amortised over such period as it thinks fit (which shall not exceed five years).

## **7.5. Common Expenses**

Where any costs, charges, fees and expenses relate to matters common to more than one Fund the Manager, with the Trustee's approval, shall be entitled to apportion such costs, charges, fees and expenses among the Funds in such manner as may appear to the Manager, with the Trustee's approval, to be equitable.

## **8. TERMINATION**

### **8.1. Continuation of Trust**

The Trust shall continue until it is terminated in one of the ways provided by this Clause. Where the Trust or any Fund is terminated in accordance with the provisions of this Clause the Manager shall seek the revocation of the authorisation of the Trust or the approval of the relevant Fund from the Financial Regulator.

### **8.2. Termination on one year's notice by Trustee or Manager**

Either the Trustee or the Manager may in its absolute discretion terminate the Trust or any Fund by not less than one year's notice in writing to the other of them. The Manager and/or the Trustee shall be entitled by notice to the other to make the continuation of the Trust or any Fund beyond any such date conditional on the revision to their or its satisfaction at least three months before the relevant date of their or its remuneration hereunder.

### **8.3. Termination if the Net Asset Value per Unit falls below a certain level**

The Manager may terminate a Fund, after consultation with the Trustee and the investment adviser, if the Net Asset Value of the Fund falls below US\$5,000,000 or such other amount where the Manager believes that it is no longer viable to continue the Fund.

### **8.4. Events entitling Trustee to terminate**

The Trustee may by notice in writing to the Manager terminate the Trust or any Fund in any of the following events:-

- 8.4.1. if the Manager shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Trustee) or if a receiver is appointed over any of the assets of the Manager;
- 8.4.2. if in the opinion of the Trustee the Manager shall be incapable of performing or shall in fact fail to perform its duties satisfactorily or shall do any other thing which in the opinion of the Trustee is calculated to bring the Trust or the relevant Fund into disrepute or to be harmful to the interests of the Holders, provided that if the Manager shall be dissatisfied with such opinion the matter shall be referred to the President for the time being of the Incorporated Law Society of Ireland for determination and his or her determination shall be final and bind the Trustee and the Manager;
- 8.4.3. if the Trust or the relevant Fund shall cease to be authorised or otherwise officially approved under the Regulations or if any law shall be passed which renders it illegal or in the opinion of the Trustee impracticable or inadvisable to continue the Trust or the relevant Fund; or
- 8.4.4. if within such time as the Trustee considers to be reasonable after the removal of the Manager pursuant to any provision of this Deed the Trustee is unable to find a qualified corporation acceptable to the Trustee and the Financial Regulator to act as the new manager.

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

## **8.5. Events entitling Manager to terminate**

The Manager may also, in its absolute discretion by notice in writing to the Trustee, terminate the Trust or any Fund in any of the following events:-

- 8.5.1. if the Trustee shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Manager) or if a receiver is appointed over any of the assets of the Trustee;
- 8.5.2. if, in the opinion of the Manager, the Trustee shall be incapable of performing or shall in fact fail to perform its duties satisfactorily or shall do any other thing which in the opinion of the Manager is calculated to bring the Trust or the relevant Fund into disrepute or to be harmful to the interests of the Holders, provided that if the Trustee shall be dissatisfied with such opinion the matter shall be referred to the President for the time being of the Incorporated Law Society of Ireland for determination and his/her determination shall be final and bind the Trustee and the Manager;
- 8.5.3. if the Trust or the relevant Fund shall cease to be authorised or otherwise officially approved pursuant to the Regulations; or
- 8.5.4. if any law shall be passed which renders it illegal or in the opinion of the Manager impracticable or inadvisable to continue the Trust or the relevant Fund.

The decision of the Manager in any of the events specified in this sub-clause shall be final and binding on all the parties concerned but the Manager shall be under no liability on account of any failure to terminate the Trust or any Fund pursuant to this Clause or otherwise.

## **8.6. Notice to Holders of termination**

The party terminating the Trust or relevant Fund shall give notice thereof to the Holders or to the Holders of Units in the relevant Fund and by such notice fix the date at which such termination is to take effect, which date shall not be less than three months after the service of such notice.

## **8.7. Termination by Trustee and Manager with approval of Extraordinary Resolution**

The Trust or any Fund may at any time after the date of this Deed be terminated by the Trustee and the Manager with the approval of an Extraordinary Resolution and such termination shall take effect from the date so approved.

## **8.8. Final Termination**

Unless previously terminated the Trust shall terminate upon the expiration of twenty-one years of the death of the last survivor of the issue living on the date of this Deed of his late Britannic Majesty King George the Sixth.

## **9. PROCEEDINGS UPON TERMINATION**

### **9.1. Consequences and manner**

With effect on and from the date as at which the Trust or any Fund is to terminate:-

- 9.1.1. No Units or Units of the relevant Fund may be issued or sold by the Manager and neither the Manager nor any Holder shall have any right to require the cancellation or realisation of any Unit or Units of the relevant Fund;
- 9.1.2. The Manager shall realise all the assets then comprised in the Trust Assets or in the relevant Fund (which realisation shall be carried out and completed in such manner and within such period after the termination of the Trust or the Fund as the Manager and the Trustee think advisable).
- 9.1.3. The Trustee shall from time to time distribute to the Holders in proportion to their respective



interests in the Trust Assets or in the Trust Assets of the relevant Fund all net cash proceeds derived from the realisation of the Trust Assets or and available for the purpose of such distribution, provided that the Trustee shall not be bound (except in the case of the final distribution) to distribute any of the moneys for the time being in its hands the amount of which is insufficient to pay US\$10 in respect of each Unit or each Unit of the relevant Fund and provided also that the Trustee shall be entitled to retain out of any moneys in its hands as part of the Trust Assets or of the Trust Assets of the relevant Fund full provision for all costs, charges, expenses, claims and demands incurred, made or apprehended by the Trustee or the Manager in connection with or arising out of the termination of the Trust or the relevant Fund and out of the moneys so retained to be indemnified and saved harmless against any such costs, charges, expenses, claims and demands.

Every such distribution shall be made in the same manner as is provided in paragraph 2 subparagraph B of Appendix F but shall be made only against production of the Certificates (if any) relating to the Units or the Units of the relevant Fund in respect of which the same is made and upon delivery to the Trustee of such form of request for payment as the Trustee shall in its absolute discretion require. All Certificates shall in the case of an interim distribution be enfaced by the Trustee with a memorandum of payments made and in the case of the final distribution shall be surrendered to the Trustee. Any unclaimed proceeds or other cash held by the Trustee under the provisions of this Clause may at the expiration of twelve months from the date upon which the same were payable be paid into Court subject to the right of the Trustee to deduct therefrom any expenses it may incur in making such payment.

## 9.2. **Continuing powers**

After the Trust or any Fund has been terminated but notwithstanding the same:-

- 9.2.1. In relation to the Trust or the relevant Fund the Trustee may exercise its powers and carry out its duties under this Deed and shall otherwise continue to have the benefit of and be subject to the provisions of this Deed (and, in particular but without limitation, any indemnity in favour of the Trustee as set out in this Deed) and to be entitled to exercise all its powers, duties, authorities and discretions hereunder until all of the Trust Assets (if the Trust is to be terminated) or as the case may be the Trust Assets of the relevant Fund (if a Fund is to be terminated) shall have been distributed to the Holders or to the Holder of Units of the relevant Fund or any unclaimed net proceeds or other cash paid into court (whichever is the later) pursuant to this Clause; and
- 9.2.2. In relation to the Trust or the relevant Fund the Manager may exercise its powers and carry out its duties under this Deed and shall otherwise continue to have the benefit of and be subject to the provisions of this Deed (and, in particular but without limitation, any indemnity in favour of the Manager), and its powers, authorities, duties and discretions hereunder shall not cease, but shall continue in full force and effect, until all of the Trust Assets (if the Trust is to be terminated) or the Trust Assets of the relevant Fund (if a Fund is to be terminated) has been distributed to the Holders or to the Holders of Units of the relevant Fund or any unclaimed net proceeds or other cash paid into court (whichever is the later) pursuant to this Clause.

## 10. **MODIFICATION OF THIS DEED**

### 10.1. **Modification and need for Extraordinary Resolution**

The Trustee and the Manager shall be entitled jointly by deed supplemental to this Deed to modify, alter or add to the provisions of this Deed (excluding for these purposes the Investment and Operational Guidelines) in such manner and to such extent as they may consider expedient for any purpose, provided that:-

- 10.1.1. unless the Trustee shall certify in writing that in its opinion such modification, alteration or addition:-

- (1) does not materially prejudice the interests of Holders, does not operate to release to any material extent the Trustee or the Manager from any responsibility under this Deed and (with the exception of the payment of fees and expenses incurred in relation to the preparation and execution of the relevant supplemental deed) will not result in any

increase in the amount of costs and charges payable from the Trust Assets; or

- (2) is necessary in order to make possible compliance with any fiscal, statutory or other official requirement (whether or not having the force of law); or
- (3) is made to correct a manifest error,

no such modification, alteration or addition shall be made without the approval of an Extraordinary Resolution; and

10.1.2. 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 any liability in respect thereof.

## 10.2. **Notice of modification to Holders**

The Manager shall, as soon as practicable after any modification or alteration of or addition to the provisions of this Deed in respect of which the Trustee shall have certified in accordance with the provisions of paragraph (1), (2) or (3) of proviso 10.1.1 to sub-clause 10.1, give notice of such modification, alteration or addition to the Holders, unless such modification, alteration or addition is not in the opinion of the Manager or the Trustee of material significance.

## 10.3. **Prior approval of Financial Regulator**

No modification, alteration or addition shall be made to this Deed without the prior approval of the Financial Regulator. A copy of any supplemental deed containing any such modification, alteration or addition shall be deposited with the Financial Regulator in accordance with the Regulations.

## 11. **RECONSTRUCTION AND AMALGAMATION**

### 11.1. **Conditions**

With the prior approval of the Financial Regulator and upon the following conditions being satisfied namely:-

- 11.1.1. that the Manager and the Trustee have approved the terms and conditions of a scheme of reconstruction and amalgamation in relation to the Trust or any Fund or Funds to be entered into with the manager(s) and the trustee(s) of some other collective investment scheme(s);
- 11.1.2. that the Holders or relevant Holders have been circulated with particulars in a form approved by the Manager and the Trustee and an Extraordinary Resolution has been passed approving the said scheme;

then the said scheme shall take effect upon such conditions being satisfied or upon such later date as the scheme may provide whereupon the terms of such scheme shall be binding upon all the Holders or all the relevant Holders who shall be bound to give effect thereto accordingly and the Manager and the Trustee shall do all such acts and things as may be necessary for the implementation thereof.

## 12. **NOTICES**

### 12.1. **Notification by post**

Subject as otherwise provided in this Deed, any notice or other document required to be served upon or given to a Holder shall be deemed to have been duly served or given if sent by post (airmail, if overseas) to or left at his address as appearing in the Register. Any notice or other document so served by post shall be deemed to have been served on the fifth Business Day following that on which the letter containing the same is posted and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted. All notices and other documents sent by post, or in accordance with the instructions of, any Holder shall be sent at the risk of the persons entitled thereto.

### 12.2. **Notification of joint Holders**

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.

**12.3. Notification of dead or bankrupt Holders**

Any notice or document sent by post to or left at the registered address of a Holder in pursuance of these presents shall notwithstanding that such Holder be then dead or bankrupt and whether or not the Trustee or the Manager 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.

**12.4. Notifications between Trustee and Manager**

Any notice by the Trustee to the Manager or by the Manager to the Trustee shall be addressed to the Manager or the Trustee (as the case may be) at its registered office and shall be delivered by hand or sent by telex or prepaid post (airmail if overseas) or such other method as may be agreed to between the Trustee and the Manager from time to time. Any such notice sent by telex shall be deemed to be served at the time of despatch and any such notice sent by post shall, in the absence of industrial action affecting any relevant part of the postal services, be deemed to have been served three days after the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

**12.5. Postal risks on notification**

All notices and documents sent by post to Holders or otherwise in accordance with their instructions shall be sent at the risk of the persons entitled thereto.

**12.6. Notification by Electronic Communication**

Subject as otherwise provided in this Deed, any notice or other document required to be served upon or given to a Holder shall be deemed to have been duly served or given if sent by any means of Electronic Communication, including e-mail and fax, to a contact address specified by the Holder where the consent of the Holder to receipt of Notices in such electronic form has been given. Any notice or other document so served by Electronic Communication shall be deemed to have been served on the Holder on receipt thereof by the Holder and in proving such service it shall be sufficient to prove that such communication was properly addressed and sent by the method specified. All notices and other documents sent by Electronic Communication or in accordance with the instructions of any Holder shall be sent at the risk of the persons entitled thereto.

**13. APPENDICES**

**13.1. Nature of Appendices**

The provisions set out in the Appendices shall have the same effect as if such provisions were set out herein at length.

**14. GOVERNING LAW**

**14.1. Irish law to govern**

The Trust shall be subject to and governed by the laws of Ireland and this Deed shall be construed according to the laws of Ireland.

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

## APPENDIX A - VALUATION RULES

### 1. Net Asset Value of Each Fund

The Net Asset Value of each Fund shall be calculated by the Manager as at the Valuation Point for each Dealing Day of the relevant Fund by valuing the assets of the relevant Fund in accordance with paragraphs 2 and 3 and deducting the liabilities of each Fund in accordance with paragraph 3. The resultant sum shall be divided by the number of Units of the relevant Fund in issue or deemed to be in issue at such Valuation Point and the resulting amount shall be the Net Asset Value of a Unit of the relevant Fund. Where there is more than one class of Units in a Fund, the Manager shall determine the proportion of the Net Asset Value of the Fund attributable to that class of Units and that sum shall be divided by the number of Units of that class of the Fund in issue or deemed to be in issue and the resulting amount (rounded to the nearest four decimal places or such other number as may be determined by the Manager) shall be the Net Asset Value of a Unit of the relevant class of the relevant Fund.

### 2. Valuation of assets

The Value of the assets comprised in the Trust Assets shall be ascertained on the following basis:-

#### 2.1.1. Valuation of Investments quoted, listed or dealt in on a Market

The Value of any Investment quoted, listed or normally dealt in on a Market shall be calculated by reference to the last traded price or quotation on such Market or, if no such last traded price is available, at the latest mid – market price or failing that, at the last available closing bid or offer price as at the Valuation Point for the relevant Dealing Day of the relevant Fund (or, if no trading shall take place in that Market on that Dealing Day on the last day on which trading in that Market took place before that Dealing Day) for such amount or quantity of such Investment as the Manager may consider in the circumstances to provide a fair criterion, provided that:-

- (1) if an Investment is quoted, listed or normally dealt in on more than one Market, the Manager shall adopt the traded price or quotation on the Market which, in its opinion, provides the principal market for such Investment;
- (2) in the case of any Investment which is quoted, listed or normally dealt in on a Market but in respect of which, for any reason, prices or quotations on that Market may not be available at any relevant time, or the prices or quotations do not in the opinion of the Manager represent fair market value, the Value thereof shall be the probable realisation value estimated with care and in good faith by a competent person appointed by the Manager and approved for such purpose by the Trustee;
- (3) the Manager shall not be under any liability by reason of the fact that a Value reasonably believed by it to be the last available price or quotation may be found not to be such; and
- (4) there shall be taken into account interest accrued on interest-bearing Investments up to the relevant Valuation Point unless such interest is included or reflected in the last available price or quotation.

#### 2.2. Valuation of Investments not quoted, listed or dealt in on a Market

The Value of any Investment which is not quoted, listed or normally dealt in on a Market shall be the probable realisation value estimated by the Manager or by any other competent person with care and in good faith provided such person has been approved for the purpose by the Trustee. For this purpose the Manager may accept an estimated valuation provided by a suitably qualified market maker or other person approved by the Trustee for the purpose of estimating the value of the relevant Investment.

#### 2.3. Valuation of options and futures contracts

The Value of any option or futures contract which is dealt in on a Market shall be the settlement price on such Market at the Valuation Point but the Manager may make such adjustments in relation thereto as it may consider in the circumstances to be fair after consulting with the Trustee or in accordance with a method approved by the Trustee.

#### **2.4. Valuation of Forward Exchange Contracts**

The Value of any Forward Exchange Contract will be calculated by reference to the price at which a new forward exchange contract of the same size and maturity could be undertaken.

#### **2.5. Valuation of cash, deposits and similar property**

Cash, deposits and similar property shall be valued at their face value (together with accrued interest up to Valuation Point) unless, in the opinion of the Manager with the consent of the Trustee, any adjustment should be made to reflect the Value thereof.

#### **2.6. Valuation of certificates of deposit**

Certificates of deposit shall be valued with reference to the best price bid for certificates of deposit of like maturity, amount and credit risk at the Valuation Point on the relevant Dealing Day.

#### **2.7. Valuation of treasury bills and bills of exchange**

Treasury bills and bills of exchange shall be valued with reference to bid prices ruling in the appropriate markets at the Valuation Point for such instruments of like maturity, amount and credit risk on the relevant Dealing Day.

#### **2.8. Valuation of Units or Shares or other Similar Participations in Collective Investment Schemes**

Units or shares or similar participations in any collective investment scheme which provides for the units or shares or similar participations therein to be redeemed at the option of the holder out of the assets of that undertaking shall be valued at the last published net asset value per unit or share or (if bid and offer prices are published) the last published bid price at the Valuation Point.

#### **2.9. Valuation of Off-Exchange Derivative Contracts**

Off exchange derivative contracts will be valued daily at the prices determined by an independent pricing vendor who must be approved for this purpose by the Trustee and the valuation of such contracts shall be reconciled to the counterparty valuation at least monthly by a party independent of the counterparty which could include the investment manager, which party must be approved for such purpose by the Trustee. Any significant differences arising from such reconciliation must be promptly investigated and explained. If a price is not available from an independent pricing vendor, or the price quoted does not in the opinion of the Manager represent fair market value, or if the Manager otherwise considers it appropriate, off exchange derivative contract may be valued using an alternative method of valuation provided the value is approved by the Trustee or by using the counterparty valuation which must be approved or verified by a party (which could include the investment manager) which must be approved for this purpose by the Trustee and which is independent of the counterparty. Such independent verification of the counterparty valuation must be carried out at least weekly. Where an off exchange derivative contract is valued using an alternative method of valuation to the counterparty valuation, the Manager will follow international best practice and adhere to the principles on valuation of off exchange instruments established by bodies such as IOSCO and AIMA.

#### **2.10. Adjustment of valuation by Manager**

Notwithstanding any of the foregoing sub-paragraphs, the Manager may with the consent of the Trustee adjust the Value of any listed Investment if, having regard to currency, applicable rate of interest, maturity, marketability and such other considerations as the Manager may deem relevant, the Manager considers that such adjustment is required to reflect more fairly the Value of such Investment.

#### **2.11. Adjustment of method of Valuation by Manager**

Notwithstanding any of the foregoing sub paragraphs, the Manager may with the consent of the Trustee permit some other method of valuation of an Investment to be used, if having regard to currency, applicable rate of interest, maturity, marketability and such other considerations as the Manager may deem relevant, the Manager considers that such other method of valuation is required to reflect more fairly the Value of such Investment. Any such other method of valuation must be approved by the Trustee.

### **3. Calculation of Net Asset Value of a Fund**

In calculating the Net Asset Value of a Fund as at any particular Valuation Point for a Dealing Day (the **Relevant Dealing Day**)

#### **3.1. Treatment of Units issued and not cancelled**

Every Unit in the Fund issued and not cancelled on any Dealing Day prior to the Relevant Dealing Day shall be deemed to be in issue and the relevant Fund shall be deemed to include the value of any cash or other property to be received in respect of each such Unit after deducting therefrom or providing thereout the Preliminary Charge (if any), and any monies payable out of the relevant Fund pursuant to the provisions of paragraph 2.2 of Appendix B.

#### **3.2. Treatment of cancelled Units**

Where, in consequence of any notice or realisation request duly given pursuant to paragraph 4 of Appendix F, a reduction of the Trust Assets of the relevant Fund by the cancellation of Units has been or is to be effected on any Dealing Day prior to the Relevant Dealing Day but payment in respect of such reduction has not been completed, the Units in question shall be deemed not to be in issue and any amount payable in cash out of the Trust Assets in pursuance of such reduction shall be deducted. Furthermore, monies due to be transferred as a result of a conversion of Units pursuant to Appendix E shall be deemed to be a liability of the original Class and an asset of the New Class immediately after the Valuation Point for the Dealing Day to which the conversion request relates.

#### **3.3. Treatment of property agreed to be purchased or sold**

Where any Investment or other property has been agreed to be purchased or otherwise acquired or sold but such purchase, acquisition or sale has been not completed, such Investment or other property shall be included or excluded and the gross purchase, acquisition or net sale consideration excluded or included as the case may require as if such purchase, acquisition or sale had been duly completed;

#### **3.4. Treatment of amounts to be amortised**

There shall be included in the assets an amount equal to all such costs, charges, fees and expenses as the Manager may have determined to amortise pursuant to the provisions of Clause 7.4 less the amount thereof which has previously been or is then to be written off;

#### **3.5. Liabilities of a Fund**

The liabilities attributable to a Fund shall include (without limitation):-

- 3.5.1. any amount of Management Fee and Trustee Fee (if any) accrued up to the Relevant Dealing Day but remaining unpaid;
- 3.5.2. the amount of tax (if any) on gains or profits accrued up to the end of the last Accounting Period but remaining unpaid;
- 3.5.3. the aggregate amount for the time being outstanding of any borrowing effected under Clause 5 and the amount of any interest and expenses referred to in Clause 5.5 but not paid;
- 3.5.4. an amount equal to the Value of any futures contract or any other derivative contract which is a negative amount;
- 3.5.5. any other costs or expenses payable but not paid which are expressly authorised by any of the provisions of this Deed to be payable out of the Trust Assets and attributable to the Fund; and
- 3.5.6. an appropriate allowance for any contingent liabilities.

#### **3.6. Estimated taxation**

There shall be taken into account such sum (if any) as in the estimate of the Manager will fall to be paid or reclaimed in respect of taxation related to income and transactions prior to or on the Relevant

Dealing Day;

**3.7. Conversion of currencies**

Any Value (whether of a liability or of an Investment, cash or other property) otherwise than in the Base Currency of the relevant Fund shall be converted into such currency at the rate (whether official or otherwise) which the Manager shall deem appropriate in the circumstances having regard to any premium or discount which may be relevant and to the costs of exchange;

**3.8. Treatment of dividends or interest not yet received**

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

**3.9. Accrual of liabilities**

Liabilities shall (where appropriate) be treated as accruing from day to day.

**4. Allowance for Fiscal and purchase/sale charges**

The Manager shall have discretion when calculating the Net Asset Value of a Unit of a Fund as at any particular Valuation Point for a Dealing Day, to apply to the Net Asset Value of the relevant Fund a sum representing an appropriate allowance for Fiscal and purchase charges or Fiscal and sale charges, as the case may be but any such sum will not exceed in either case 1% of the Net Asset Value of the relevant Fund or such lesser amount as the Manager may determine.

## APPENDIX B - ISSUE OF UNITS

### 1.

#### 1.1. **Minimum Holding and Minimum Initial Subscription**

No Units shall be issued so as to give rise to a holding of less than the Minimum Holding.

#### 1.2. **Dates on which Units may be issued**

Units shall be issued on the Commencement Date in respect of applications received by the Manager or its duly authorised agents up to the Dealing Deadline in the place of receipt on such day as the Manager may determine. Thereafter Units shall only be issued on or with effect from a Dealing Day in respect of applications received by the Manager or its duly authorised agents up to the Dealing Deadline in the relevant place for the relevant Dealing Day. Subject thereto, if any application is received after the Dealing Deadline, such application shall be treated as having been received by the next Dealing Deadline.

#### 1.3. **Issue Price of Units**

Without prejudice to the provisions of paragraphs 3 and 4 hereof, the price per Unit at which Units shall be issued for cash and/or (in the case of a reconstruction and amalgamation referred to in subparagraph 1.3(4) below) other valuable consideration shall be:-

- 1.3.1. the price per Unit determined by the Manager in the case of Units issued on the Commencement Date;
- 1.3.2. in the case of Units issued on any Dealing Day the Net Asset Value per Unit of that class (rounded to the nearest three decimal places) determined as at the Valuation Point for that Dealing Day;
- 1.3.3. where the class of Units is a Hedged Currency Unit Class, adding to or deducting from (as the case may be) the sum calculated in accordance with (ii) above the cost and gains/losses per Unit (rounded to the nearest three decimal places per Unit) of any currency hedging transaction effected in respect of that class;
- 1.3.4. in the case of Units issued pursuant to a reconstruction and amalgamation, such price as may be specified in any particulars or circular approved by the Manager and the Trustee in respect of such reconstruction and amalgamation.

The Issue Price determined as aforesaid shall be subject to adjustment in the event that a performance related fee is payable out of the assets of the relevant Fund to the Manager or any investment adviser/manager appointed by the Manager. The method of any such adjustment shall be determined by the Manager and shall be set out in the Prospectus. The purpose of any such adjustment shall be to ensure that any performance fee is only payable in respect of Units which have appreciated in value, that all Holders have the same amount per Unit at risk and that all Units have the same Net Asset Value per Unit on an ongoing basis.

#### 1.4. **Payment for Units**

Unless the Manager shall otherwise agree payment for Units issued for cash shall be due not later than the relevant Settlement Date. If payment in full in cleared funds shall not be received by the Settlement Date the Manager may in any event cancel the issue of the relevant Units and shall cancel such issue if either (i) the Trustee so requires or (ii) the Units in respect of which the Issue Price shall not have been received in full as aforesaid constitute more than one per cent. of the total number of Units in issue on that Dealing Day. Upon such cancellation, the relevant Units shall be deemed never to have been allotted and the applicant therefor shall have no right or claim in respect thereof against the Manager or the Trustee;

#### **PROVIDED THAT:-**

- 1.4.1. no previous valuations of the relevant Fund shall be re-opened or invalidated as a result of the



cancellation of such Units;

1.4.2. the Manager shall be entitled to charge the applicant (and retain for its own account) a cancellation fee of such amount as it may from time to time determine to represent the administrative costs involved in processing the application for such Units from such applicant; and

1.4.3. the Manager may, but shall not be bound to, require the applicant to pay to the Manager for the account of the relevant Fund in respect of each Unit so cancelled the amount (if any) by which the Issue Price of each such Unit exceeds the Realisation Price which would have applied in relation to each such Unit if the Manager had received on such day a request from such applicant for the realisation thereof in accordance with the provisions of Appendix F.

#### 1.5. **Sale of Units by Manager**

Any Units purchased by the Manager pursuant to the provisions of Clause 3.2 and Appendix F, or subscribed by the Manager, on a Dealing Day of the relevant Fund and for the time being in issue may, without notice, be sold by the Manager on the same or any subsequent Dealing Day of such Fund in satisfaction of the whole or any part of any application for Units of the relevant class in the relevant Fund. Such sale may be effected at any price not exceeding the aggregate of the Net Asset Value applicable to Units of the relevant class in the relevant Fund issued as at such Dealing Day, the relevant Preliminary Charge and any amount which would have been charged pursuant to the provisions of this Deed on an issue of the same number of Units; and the Manager shall be entitled to retain for its own use and benefit all moneys received by it on any such sale.

#### 1.6. **Issue upon reconstruction**

Units may be issued other than in accordance with the foregoing as part of a scheme of reconstruction and amalgamation approved in accordance with Clause 11 and any such issue shall be on the terms and conditions as of the scheme.

#### 1.7. **Fractions of Units**

Fractions of not less than 1/1000 of a Unit may be issued. Subscription moneys representing smaller fractions of Units will not be returned to the applicant but will be retained as part of the assets of the relevant Fund.

#### 1.8. **Issues linked to performance fee**

Where a performance related fee is payable out of the assets of a Fund to the Manager or any investment adviser/ manager appointed by the Manager, and this was reflected in the Issue Price paid by a Holder for his Unit, additional Units may be issued to the Holder in the circumstances determined by the Manager which will be set out under the heading **Issue and Realisation Prices/ Asset Valuation** in the Prospectus. This power will be exercised to ensure that a performance fee is payable only in respect of Units which have appreciated in value.

### 2. **Exchange of Investments for Units**

The Manager may (subject as provided in Appendix H and to paragraph 1.1 above and provided that the Trustee shall be satisfied that the terms shall not be such as will result in any material prejudice to the interests of the existing Holders) in its absolute discretion also issue Units against the vesting upon the trusts hereof in the Trustee of Investments approved by the Manager for inclusion in the relevant Fund or Funds provided the Investments will qualify as Investments of the relevant Fund in accordance with the investment objective, policies and restrictions of the Fund and in connection therewith the following provisions shall apply:-

#### 2.1. **Vesting in Trustee before issue**

No Units shall be issued until the Investments shall have been vested in the Trustee or in the Trustee's sub-custodian or nominee to the Trustee's satisfaction;

## **2.2. Charges and expenses of vesting**

All charges, costs, fees and expenses arising in connection with such vesting so far as not paid by the person to whom the Units are to be issued may be paid out of the relevant Fund or Funds and (unless the Manager otherwise agrees) there shall also be paid out of the relevant Fund or Funds to the Manager an amount equivalent to the Preliminary Charge which the Manager would, if the Units to be issued had been issued for cash, have been entitled to charge in respect of such Units and an adjustment not exceeding that permissible in the case of Units issued for cash;

## **2.3. Number of Units to be issued**

The number of Units to be issued shall be that number (including fractions) which would on the day on which the relevant Investments are so vested in the Trustee (or, if that day is not a Dealing Day of the relevant Fund on the next succeeding Dealing Day of such Fund) have fallen to be issued for cash at the Net Asset Value applicable to Units of the relevant class issued on such Dealing Day (together with the relevant Preliminary Charge) against the payment of a sum equal to the value (calculated as hereinafter provided) of such Investments;

## **2.4. Valuation of Investments exchanged**

The value of the Investments so vested in the Trustee shall be calculated on such basis as the Manager may decide so long as the same does not exceed the highest amount that would be obtained by applying the definition of **Value** set out in Clause 1; and

## **2.5. Treatment of excess/insufficient aggregate value of Investments**

In the event of the aggregate value of such Investments determined as above

2.5.1. being in excess of the aggregate value of the number of Units to be issued to the holder of the Investments, the amount of such excess shall be paid out of the relevant Fund or Funds; and

2.5.2. being less than the aggregate value of the number of Units to be issued to the holder of the Investments, such holder shall pay to the Manager for the account of the relevant Fund or Funds the balance in cash.

## **3.**

### **3.1. Preliminary Charge**

The Manager may add to the Issue Price for payment to a distributor or as it may direct a Preliminary Charge and may on any day differentiate between applicants as to the amount of the Preliminary Charge it charges. The Preliminary Charge may be retained by the distributor for its own absolute use and benefit and/or may be used by the distributor in paying commissions to agents.

### **3.2. Payment out of Preliminary Charge of any commission, remuneration or other sum payable by Manager**

Any commission, remuneration or other sum payable by the Manager to any agent or other person in respect of the issue or sale of any Unit shall not be added to the price of such Unit but the Manager shall procure that any such sum shall be paid by the relevant distributor out of the Preliminary Charge.

## **4. Charge in respect of delivery of Certificates**

In the event of arrangements being made by the Manager for the delivery of Certificates outside Ireland, the price at which the relevant Units may be issued may, at the direction of the Manager, include in addition to the Issue Price a further amount sufficient to cover any additional stamp duty or taxation (whether national, municipal or otherwise) leviable 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 the remittance of money to Ireland.

## **5. No Certificate or written confirmation of membership until payment received**

No Certificate or written confirmation of entry in a Register shall be issued in respect of any Units until

the Trustee (or the Manager on behalf of the Trustee) is satisfied that the full amount of the Issue Price thereof, in cleared funds, has been duly received by the Trustee (or the Manager on behalf of the Trustee). All amounts so received by or on behalf of the Trustee in respect of the issue of Units (apart from any Preliminary Charge and any further amount charged) shall forthwith on receipt as aforesaid form part of the Trust Assets of the relevant Fund.

**6. Statements of all issues of Units**

The Manager shall furnish to the Trustee 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 it may determine to direct to be acquired for the account of the relevant Fund, and also a statement of any Investments which in accordance with the powers contained in this Deed the Manager may determine to direct to be sold for account of the relevant Fund, and all information which may be necessary so that the Trustee may be in a position to ascertain at any moment the Net Asset Value of the relevant Fund. The Trustee shall be entitled to refuse to issue a Certificate if at any time the Trustee is of the opinion that the provisions of this Appendix with regard to the issue of Units are being infringed; but nothing in this paragraph or in any other provision of this Deed shall impose upon the Trustee any responsibility for satisfying itself before Certificates are issued that the Manager or the Administrator has complied with the provisions of this Appendix.

## APPENDIX C - REGISTER OF HOLDERS AND TRANSFER OF UNITS

### 1.

#### 1.1. Register of Units

There shall be kept in respect of each Fund a Register listing the Holders of Units in that Fund. The Register may be kept either in written form or (without prejudice to the provisions of sub-paragraph 1.5) by such other means (including magnetic or electronic recording) as the Manager shall from time to time approve. Written confirmation of entry on the Register will be provided.

#### 1.2. Entries on Register

There shall be entered on each Register:-

- 1.2.1. the names and addresses of the Holders of Units in the relevant Fund;
- 1.2.2. the number of Units and where appropriate the relevant class of Units in the relevant Fund held by every such person and the serial number of the Certificate or Certificates (if any) in respect thereof;
- 1.2.3. the date at which the name of every such person was entered in respect of the Units of that Fund 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; and
- 1.2.4. the date on which any transfer is registered and the name and address of the transferee,

provided that the Registrar shall not be bound to register more than four persons as the joint Holders of any Unit.

#### 1.3. Body corporate

A body corporate may be registered as a Holder or as one of joint Holders.

#### 1.4. Change of name/address

Any change of name or address on the part of any Holder shall forthwith be notified to the Registrar, who on being satisfied thereof and on compliance with such formalities as either it or the Manager may require shall alter or cause to be altered the appropriate Register accordingly.

#### 1.5. Inspection of Register

Except when the Register is closed in accordance with the provisions of sub-paragraph 1.6 the Register containing details of Units held by a Holder shall during normal business hours (but subject to such reasonable restrictions as the Manager may impose or permit but so that not less than two hours in each Business Day shall be allowed for inspection) be open to the inspection of any Holder at the offices of the Registrar without charge, provided that if the Register is kept on magnetic tape or in accordance with some other mechanical or electrical system the provisions of this sub-paragraph may be implemented by the production of legible evidence of the contents of the Register.

#### 1.6. Closing of Register

The Register may be closed at such times and for such periods as the Trustee may from time to time determine, but it shall not be closed for more than thirty Business Days in any year.

#### 1.7. Conclusive evidence as to persons entitled to the Units

Save as herein provided, each Register shall be conclusive evidence as to the persons entitled to the Units entered therein and no notice of any trust (express, implied or constructive) shall be entered on any Register.

## **2.**

### **2.1. Entitlement of Holder to transfer Units**

Every Holder shall be entitled to transfer the Units registered in his name or any of them by an instrument in writing (which need not be a deed) in common form or in such other form as the Manager may from time to time approve. To be entered on the Register, transferees must acquire Units to a value of not less than the Minimum Initial Subscription for the relevant class of Units.

### **2.2. Signature of instruments of transfer**

Every instrument of transfer must be signed by or on behalf of (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 3.12 and sub-paragraph 2.6, 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.

### **2.3. Stamping of instruments of transfer**

Every instrument of transfer must be duly stamped with any applicable stamp duty and left with the Registrar for registration accompanied by any necessary declarations or other documents that may be required in consequence of any legislation for the time being in force and (subject to the provisions of paragraph 3.5 of Appendix D) by the Certificate or Certificates (if any) relating to the Units to be transferred and such other evidence as the Manager may require to prove the title of the transferor or his right to transfer the Units.

### **2.4. Retention of instruments of transfer**

All instruments of transfer which shall be registered may be retained by the Manager or by the Registrar on its behalf.

### **2.5. Registration fee**

A fee not exceeding Euro 12.50 may be charged by the Registrar on behalf of the Manager for the registration of each transfer and the issue of a new Certificate in the name of the transferee and a balance Certificate (if necessary) in the name of the transferor and such fee must if required by the Registrar be paid before the registration of the transfer.

### **2.6. Transfer in favour of Manager**

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

### **2.7. Realisation of Units in respect of transfers by Taxable Irish Person**

The Manager may realise and cancel a sufficient portion of the transferor's Units to discharge any tax payable to the Revenue Commissioners in Ireland in respect of a transfer of Units by a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person.

## **3.**

### **3.1. Death of a joint Holder**

In the case of the death of any one of joint Holders, the survivor or survivors shall be the only persons recognised by the Trustee, the Manager and the Registrar as having any title to or interest in the Units represented thereby and upon producing such evidence of the death as the Manager or the Registrar may require and (in the case of any Units in respect of which a Certificate is then in issue) delivering the relevant Certificate, the survivor or survivors shall be entitled to have such Certificate duly marked or to have a fresh Certificate duly issued in his or their name or names as may be appropriate and the Registrar shall make the necessary changes to the relevant Register.

**3.2. Title to deceased Holder's Units**

The executors or administrators of a deceased Holder (not being one of several joint Holders) shall (subject to the proviso to paragraph 1.2) be the only persons recognised by the Trustee, the Manager and the Registrar as having title to the Units represented thereby.

**3.3. Registration of successor to deceased Holder**

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, upon producing such evidence as to his title as the Manager or the Registrar shall think sufficient, either be registered himself as Holder of such Unit upon giving to the Registrar notice in writing of such desire 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.

**3.4. Entitlements of successor**

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.

**3.5. Retention by Trustee of moneys payable until registration**

The Trustee 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 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.

**4. Fees in respect of registration of various documents**

In respect of the registration of any probate, letters of administration, power of attorney, marriage or death certificate, notice in lieu of distringas, stop notice, order of the court, deed poll or other document relating to or affecting the title to any Unit there shall be paid to the Manager (or the Registrar on its behalf) such fee (not exceeding the sum of Euro 12.50) as the Manager (or the Registrar on its behalf) may from time to time require.

## APPENDIX D - CERTIFICATES

### 1.

#### 1.1. Form of Certificates

Certificates, if issued, shall be in registered form and shall be in such form as may from time to time be agreed between the Manager and the Trustee.

#### 1.2. Denomination of Certificates

Certificates may be issued in any denomination of one or more whole Units and may be issued in respect of fractions of Units.

#### 1.3. Information to be entered on Certificate

Each Certificate shall bear a serial number and shall specify the Fund, the number of Units and where appropriate the relevant class of Units represented thereby and the name of the Holder.

### 2.

#### 2.1. Signature of Certificates

Certificates shall be prepared by the Manager and signed by the Manager and the Trustee in some manner authorised by the Manager and the Trustee and such signature shall either be autographic, facsimile or affixed by some mechanical means under the control of the Manager and the Trustee or their duly authorised agents as the case may be. No Certificate shall be of any force or effect until so signed. Certificates so signed shall be valid and binding notwithstanding that the Manager or the Trustee or any person whose signature appears thereon as a duly authorised signatory of the Manager or the Trustee may have ceased to be the Manager or the Trustee or (as the case may be) so authorised.

#### 2.2. Delivery of Certificates

The Trustee shall sign and deliver to, or to the order of the Manager, Certificates in such denominations as may be required for Units which have been agreed to be issued and for which one or more Certificates have been requested to be issued by the relevant Holder and for such purpose shall be entitled to rely on a declaration in writing by the Manager as to the Units from time to time agreed to be issued and the request for Certificates (if appropriate), but the Trustee shall deliver any such Certificates only against payment or transfer to the Trustee of the cash or other property receivable by the relevant Fund in respect of the issue of the Units concerned. The Trustee shall also from time to time sign and deliver Certificates required to be issued pursuant to any provision of this Deed upon due compliance with the conditions applicable thereto.

### 3.

#### 3.1. Exchange of Certificates

Subject to the provisions of this Deed every Holder shall be entitled to exchange any or all of his Certificates (if any) for one or more Certificates of such authorised denominations as he may require representing the same aggregate number of Units. Before any such exchange as aforesaid is carried out the Holder shall surrender to the Manager for cancellation the Certificate or Certificates to be exchanged and shall pay to the Manager all moneys (if any) payable hereunder in respect of the issue of the new Certificate or Certificates.

#### 3.2. New Certificates

In case any Certificate shall become mutilated or defaced the Trustee in its discretion may issue to the person entitled thereto in exchange for, and upon surrendering to the Manager for cancellation the mutilated or defaced Certificate, a new Certificate. In case any Certificate shall be lost, stolen or destroyed the Trustee may in its discretion issue to the person entitled thereto a new Certificate in lieu thereof.

No such new Certificate shall be issued unless the applicant shall previously have:-

- 3.2.1. (in the case of loss, theft or destruction) furnished to the Manager evidence satisfactory to it and to the Trustee of the loss, theft or destruction of the original Certificate;
- 3.2.2. paid all expenses incurred in connection with the investigation of the facts by the Manager;
- 3.2.3. (in the case of defacement or mutilation) produced and surrendered to the Manager for cancellation the defaced or mutilated Certificate; and
- 3.2.4. (if required by the Manager and/or the Trustee so to do) furnished to the Manager and/or the Trustee such indemnity or bond as the Manager and/or the Trustee may require.

Neither the Manager nor the Trustee shall incur any liability for any action which they or either of them may take in good faith under the provisions of this sub-paragraph.

**3.3. Fee for issue of Certificate**

Before procuring the issue of any Certificate under the provisions of this paragraph the Manager may require from the applicant for the Certificate the payment to it of a fee not exceeding Euro 12.50 per Certificate together with a sum sufficient in its opinion to cover any stamp duty or other governmental taxes or charges that may be payable in connection with the issue of such Certificate.

**3.4. Name on new Certificate**

Every Certificate issued under the provisions of this paragraph shall be in the name of the Holder of the Units represented by the Certificate surrendered, lost, stolen or destroyed.

**3.5. Dispensing with production of Certificate**

Upon a transfer or realisation of Units or upon a conversion or upon a distribution in respect of any Unit, the Manager and the Trustee may, in their absolute discretion, dispense with production of any Certificate which has been lost, stolen or destroyed upon compliance by the Holder with the like requirements as are set out in sub-paragraph 3.2.

**3.6. Cancellation of mutilated or defaced Certificates**

All mutilated or defaced Certificates surrendered pursuant to this paragraph shall be cancelled forthwith by the Manager on behalf of the Trustee.



## APPENDIX E - CONVERSION OF UNITS

### 1. Conversion procedures

The following provisions shall have effect in relation to the conversion of Units of one class for Units of another class where such conversion is permitted by the Manager for the relevant Fund(s):-

#### 1.1.

a Holder of Units of any class in a Fund (the **Original Class**) may by notice to the Manager or any duly authorised agent of the Manager, such notice to be in writing or in such other form as the Manager may accept, and subject to the payment of such fee (if any) as is hereinafter provided, request the Manager or any duly authorised agent of the Manager to convert some or all of such Units of the Original Class into Units in another Fund (the **New Class**) subject to Units of the New Class being in issue and being offered for sale by the Manager, subject to the creation, issue or sale thereof not being suspended pursuant to paragraph 6 of Appendix F, subject to the right of Holders of Units of the Original Class to require a realisation of such Units not being suspended under paragraph 6 of Appendix F and subject to the Holder satisfying any further criteria laid down for the New Class as specified in the relevant Investment and Operational Guidelines and the Prospectus. No such conversion shall be effected if it would result in the Holder being a Holder of Units of the New Class less than the Minimum Initial Subscription or Units of the Original Class less than the Minimum Holding; the provisions of paragraph 7 of Appendix F shall apply to any such request as if the request was a request to realise the relevant Units of the Original Class;

#### 1.2.

for the conversion to be effected on a particular Dealing Day, notice of conversion must be received not later than the Dealing Deadline for the relevant Dealing Day for the New Class of Units in the relevant Fund in the location in which the notice is received provided however that the Manager or any duly authorised agent of the Manager may however at its discretion agree to accept requests for conversion received after the relevant Dealing Deadline provided that they are received prior to the relevant Valuation Point. In any other case, conversion will be effected as at the next Dealing Day for the New Class of Units in the relevant Fund following such receipt (the **relevant Dealing Day**);

#### 1.3.

the number of Units of the New Class to be issued will be calculated in accordance with the following formula:

$$N = \frac{[P \times (R \times CF) - F]}{S}$$

where:

- N - is the number of Units of the New Class to be issued.
- P - is the number of Units of the Original Class to be converted.
- R - is the Net Asset Value per Unit of the Original Class as calculated as at the relevant Valuation Point for the Dealing Day on which the conversion is to be effected.
- CF - in the case of a conversion of Units designated in the same Base Currency is 1. In any other case, it is the currency conversion factor determined by the Manager at the Valuation Point for the relevant Dealing Day as representing the effective rate of exchange applicable to the transfer of assets relating to the Original and New Classes of Units after adjusting such rate as may be necessary to reflect the effective costs of making such transfer;
- S - is the Net Asset Value per Unit of the New Class as calculated as at the relevant Valuation Point for the Dealing Day on which the conversion is to be effected.
- F - is the conversion charge (if any) payable on the conversion of the Original Class as set out below.

On a conversion Units of the New Class will be issued in respect of and in proportion to the Units of the

Original Class in the proportion N to P.

1.4.

upon any such conversion being effected, there shall be transferred to the Fund to which Units of the New Class relate from the Fund relating to the Original Class, assets or cash equal to the aggregate Net Asset Value of the Units of the Original Class converted; the assets or cash to be so transferred shall be determined at the sole discretion of the Manager;

1.5.

in respect of any such conversion the Holder shall pay to the Manager or as it directs (at its discretion) in such manner as the Manager may from time to time determine a fee in respect of such conversion not exceeding such amount as is set out in the Investment and Operation Guidelines for the relevant Fund; the Holder may also be required by the Manager to reimburse to the Manager any Fiscal and sale or purchase charges arising out of such conversion; such fee and all such charges may be taken into account by the Manager in determining the number of Units of the New Class to be issued in which event the Trustee will reimburse the Manager the amount of any such fee out of the assets of the relevant Fund;

1.6.

upon any such conversion becoming effective, the Manager shall procure that the relevant Registers are amended accordingly;

1.7.

no such conversion shall be effected unless the Manager shall have received the Certificate or Certificates (if any) issued in respect of the Units of the Original Class being converted; Certificates relating to Units of the New Class shall be issued in accordance with the provisions of this Deed if so requested by the Holder and agreed to by the Manager or by the Registrar on its behalf;

1.8.

the Manager may at its discretion permit the Holders of Units of any class in a Fund to convert his holding into Units of another class in the same Fund and the provision of this shall apply mutatis mutandis to such conversion of Units.

## APPENDIX F - REALISATION OF UNITS

### 1.

#### 1.1. **Delivery of realisation request**

On receipt by the Manager or its duly authorised agent of a realisation request from a Holder which complies with the requirements of sub-paragraph 1.2, the Manager shall (subject to the provisions of paragraphs 2, 6 and 7 below and clause 3.9 of the Deed) effect the realisation of the Units specified in the realisation request at the Realisation Price on the next Dealing Day occurring after the date of receipt of the realisation request provided such request is received not later than the Dealing Deadline in the relevant place for that Dealing Day. Any realisation request received after the Dealing Deadline, unless the Manager otherwise agrees and provided it is received before the relevant Valuation Point, is to be treated as having been received on the following Dealing Deadline. Subject thereto if any realisation request is received on a day which is not a Business Day in the place in which the request is received or is received after the Dealing Deadline in that place such request shall be treated as having been received on the next following day which is a Business Day in such place.

#### 1.2. **Contents of realisation request**

To be effective a realisation request must be given in writing signed by the Holder or each of joint Holders (although the Manager or any of its authorised agents may, but shall not be bound to, accept any request given by the Holder or any one of joint Holders by word of mouth, including by telephone) or by any other such manner as the Manager may determine from time to time and must specify the number and class of Units to be realised and the name or names of the Holder or Holders. Such realisation request must be accompanied by the duly endorsed Certificate or Certificates (if any) issued for the Units to which it relates. Subject as hereinafter provided, a realisation request once given cannot be revoked without the consent of the Manager.

#### 1.3. **Calculation of Realisation Price**

The price per Unit at which Units shall be realised on any Dealing Day shall be ascertained by the Manager as at the Valuation Point for such Dealing Day and shall be the Net Asset Value per Unit (rounded to the nearest three decimal places). The Realisation Price determined as aforesaid shall be subject to adjustment in the event that a performance related fee is payable out of the assets of the relevant Fund to the Manager or any investment adviser/manager appointed by the Manager. The method of any such adjustment shall be determined by the Manager and shall be set out under the heading **Issue and Realisation Prices/Asset Valuation** in the Prospectus. The purpose of any such adjustment shall be to ensure that any performance fee is only payable in respect of Units which have appreciated in value, that all Holders have the same amount per Unit at risk and that all Units have the same Net Asset Value per Unit on an ongoing basis. In addition, the Manager may, in calculating the Realisation Price of Units, deduct a sum in respect of realisation requests which will necessitate the Manager realising investments at a discount to the price (calculated in accordance with paragraph 2 of Appendix A) that would otherwise be used to value the assets of the relevant Fund in order to provide monies to meet such realisation requests. Such deduction will represent a proportionate part of such reduction in value and will be a sum which the Manager considers fair and equitable and is approved by the Trustee. Alternatively, the Manager may arrange for the relevant Fund to borrow funds subject to the limits and conditions laid down in clause 5 and the Regulations and the costs of such borrowings will be apportioned as aforesaid to such extent as the Manager considers fair and equitable and is approved by the Trustee.

#### 1.4. **Realisation Fee**

The Manager may require any Holder to pay to the Manager for the benefit of the relevant Fund a realisation fee in respect of each Unit to be realised of such amount as may be agreed by the Manager but not exceeding in respect of each Unit to be realised an amount greater than 1% of the Realisation Price determined in accordance with paragraph 1.3. The amount of any realisation fee payable may be deducted from the amount to be paid to the former Holder in respect of such realisation before such payment is made.

**1.5. Verification of Realisation Price by Trustee**

Unless specifically requested by the Holder or former Holder concerned so to do not later than one month after the relevant Dealing Day the Trustee shall be under no obligation to check the calculation of the amount payable in connection with any purchase or cancellation of Units pursuant to this paragraph but shall be entitled at any time before the audited accounts of the relevant Fund have been prepared covering the relevant Dealing Day to require the Manager to justify the same.

**1.6. Payment in respect of realisation**

Any amount payable to a Holder in respect of the realisation of Units may be paid sooner than but shall be payable not later than the Settlement Date for the relevant Fund provided that the Manager may retain sufficient portion of the amount payable to the Holder in respect of the realisation to pay any taxation payable to the Irish tax authorities in respect of the realisation of the Units in the relevant Fund. Each such amount shall be paid in accordance with and subject to the provisions of paragraph 2.2 of Appendix G as if the same were a distribution payable to the relevant Holder.

**1.7. Partial realisation**

NO Holder shall be entitled to realise part only of his holding of Units of a class in a Fund if such realisation would result in his holding of such Units after such realisation being less than the Minimum Holding.

**1.8. Balance Certificate**

In the case of Units in respect of which a Certificate is then in issue, where part only of the Units represented by such Certificate are to be realised the Manager shall procure a balance Certificate to be issued for the balance of the Units comprised in the original Certificate and the Holder shall pay to the Manager (which may deduct the same from any amount payable to such Holder) the fiscal charges (if any) and all other costs, charges and expenses incurred or arising upon the issue of such Certificate.

**1.9. Dispensing with production of Certificate**

The Manager may at its option dispense with the production of any Certificate which shall have become lost, stolen or destroyed upon compliance by the Holder with the like requirements to those arising in the case of an application by him for the replacement thereof.

**1.10. Realisation by cancellation**

WHERE realisation is to be effected by cancellation of Units the Manager shall proceed to effect any sales necessary to provide the cash required and shall notify the Trustee that the said Units are to be realised and cancelled in accordance with the provisions of this Appendix and shall deliver to the Registrar for cancellation the Certificate (if any) representing the said Units and in such event the Trust Assets of the relevant Fund shall be reduced by the cancellation of such Units and the Trustee shall pay to the Manager out of the relevant Fund in respect of the cancellation of the said Units the Realisation Price thereof and the Manager shall (subject as otherwise provided in this Deed) pay over the same to the Holder.

**2. Realisation by purchase by Manager**

The Manager shall be entitled in the name and on behalf of the Holder to execute an instrument of transfer in respect of any Units to be realised hereunder by purchase by the Manager and to endorse and sign on the appropriate Certificate (if any) in respect of any Units to be realised hereunder by cancellation such statement as may be necessary or desirable as evidence that the Holder no longer has any interest in the said Units, provided that in either event the Manager shall within a reasonable period thereafter furnish to the Trustee the authority under which it acted but the Trustee shall not be concerned to require the endorsement of any such statement and shall be entitled to cancel Units upon compliance with the procedure provided in this Appendix.

### **3. Suspension of Dealings**

The Manager may at any time with the approval of the Trustee temporarily suspend the calculation of the Net Asset Value per Unit, the issue of Units and the right of the Holders to require the realisation of Units (having notified the Financial Regulator and the Stock Exchange of any such suspension immediately, and, in any event, within the same Business Day) under this paragraph and/or may delay the payment of any moneys in respect of any such realisation during any of the following periods:-

#### **3.1. When relevant Market closed**

Any period when any Market on which a substantial part of the Investments of the relevant Fund from time to time are quoted, listed or dealt in is closed otherwise than for ordinary holidays;

#### **3.2. When dealings on Market restricted or suspended**

Any period when dealings on any such Market are restricted or suspended;

#### **3.3. When disposal cannot be effected normally or without seriously prejudicing the Holders' interests**

During the existence of any state of affairs as a result of which disposal of some or all Investments or other property for the time being comprised in the relevant Fund cannot, in the opinion of the Manager, be effected normally or without seriously prejudicing the interests of Holders;

#### **3.4. When Net Asset Value cannot be ascertained**

During any breakdown in the means of communications normally employed in determining the Net Asset Value of the relevant Fund or when for any other reason the Value of any Investment or other property for the time being comprised in the relevant Fund cannot be promptly and accurately ascertained;

#### **3.5. When realisation cannot be effected at normal prices or normal rates of exchange**

Any period when the realisation of Investments or other property of the relevant Fund from time to time or the transfer of funds involved in such realisation cannot, in the opinion of the Manager, be effected at normal prices or normal rates of exchange.

Such suspension (which expression shall include the aforesaid right to delay payment) shall take effect forthwith upon the declaration thereof by the Manager and thereafter there shall be no issue or realisation of Units and/or payment of moneys in respect of any such realisation until the Manager 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 suspension is authorised under this paragraph shall exist. Each declaration by the Manager pursuant to this paragraph shall be consistent with such official rules and regulations, if any, relating to the subject matter hereof as shall have been promulgated by any authority having jurisdiction over the Trust or the relevant Fund 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 hereof, the declaration of the Manager shall be conclusive. Any Holder or potential Holder may at any time after such a suspension has been declared and before termination of such suspension withdraw any application for the realisation of Units or any application for the issue of Units by notice in writing to the Manager. If no such notice withdrawing any such application has been received by the Manager before termination of such suspension, the Manager shall, subject to and in accordance with the provisions of this Deed, realise Units in respect of which it or any of its authorised agents has received a realisation request and consider applications for the issue of Units as at the Dealing Day of Units next following the termination of such suspension.

### **4. Restriction on number of Units realised on a Dealing Day**

The Manager shall be entitled with the approval of the Trustee to limit the total number of Units in any Fund which Holders are entitled to realise on a Dealing Day to 10 per cent of the total number of Units in issue (disregarding any Units which have been agreed to be issued), such limitation to be applied (subject as provided in the last sentence of this paragraph) pro rata to all Holders who have validly requested realisations to be effected on or as at such Dealing Day so that the proportion realised of

each holding so requested to be realised is the same for all such Holders. Any Units which, by virtue of the powers conferred on the Manager hereby, are not realised on a particular Dealing Day of the relevant Fund (a **first relevant Dealing Day**) shall be carried forward for realisation (subject to any further application of the provisions of this paragraph) on the Dealing Day of such Fund next following the first relevant Dealing Day (such Dealing Day being hereinafter referred to as a **second relevant Dealing Day**). The Manager will inform the Holders of Units affected thereby within two Business Days after the first relevant Dealing Day of such Fund that such Units have not been realised and that (subject as aforesaid) they shall be realised on the second relevant Dealing Day. If realisation requests are carried forward as aforesaid, any other realisation request received after the first relevant Dealing Day and before the second relevant Dealing Day shall also be carried forward to, and be deemed to be a request for the realisation of the relevant Units on the second relevant Dealing Day.

## **5. Restriction on individual realisations**

Where a Holder requests the realisation of a number of Units equal to 5 per cent. or more of the total number of Units of a Fund in issue on the Dealing Day on which such Units would but for this paragraph have been realised pursuant to sub-clause 3.9 of Clause 3 (disregarding any Units to be issued on such Dealing Day), the Manager shall have the right, instead of purchasing or cancelling the said Units at the Realisation Price, to elect by notice in writing to the Holder to purchase or cancel the said Units (unless the further option conferred on the Manager by sub-paragraph 8.2 below or on the Holder by sub-paragraph 8.4 below shall be exercised) at the aggregate price hereinafter mentioned. The following provisions shall apply on any exercise by the Manager of the said right of election:-

### **5.1. Realisation of Investments**

Subject as hereinafter provided the Manager shall cause to be sold or realised that proportion of each Investment forming part of the Trust Assets of the relevant Fund which the Net Asset Value of the Units of the relevant Fund to be purchased or cancelled bears to the total number of the Units of the relevant Fund then in issue and shall add to the net proceeds thereof a similar proportion of the net cash then forming or deemed to form part of the Trust Assets of the relevant Fund and the aggregate amount so obtained shall be adjusted in the said proportion in accordance with (where deemed by the Manager to be applicable) the provisions of paragraph 2 of Appendix A in the same way in which such adjustments would be made in the event of a valuation of the relevant Fund. The resulting sum shall be the realisation price of the said Units

PROVIDED ALWAYS THAT,

- 5.1.1. if for any reason it is not possible or convenient in the case of any one or more Investments to sell or realise exactly the said proportion or if the Manager deems it appropriate to exclude from sale or realisation any Investment (or part thereof) which is not quoted, listed or normally dealt in on a Market, the Investments to be sold or realised and the amount of cash to be added to the net proceeds thereof may be adjusted in such manner as the Manager may deem equitable and as may ensure that the amount receivable by the Holder is as nearly as may be the same as he would receive if the foregoing provisions of this paragraph (excluding this paragraph 5.1.1 proviso) had been strictly complied with;
- 5.1.2. the Manager shall in selecting the Investments to be sold have regard to the interests of continuing Holders in the light of circumstances prevailing at the time of selection by reason of the nature and balance of the Investments forming part of the relevant Fund following such a sale or proposed sale but the Manager shall not be liable for a selection provided that it acted in good faith; and
- 5.1.3. where Investments selected are not selected in proportion or as nearly in proportion as circumstances admit to the proportion which the value of the Units of the relevant Fund to be realised bears to the total value of Units in the relevant Fund in issue (ignoring fractions and Investments which the Manager does not regard as readily realisable) such selection shall only be made if the Trustee is satisfied that the basis of selection is not such as is likely to prejudice materially the interests of continuing Holders;

### **5.2. In specie distribution**

The Manager may elect that instead of the said Units being purchased or cancelled by the Manager as provided in sub-paragraph 5.1 above the relevant Fund shall be reduced by the cancellation of the said

Units and in respect of such cancellation there shall be transferred to the Holder in specie the Investments which would otherwise be sold and there shall be paid to the Holder the amount of cash which would be added to the net sale proceeds of such Investments subject to the application of adjustments which would fall to be made to the aggregate of the net proceeds of sale of such Investments and cash pursuant to sub-paragraph 5.1 above.

### 5.3. **Notice to Holder**

In order to exercise the right conferred on it by sub-paragraph 5.1 or sub-paragraph 5.2 above the Manager shall as soon as possible and in any event within ten Business Days after the date of receipt of the said request give to the Holder notice in writing of the exercise of such right and supply to the Holder particulars of the Investments to be sold or realised or transferred and of the amount of cash to be added;

### 5.4. **Election by Holder**

The Holder upon the service of such notice shall, if the Manager shall have elected to proceed in accordance with sub-paragraph 5.1 above, have the option to elect by written notice served on the Manager within five Business Days after the service of such notice by the Manager that the Manager shall proceed in accordance with sub-paragraph 5.2 above. In addition, the Holder upon the service of such notice shall, if the Manager shall have elected to proceed in accordance with sub-paragraph 5.2 above, have the option to elect by written notice served on the Manager within five Business Days after the service of such notice by the Manager that the Manager shall proceed in accordance with sub-paragraph 5.1 above;

### 5.5. **Notice to Trustee**

If the realisation is to be effected under sub-paragraph 5.2 above the Manager shall notify the Trustee and shall supply to the Trustee particulars of the Investments to be transferred and cash to be paid to the Holder and the Holder shall deliver to the Trustee for cancellation the Certificate or Certificates (if any) in respect of the said Units. The Manager shall prepare and deliver to the Trustee for execution transfers of such Investments in favour of the Holder. All stamp duties and registration fees in respect of such transfers shall be payable by the Holder;

### 5.6. **Cancellation**

If the realisation is to be effected under sub-paragraph 5.1 above the Manager shall proceed to effect the sales or realisations referred to in sub-paragraph 5.1 above and the Manager shall notify the Trustee that the said Units are to be realised in accordance with that sub-paragraph and the Holder shall deliver to the Trustee for cancellation the Certificate or Certificates (if any) in respect of the said Units and in such event the relevant Fund shall be reduced by the cancellation of the said Units and the Manager shall, subject as in this paragraph provided, be entitled to receive out of the Trust Assets of the relevant Fund in respect of the cancellation of the said Units a sum equal to that payable by the Manager to the Holder as the realisation price of the said Units PROVIDED ALWAYS THAT, where in pursuance of sub-paragraph 5.1 above there falls to be sold or realised any Investment which is not quoted, listed or normally dealt in on a Market and which has not been excluded as provided by the said sub-paragraph 5.1 above, the net proceeds thereof shall not be receivable by the Manager from the Trustee nor payable by the Manager to the Holder until the said Investment shall have been realised, and neither the Trustee nor the Manager shall be under any liability in respect of any delay howsoever caused in such realisation. In the event of any delay or difficulty in the realisation of any such Investment the same may, if the Holder and the Manager so agree, be transferred to the Holder in satisfaction of his right to have the same sold and to receive the net sale proceeds thereof and in satisfaction pro tanto of the rights of the Manager against the Trust.

### 5.7. **Realisations linked to performance fees**

Where a performance related fee is payable out of the assets of a Fund to the Manager or any investment adviser/ manager appointed by the Manager, any Units in respect of which a performance fee is payable may be subject to compulsory realisation by the Manager in order to realise assets to pay the performance fee. The circumstances in which such realisation will be effected by the Manager will be set out under the heading **Issue and Realisation Prices/ Asset Valuation** in the Prospectus and the Manager will only exercise this power to ensure that any performance fee is payable in respect of Units which have appreciated in value.

## APPENDIX G - DISTRIBUTIONS

### 1.

#### 1.1. Distribution by Trustee

On a Distribution Date of the relevant Fund the Trustee shall distribute, among the Holders of Units in the relevant class of Units of the Fund as at the immediately preceding Accounting Date rateably in accordance with the number of Units held by them on such Accounting Date, such amount (if any) as the Manager may determine to distribute in respect of the Income available for distribution in respect of the Accounting Period ended on such Accounting Date less the Income (if any) previously distributed by way of interim distribution in respect of such Accounting Period. As at the Accounting Date the Income required to effect such distribution shall be transferred to a special account in the books of the Trustee to be entitled **Distribution Account**.

#### 1.2. Interim and further distributions

The Manager may at any time and from time to time during any Accounting Period determine that there shall be distributed to Holders of Units in the relevant class of Units of the relevant Fund either by way of interim distribution on account of the Income available for distribution in respect of the then current Accounting Period or by way of a further distribution in respect of the Income available for distribution in respect of the immediately preceding Accounting Period such amount as the Manager may determine and in the event of the Manager so determining:-

1.2.1. the amount required to effect such interim distribution shall be transferred to the Distribution Account; and

1.2.2. the amount so determined to be distributed shall, on such day as the Manager may with the prior approval of the Trustee determine, be distributed by the Trustee among the Holders of Units of the relevant class in the relevant Fund as at the day on which such amount was transferred to the Distribution Account rateably in accordance with the number of Units of the relevant class in the relevant Fund held by them on such day. In the case of an interim distribution on account of the amount available for distribution in respect of the then current Accounting Period, the amount so determined to be distributed shall not exceed such sum as in the opinion of the Manager represents the amount available for distribution calculated from the commencement of such Accounting Period down to the day on which such amount is transferred to the Distribution Account.

### 2.

#### 2.1. Reinvestment of distribution

Unless a Holder requests payment of a distribution in cash, the amount to be paid to a Holder in accordance with paragraph 1 in respect of a distribution in respect of Units of any class in a Fund shall be applied in payment for additional Units of the relevant class in the relevant Fund (including fractions as provided herein) (the **additional units**). Each such Holder shall have issued to it such number of additional units credited as fully paid up, which, calculated by reference to the Net Asset Value per Unit of the relevant class at the opening of business on the relevant Distribution Date (or if such date is not a Dealing Day on the next succeeding Dealing Day) (the **relevant date**), is nearly as possible equal to (but not in excess of) the cash amount of the relevant distribution and for such purpose the Manager as agent for the Holder will apply for the issue of the additional units.

#### 2.2. Payment of distribution

In the event that the Holder elects not to reinvest the distribution the amount of each distribution to be paid by the Trustee to any Holder under the provisions of this Deed shall be sent by wire transfer or by cheque or bank draft through the post to the registered address of each such Holder or in the case of joint Holders to the registered address of that one of the joint Holders who is first named on the Register or to the registered address of such other of the joint Holders as may be authorised in writing by all of them and, in each case, at the risk of such Holder or (as the case may be) joint Holders. Every such cheque or bank draft shall be made payable to the order of the person to whom it is sent and



payment of the cheque or bank draft by the banker upon whom it is drawn shall be a satisfaction of the moneys payable. Where an authority in that behalf shall have been received by the Trustee in such form as the Trustee shall consider sufficient the Trustee shall pay the amount distributable to any Holder to his bankers or other agent and the receipt of such bankers or other agent shall be a good discharge therefore.

### **2.3. Deductions from distributions**

Before making any distribution or other payment in respect of any Unit, the Trustee or the Manager may make any such deductions or withholdings as it is required or entitled by any applicable law to make in respect of any income, interest or other taxes, charges or assessments whatsoever. The Trustee and the Manager may also deduct the amount of any stamp duties or other governmental taxes, charges or assessments payable by it or them in respect of any distribution made hereunder. For the avoidance of any doubt, where the Manager on behalf of a Fund is required to pay any taxation as a consequence of making any dividend payment to a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person, the Manager may deduct from the payment an amount equal to the taxation attributable to the relevant payment(s) and pay such amounts to the appropriate tax authorities. Neither the Trustee nor the Manager shall be liable to account to any Holder or former Holders or otherwise for any payment made or suffered in good faith to any fiscal authority in any jurisdiction, notwithstanding that any such payment need not or ought not to have been made or suffered.

### **2.4. No interest on distribution**

No amount payable to a Holder in respect of any distribution or realisation shall bear interest. Distributions not claimed within six years from their due date will lapse and revert to the relevant Fund.

## **3. Calculation of amount available for distribution**

The amount available for distribution from a Fund in respect of any Accounting Period shall be assessed by the Manager by determining the amount of Income attributable to such period as being the amount of Income received during such Accounting Period. For the purposes of this Deed all Income shall be treated as received on the date on which it is actually received or may accrue provided that the Manager shall have absolute discretion after consulting the Auditors and with the approval of the Trustee to deem Income receivable as Income received. Such amount available for distribution shall be calculated as follows;

### **3.1. Deduction of fees, etc.**

By deducting the Management Fee, the Trustee Fee, any VAT payable thereon and all costs, charges, fees and expenses paid or payable and permitted by this Deed to be paid out of the relevant Fund (in each case being paid or payable in respect of the relevant Accounting Period but so that the same shall only be so deducted insofar as the same is charged against the income of the relevant Fund) from the Income in respect of the relevant Accounting Period.

### **3.2. Deduction of interest on borrowings and expenses under Clause 5.5**

By deducting therefrom any interest paid or payable in respect of the relevant Accounting Period on borrowings effected under Clause 5 and the amount of any expenses paid or payable out of the relevant Fund pursuant to Clause 5.5, in each case to the extent (if any) that the same is charged against the Income of the relevant Fund;

### **3.3. Provision for taxation**

By making such provisions for taxation for the relevant Fund as the Manager after consulting the Auditors shall think appropriate;

### **3.4. Adjustments for income**

By adjusting the resulting figure by the addition of a sum representing the amounts included in the Issue Price of Units of the relevant Fund issued during the relevant Accounting Period for Income accrued up to the time of issue and by the deduction of a sum representing participation in Income distributed upon the cancellation of Units of the relevant Fund during the relevant Accounting Period;

**3.5. Provision for tax repayable**

By adding such sum as shall have been received or is estimated by the Manager to be receivable by way of repayment of tax on income receivable by the relevant Fund during the relevant Accounting Period; and

**3.6. Addition of monies brought forward**

By adding any amount brought forward in respect of the relevant Fund from the previous Accounting Period except to such extent (if any) as the Manager may determine not to distribute the same.

**4. Interest on monies standing to the credit of Distribution Account**

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 Fund 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 Fund but shall be held by the Trustee upon trust for distribution or application as herein provided.

- 5.** Notwithstanding any other provision of this Deed, where the Manager is required to pay any tax as a consequence of making any payment to a Holder who is or is deemed to be a Taxable Irish Person or is acting on behalf of such a person, the Manager shall be entitled to deduct from the payment to be made to the Holder an amount equal to the tax attributable to that payment and pay such amount to the Irish tax authorities.

## APPENDIX H - INVESTMENT OF THE TRUST ASSETS

### 1. Acquisition of Investments

With effect on and from the Commencement Date, all cash and property which ought in accordance with the provisions of this Deed to be paid or transferred to the Trustee shall (except insofar as such cash may in the opinion of the Manager be required for any other purpose permitted by any other provision of this Deed) be applied at the discretion of the Manager (but subject always to the provisions of this Deed, the Prospectus and the Regulations) in the acquisition of Investments and/or such other property as may be permitted by any provision of this Deed, the Prospectus and by the Regulations provided that:-

#### 1.1. Retention of cash

Without prejudice to the provisions of Clause 5, all or any amount of cash may during such time or times as the Manager may think fit be retained in any currency or currencies either in cash or on deposit with, or in certificates of deposit or other banking instruments issued by, the Trustee or any banker or other financial institution in any part of the world approved by the Trustee (including the Manager or any Connected Person of the Manager) subject to the provisions of the Central Bank Acts, 1942 to 1997 as amended from time to time;

#### 1.2. Specific Investments

The Manager may invest up to 100 per cent of the Net Asset Value of a Fund in any of the Specific Investments.

Subject to Regulation 46 of the Regulations all Investments which constitute **transferable securities and/or liquid financial assets** within the meaning of the Regulations shall be listed or dealt on a Market or shall be acquired on the undertaking that application will be made to have them so listed or dealt.

#### 1.3. Investment in other collective investment schemes

Subject to the Regulations a Fund may invest in other collective investment schemes.

#### 1.4. Investment in index tracking funds

1.4.1. The Manager may invest up to 20% of the Net Asset Value of a Fund in shares and/or debt securities issued by the same body where the investment policy of the Fund is to replicate the composition of certain stock or debt securities index which satisfies the criteria set out in the Financial Regulator's notices and is recognised by the Financial Regulator.

1.4.2. The limit above may be raised to 35%, and applied to a single issuer, where this is justified by exceptional market conditions.

### 2. Changes of Investments due to exceeding limits

Subject to the provisions in the final sentence of this paragraph, it shall not be necessary for the Manager immediately to effect changes of Investments or other property forming part of any Fund merely because, owing to appreciations or depreciations in the value of the whole or any part of the relevant Fund and/or variations in exchange rates or as a result of any of the following circumstances, any of the limitations or restrictions contained in the Regulations shall be exceeded;

#### 2.1. Receipt of rights, bonuses, etc. by Trustee

The receipt by the Trustee or its nominee of any rights, bonuses or benefits in the nature of capital; or

#### 2.2. Scheme/arrangement for amalgamation, etc.

Any scheme or arrangement for amalgamation, reconstruction, conversion or exchange; or

### 2.3. Realisation

Any realisation of Units or assets forming part of the relevant Fund,

but if and for so long as any of such limitations or restrictions shall be exceeded the Manager shall not purchase any Investments or other property which would result in any of such limitations or restrictions being further exceeded. Notwithstanding the foregoing, if any of such limitations or restrictions shall at any time be exceeded for reasons beyond the control of the Manager or as the result of the exercise of subscription rights, the Manager shall adopt as a priority objective for the relevant Fund's sale transactions the remedying of the situation after taking due account of the interests of Holders generally.

### 3. Interest on deposits with certain entities

Where any cash forming part of a Fund or standing to the credit of the Distribution Account is transferred subject to the provisions of the Central Bank Acts, 1942 to 2004 as amended to a deposit account with the Trustee, the Manager or any investment adviser appointed by the Manager, the Administrator or any Connected Person of any of them (being 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 the Trust Assets of a Fund or (as the case may be) stands to the credit of the Distribution Account.

### 4. Realisation/exchange of Investments

Any Investment or other property comprised in the assets of a Fund may at any time be realised at the discretion of the Manager either in order to invest the proceeds of sale in other Investments and/or other property or 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. Any Investment or other property in the Trust Assets of a Fund may at any time be exchanged for any other Investment.

### 5.

#### 5.1. Purchase and sale of Investments as agent

The Manager, any investment adviser, any investment broker or any Connected Person of any of them may purchase and sell Investments for the account of a Fund as agent for the Trustee and shall be entitled to charge to the relevant Fund commissions and/or brokerage on such transactions and to accept payment of and retain for its own absolute use and benefit all commissions, brokerage, discounts on or rebates of brokerage and commission which it may derive from or in connection with any such purchase or sale and shall be entitled at its absolute discretion to share any such commissions, brokerages, discounts or rebates with any other persons whatsoever notwithstanding that any such amounts would otherwise form part of the Trust Assets of the relevant Fund or fall to be treated as such. Notwithstanding the generality of the foregoing, the Manager, any investment adviser, any investment manager or any Connected Person or any of them shall comply with any guidelines issued by the Financial Regulator from time to time applicable to discounts/rebates of brokerage and commissions and any other similar arrangements.

#### 5.2. Selling or dealing as principal

Subject to the provisions of the Regulations nothing in this Deed shall prevent

5.2.1. the Trustee, the Manager, any investment manager/adviser or any Connected Person of any of them (in this sub-paragraph 5.2 called the **Interested Party**) from selling Investments to or from vesting Investments in the Trustee for the account of a Fund with the same rights which they would have had if they were not a party to, appointed under, or a Connected Person of a party to, or an appointee under, this Deed; or

5.2.2. any Interested Party purchasing Investments from the Trustee for the account of a Fund with

the same rights which they would have had if they were not a party to, appointed under, or a Connected Person of a party to, or an appointee under, this Deed. Subject to the provisions of the Regulations 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 **PROVIDED THAT** any such sale or purchase is made on terms no less favourable to the relevant Fund than could reasonably have been obtained by the relevant Fund if the transaction had been effected on normal commercial terms negotiated at arm's length and

- (1) a certificate has been obtained by the Manager, from a person approved by the Trustee as being independent and competent to give such certificate, to the effect that the terms of the transaction are no less favourable to the Trust than could reasonably have been obtained by the Trust if the transaction had been effected on normal commercial terms negotiated at arm's length; or
- (2) such transaction has been executed on an organised investment exchange on the best terms reasonably obtainable; or
- (3) where (1) and (2) are not practicable, the Trustee otherwise certifies that it is satisfied that the transaction has been carried out as if effected on normal commercial terms negotiated at arm's length.

**PROVIDED FURTHER** that where an Interested Party acts as agent for a Fund in respect of any such sale or purchase it shall only be entitled to receive from the relevant Fund such commission or other benefit as it would be usual for such party to receive for such transaction had it been carried out on normal commercial terms negotiated at arm's length and that all such transactions shall be consistent with the best interest of the Holders of Units.

## 6.

### 6.1. Efficient Portfolio Management

The Manager may with notification to the Trustee, in the investment of a Fund:-

- 6.1.1. employ techniques and instruments relating to the Investments and other assets of the Fund under any conditions and within any limits laid down by the Financial Regulator from time to time for the purposes of the Regulations provided that such techniques and instruments are used for efficient portfolio management; and
- 6.1.2. employ techniques and instruments intended to provide protection against exchange risks in the context of the management of the assets and liabilities of a Fund.

### 6.2. Margin and cover

For the purpose of providing margin and/or cover in respect of any of the foregoing transactions, the Trustee shall be entitled:-

- 6.2.1. in accordance with the instructions of the Manager and as permitted under the rules and regulations of any Market to charge, pledge or encumber any Investments forming part of the Trust Assets of a Fund;
- 6.2.2. in accordance with the instructions of the Manager to vest any such Investments or cash in the relevant Market or in any company controlled by such Market and used for the purpose of receiving margin and/or cover and/or collateral or in a nominee for the Trustee;
- 6.2.3. in accordance with the instructions of the Manager and as permitted under the rules and regulations of a Market, to give or obtain the guarantee of a bank (and to provide any necessary counter-security therefor) and deposit such guarantee or, at its discretion, cash, with such Market or any company controlled by such Market and used for the purpose of receiving margin and/or cover and/or collateral **PROVIDED THAT** nothing in this Deed shall prevent the Trustee or any Connected Person of the Trustee, the Manager or any investment manager/adviser from providing guarantees (or counter-securities) for the purpose of providing margin and/or cover upon their normal terms of business and so be entitled to retain for their

own use (without liability to account therefor) any benefits, profits or advantages which they may derive therefrom.

### **6.3. Stock lending**

The Manager may with the prior written approval of the Trustee and under the conditions and subject to the Regulations and the limits laid down by the Manager, loan or transfer on terms which involve a re-transfer of equivalent Investments, any of the Investments comprised in a Fund or documents of title or certificates evidencing title to such Investments to third parties (including Connected Persons of the Manager, Trustee, any administrator or any investment manager/adviser) on such terms and conditions as it thinks fit and may permit any loaned Investments to be transferred into the name of and voted by the borrower and others, and neither the Manager nor the Trustee shall be liable for the default of any such borrower. The Trustee shall co-operate with the Manager and execute such transfers and proxies as are required by the Manager to give effect to this sub-paragraph.

### **6.4. Liability**

The Trustee and/or the Manager shall not incur any liability by reason of any loss which a Holder may suffer by reason of any depletion in the value of the Trust Assets of a Fund which may result from any derivative transaction effected hereunder for whatsoever reason and the Trustee and/or the Manager shall be entitled to be indemnified out of and have recourse to the Trust Assets of the relevant Fund in respect of any liabilities costs claims or demands which it and/or they may suffer arising directly or indirectly from the operation of this paragraph and the arrangements referred to herein.

### **6.5. Currency dealings**

Any transaction permitted under this Deed may be effected in any currency or currencies and for such purpose and/or otherwise for hedging purposes foreign currency (and options to acquire the same) may be acquired either at the official rate of exchange or otherwise as the Manager and the Trustee may agree having regard to prevailing market conditions and either for present or forward settlement and any costs and commissions thereby incurred shall be paid out of the relevant Fund. Any such transaction may be made with the Trustee or (subject to the Trustee's approval) the Manager or any Connected Person of the Manager or with any Connected Person of the Trustee and any such person shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom.

## **7. Selection of Investments**

Subject to the provisions of this Appendix the selection of all Investments and other property 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 Manager solely and not of the Trustee.

## **8. Acceptance of property by Trustee**

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

## **9.**

### **9.1. Partly paid Investments**

The Manager shall not be entitled without the consent of the Trustee to apply any part of the assets of a Fund (i) in the acquisition of any Investment or other property which is for the time being nil or partly paid only unless the Trustee is satisfied that there is sufficient cash or other property in the relevant Fund to pay up such Investment or other property in full or (ii) in the acquisition of any Investment or other property which is otherwise in the opinion of the Trustee likely to involve the Trustee in any liability (contingent or otherwise).

### **9.2. Acquisition of Investments likely to involve Trustee in liability**

In the case of the acquisition (whether or not the Trustee is required to be satisfied as provided in subparagraph 10.1) of any Investment or other property which is for the time being nil or partly paid only or otherwise in the opinion of the Trustee likely to involve the Trustee in any liability (contingent or otherwise) the Trustee shall be entitled but not bound to appropriate and set aside cash or other property approved by the Manager and acceptable to the Trustee sufficient to provide for paying up such Investment or other property in full or (as the case may be) for meeting any underwriting or sub-underwriting or other liability. The cash or other property so appropriated shall form part of the assets of the relevant Fund but shall not be available for application without the consent of the Trustee in any way otherwise than as may be required for paying up the Investment or other property or meeting the liability in respect of which the appropriation was made so long as and to the extent that such Investment or other property remains partly-paid and part of the assets of the relevant Fund or (as the case may be) such liability continues in relation to the assets of the relevant Fund.

## APPENDIX I - SAFE CUSTODY AND VOTING RIGHTS ON INVESTMENTS

### 1.

#### 1.1. **Trustee responsible for safe-keeping of all of the Investments**

The Trustee shall be responsible for the safe-keeping of all of the Investments and other property forming part of any Fund in accordance with the provisions of this Deed and such Investments and other property shall (whether in bearer or registered form) be dealt with as the Trustee may think proper for the purpose of providing for the safe keeping thereof.

The Trustee must (a) ensure that there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis. In jurisdictions where fiduciary duties are not recognised the Trustee must ensure that the legal entitlement of the Trust to the assets is assured; and (b) maintain appropriate internal control systems to ensure that records clearly identify the nature and amount of all assets under custody, the ownership of each asset and where documents of title to that asset are located.

#### 1.2. **Appointment of sub-custodians etc.**

Where the Trustee utilises the services of a sub-custodian the Trustee must ensure that these standards are maintained by the sub-custodian.

Where the Trustee utilises the services of a global sub-custodian the Trustee must ensure that (a) the non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents. This should be confirmed by those agents on a regular basis; (b) the Trustee must maintain records of the location and amounts of all securities held by each of the global sub-custodial agents; and (c) the relationship between the Trustee and the global sub-custodian should be set out in a formal contract between the two entities.

### 2.

#### 2.1. **Voting rights on Investments**

All rights of voting conferred by any of the Investments or other property comprised in the relevant Fund shall be exercised in such manner as the Manager may in writing direct and the Manager may refrain at its own discretion from the exercise of any voting rights and no person shall have any right to interfere or complain. The Trustee shall upon written request by and at the expense of the Manager from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominees sufficient powers of attorney or proxies in such name or names as the Manager may request authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the relevant Fund. The Trustee shall also give, or join in giving, appropriate instructions to any depositary or clearing system holding any part of the relevant Fund if the Manager's sole instructions are not sufficient. The Manager shall be entitled to exercise the said rights in what it may consider to be the best interests of the Holders but neither the Manager nor the Trustee 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 Manager whether in person or by proxy and neither the Trustee nor the Manager 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 to be done or approval voted or given or withheld by the Trustee or the Manager or by the holder of such proxy or power of attorney under this Deed; and the Trustee shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such proxy or attorney.

#### 2.2. **Meaning of rights of voting/vote**

The phrase **rights of voting** or the word **vote** used in sub-paragraph 2.1 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 the Trust and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.



### **2.3. Release, Transfer, Exchange or Delivery**

The Trustee shall release, transfer, exchange or deliver or authorise the release, transfer, exchange or delivery of any Investments or Trust Assets including cash held by the Trustee on behalf of the Trust only in the following cases and only on the receipt of Proper Instructions:

- 2.3.1. upon sale of such Investments or financial instruments for the account of the Trust in accordance with prevailing market practice;
- 2.3.2. in the case of a sale effected through a securities system, in accordance with the regulations or customary practice thereof;
- 2.3.3. for exchange or conversion pursuant to any plan of merger, consolidation, recapitalisation, reorganisation, refinancing, sale of assets or readjustment of the issuer of such securities, or pursuant to provisions for conversion contained in such securities, or pursuant to any deposit agreement;
- 2.3.4. in the case of warrants, rights or similar securities, upon the surrender thereof on the exercise of such warrants, rights or similar securities; and
- 2.3.5. for delivery as security in connection with any borrowings on behalf of the Trust requiring a pledge or charge of assets on behalf of the Trust, but only against receipt of amounts borrowed provided that the Trustee shall not be responsible pursuant to this Trust Deed for such Trust Assets while they are in the custody of the lender to the Trust or the agent of such lender provided always that the value of Trust Assets so delivered is the minimum amount required pursuant to the terms on which borrowings have been advanced to the Trust to secure or continue the borrowings as appropriate;
- 2.3.6. as requested in connection with any margin, collateral or similar requirement; and
- 2.3.7. for any other purpose permitted by this Deed where the Proper Instructions specify the Investments or the Trust Assets to be delivered, set forth the purpose for which such delivery is to be made and name the person or persons to whom delivery of such securities of financial instruments should be made.

### **2.4. Payment of the Trust's Monies**

Subject to its right to deduct its remuneration and expenses hereof, the Trustee shall pay out moneys of the Trust, from such funds as are freely available in accounts maintained by the Trustee on behalf of the Trust upon receipt of Proper Instructions in the following cases only:-

- 2.4.1. upon the purchase of Investments provided that payments shall be made for the account of the Trust only (i) in accordance with normal market practice or (ii) in the case of a purchase effected through a Securities System, in accordance with the regulations or customary practice thereof;
- 2.4.2. in connection with the conversion, exchange or surrender of Investments;
- 2.4.3. in connection with the repurchase of Units in the Trust;
- 2.4.4. for the payment of any expense or liability incurred or payable on behalf of the Trust, including but not limited to, the following payments for the account of the Trust: interest, taxes, management, registration, audit, secretarial, accounting fees, the Manager's fees, the fees payable to any investment manager, legal fees and all other operating fees and expenses of the Trust, whether or not such expenses are to be in whole or in part capitalised or treated as deferred expenses;
- 2.4.5. for the payment of any distributions declared and payable on any Units of the Trust, pursuant to this Deed; or
- 2.4.6. as requested in connection with any margin, collateral or similar requirement; or
- 2.4.7. for any other purpose, upon the receipt of Proper Instructions which specify the amount of such

payment, set forth the purpose for which such payment is to be made and name the person or persons to whom such payment is to be made and provided that such purpose is authorised by this Deed.

## **APPENDIX J - CONCERNING THE TRUSTEE AND/OR THE MANAGER**

### **1. Liability of Trustee and Manager**

Subject and without prejudice in the case of the Trustee to paragraph 8(1) and (2) hereafter, neither the Trustee nor the Manager shall incur any liability in respect of or be responsible for:-

#### **1.1. Genuine reliance**

Any action taken or thing suffered by them in reliance upon any notice, resolution, direction, consent, certificate, affidavit, statement, certificate of stock, plan of reorganisation or other document of title, or other paper or document believed to be genuine and to have been passed, sealed or signed by the proper parties;

#### **1.2. Legal obligation**

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), they or either of them shall be directed or requested to do or perform or to forbear from doing or performing;

#### **1.3. Impossibility/impracticability of action**

It becoming impossible or impracticable for any reason to carry out the provisions of this Deed;

#### **1.4. Acts or omissions of delegates**

In the case of the Manager only, any acts or omissions of any agent or other person to whom it has delegated any of its powers, duties, authorities and discretions, except only where it shall have failed to take reasonable care in the selection of such person;

#### **1.5. Verification of signatures**

The authenticity of any signature on or any seal affixed to any certificate, transfer, application form, endorsement or other document received by it in connection with the Trust or any forged or unauthorised signature on or seal affixed to any such document or for acting on or giving effect to any such forged or unauthorised signature or seal, but so that the Trustee and the Manager shall nevertheless each be entitled but not bound to require that the signature of any person to any such 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;

#### **1.6. Acting upon resolutions**

Acting upon any resolution purporting to have been passed at any meeting of Holders in respect of which minutes have been made and signed by the Chairman thereof 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 such resolution was not binding upon all persons; or

#### **1.7. Conduct of agents**

Any misconduct, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of any such banker, accountant, broker, lawyer, agent or other person as is referred to in paragraph 2.1 or (except as specified in this Deed) of the Manager (in the case of the Trustee) or the Trustee (in the case of the Manager) or for anything done or omitted or suffered in good faith in reliance upon any advice or information obtained from any such person.

### **2.**

#### **2.1. Advice from agents**

The Trustee and the Manager may act upon any advice of or information obtained from any bankers, accountants, brokers, lawyers, agents or other persons acting as agents or advisers either of the Trustee or of the Manager and any such advice or information may be obtained or sent by letter, telegram, telex message, cablegram, Electronic Communication, facsimile transmission or any other method of communication acceptable to the Manager and the Trustee and neither the Trustee nor the Manager shall be liable for acting on any advice or information purported to be conveyed by any such letter, telegram, telex message, cablegram, Electronic Communication, facsimile transmission or other means of communication although the same contains some error or shall not be authentic.

## **2.2. Discretion of Trustee and Manager**

Except if and so far as herein otherwise expressly provided the Trustee and the Manager shall as regards all the trusts, powers, authorities and discretions vested in each of them respectively 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 in the absence of fraud or negligence neither the Trustee nor the Manager shall be in any way responsible for any losses, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

## **2.3. Valuation of assets**

The Trustee and the Manager may:-

- 2.3.1. accept as sufficient evidence of the Value of any asset of the Trust Assets or the cost price or sale price thereof or of any market quotation a certificate by any person, firm or association qualified in the opinion of the Manager to provide such a certificate; and
- 2.3.2. rely upon the established practice and rulings of any Market and any committees and officials thereof on which any dealing in any Investment or other property 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.

## **3. Dealings of Manager and Trustee**

Subject as provided in paragraph 8 of Appendix H, nothing contained in this Deed shall prevent the Manager, the Trustee or any investment adviser or any Connected Person of any of them from:-

### **3.1. Holdings of/dealings with Units**

Becoming a Holder or holding, disposing of or otherwise dealing with any Units;

### **3.2. Investments in property similar to property of the Trust**

Buying, holding, selling or dealing in any Investments or other property upon their respective individual accounts or on behalf of others notwithstanding that similar Investments or other property may be held as part of the Trust Assets of a Fund and without being obliged to make any such investment or disposal opportunity available to the relevant Fund;

### **3.3. Transactions with certain entities**

Contracting or entering into any financial, banking or other transaction with one another or with any Holder or any company or body any of whose Investments form part of the Trust Assets or from being interested in any such contract or transactions; or

### **3.4. Acting in relation to separate funds**

Establishing or acting as manager or trustee for, or otherwise being involved with, any funds separate and distinct from the Trust including funds which are similar to any Fund or invest in property of a type in which a Fund may invest, whether separately or in conjunction with any other of them,

And none of them shall be in anywise liable to account to the relevant Fund or any other person for any profit or benefit made or derived thereby or in connection therewith.

## **4.**

### **4.1. Reliance by Trustee on Manager**

Subject to the provisions of the Regulations the Trustee shall not be under any liability on account of anything done or suffered by the Trustee in good faith in accordance with or in pursuance of any request or advice of the Manager. Without prejudice to the provisions of paragraph 1, whenever pursuant to any provision of this Deed any certificate, notice, instruction, proxy or other communication or document is to be given by the Manager or any other person to the Trustee the Trustee may accept as sufficient evidence thereof a document signed or purporting to be signed on behalf of the Manager or such other person by any person whose signature the Trustee is for the time being authorised by the Manager or such other person to accept.

### **4.2. Liability to make payments of Trustee**

In no event shall the Trustee be bound to make any payment except out of the Trust Assets held by it under the provisions of this Deed.

### **4.3. Legal proceedings**

The Trustee shall not be under any obligation to appear in, prosecute or defend any action or suit in respect of the provisions of this Deed or in respect of the Trust Assets of a Fund 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 Manager shall so request in writing and the Trustee shall be indemnified out of the Trust Assets of the relevant Fund to its satisfaction.

### **4.4. Indemnification**

Subject as herein provided the Trustee shall be entitled to have recourse to the Trust for the purpose of indemnity against any action, costs, claims, damages, expenses or demands (other than those arising out of any liability or obligation to any person imposed on the Trustee by the laws of Ireland or any provision of this Deed) to which it may be put as Trustee.

### **4.5. Verification of valuation of Trust Assets**

The Trustee shall not be responsible for verifying or checking any valuation of the Trust Assets (or any part thereof) or any calculation of the Issue Price or the Realisation Price, except as herein expressly provided.

### **4.6. Delegation of Trustee's duties, powers and discretions**

The Trustee shall be entitled, (save as otherwise expressly provided in this Deed) at its own expense, subject to the approval of the Financial Regulator, to delegate certain of its duties, powers or discretions under any provisions of this Deed to any person or corporation approved by the Manager and notwithstanding such delegation the Trustee shall remain entitled to receive and retain in full the Trustee Fee and all other sums payable to the Trustee under any provision of this Deed.

## **5.**

### **5.1. Manager to prepare cheques and warrants**

It shall be the duty of the Manager to prepare all cheques, warrants, statements and notices which the Trustee has to issue, send or serve as provided in any provision of this Deed and (where authorised by the Trustee) to sign the same on behalf of the Trustee and to despatch them on the proper day or (otherwise) to deposit the same (with the necessary stamped addressed envelopes) with the Trustee so as to afford the Trustee sufficient time to examine and sign the same and despatch them on the proper day.

### **5.2. Liability of Manager**

In the absence of fraud, negligence, bad faith or wilful default by the Manager, the Manager 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 it in good faith under the provisions of this Deed. The Manager shall not be under any liability

except such liability as may be expressly assumed by it under this Deed nor shall the Manager (save as herein otherwise appears) be liable for any act or omission of the Trustee.

### **5.3. Reliance by Manager on Trustee**

Subject to the provisions of the Regulations the Manager shall not be under any liability on account of anything done or suffered by the Manager in good faith in accordance with or in pursuance of any request or advices of the Trustee. Without prejudice to the provisions of paragraph 1, whenever pursuant to any provision of this Deed any certificate, notice, instruction, proxy or other communication or document is to be given by the Trustee or any other person to the Manager the Manager may accept as sufficient evidence thereof a document signed or purporting to be signed on behalf of the Trustee or such other person by any person whose signature the Manager is for the time being authorised by the Trustee or such other person to accept.

### **5.4. Books and records**

The Manager shall keep or cause to be kept at its head office proper books of account and records in which shall be entered all transactions effected by the Manager for the account of each Fund and shall permit the Trustee from time to time on demand to examine and take copies of or extracts from any such records. The Manager shall also keep or cause to be kept at the head office proper books of account and records of the Manager in relation to each Fund so as to enable the accounts referred to in Clause 6 to be prepared.

### **5.5. Appointment of investment advisers/Administrators**

The Manager may appoint with the prior approval of the Financial Regulator such person or persons to such places as the Manager may deem fit to act as investment managers/advisers and as Administrator or otherwise as agents of the Manager for such purposes and subject to such terms and conditions in relation to the investment of the Trust Assets and/or the administration of the Trust and of each Fund by the Manager as the Manager may determine and may delegate all or any of its duties, powers or discretions under any provision of this Deed to any such person. Any such appointment may provide for the agent to be paid by the Manager out of the assets of the Trust and the remuneration of any investment managers/advisers appointed by the Manager may include a performance related element. The Manager may also agree that any Preliminary Charge payable should be paid to any such investment adviser/manager. Notwithstanding such appointment and delegation the Manager shall remain entitled to receive and retain in full the Management Fee, the Preliminary Charge and all other sums payable to the Manager under any provision of this Deed. The Manager may revoke any such appointment.

## **6. Destruction of documents**

The Trustee or the Manager or any other person on behalf of the Trustee shall (subject as hereinafter provided) be entitled to destroy:-

- (i) all instruments of transfer which have been registered at any time after the expiration of three years from the date of registration thereof;
- (ii) all Certificates and distribution mandates which have been cancelled at any time after the expiration of three years from the date of cancellation thereof;
- (iii) all notifications of change of address after the expiration of three years from the date of the recording thereof;
- (iv) all forms of proxy in respect of any meeting of Holders after the expiration of three years from the date of the meeting at which the same are used; and
- (v) all Registers, statements and other records and documents relating to the Trust or any Fund at any time after the expiration of six years from the termination of the Trust or the relevant Fund.

Neither the Trustee nor the Manager 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 so destroyed shall be deemed to have been a valid Certificate duly and properly

cancelled and every other document hereinbefore mentioned so destroyed shall be deemed to have been a valid and effective document in accordance with the recorded particulars thereof, provided that:-

- 6.1.1. the provisions aforesaid 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;
- 6.1.2. nothing in this paragraph shall be construed as imposing upon the Trustee or the Manager 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
- 6.1.3. references herein to the destruction of any document include references to the disposal thereof in any manner.

## **7. Indemnity and liability of Manager and Trustee**

- (i) Any indemnity expressly given to the Trustee in this Deed is in addition and without prejudice to any indemnity allowed by law, provided that nothing in any of the provisions of this Deed shall exempt the Trustee from or indemnify it against any liability for unjustifiable failure to perform its obligations or improper performance of its obligations.
- (ii) Any indemnity expressly given to the Manager in this Deed is in addition and without prejudice to any indemnity allowed by law, provided that nothing in any of the provisions of this Deed shall in the case of fraud, negligence, bad faith, or wilful default on the part of the Manager in the course of its performance of its duties hereunder exempt the Manager from or indemnify it against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it in respect of any fraud, negligence, default or breach of duty or trust of which it may be guilty.

## **8. Liability of Trustee**

Notwithstanding anything contained in this Deed:

- (i) The Trustee must exercise due care and diligence in the discharge of its duties. The Trustee will be liable to the Manager and the Holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.
- (ii) The liability of the Trustee shall not be affected by the fact that it has entrusted to a third-party some or all of the Investments in its safe-keeping. The parties hereto agree that the Financial Regulator considers that in order for the Trustee to discharge its responsibilities under the Regulations, the Trustee must exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The Trustee must maintain an appropriate level of supervision over the third party and make appropriate enquiries from time to time to confirm that the obligations of the third party continue to be competently discharged. This does not purport to be a legal interpretation of the Regulations and the corresponding provisions of the UCITS Directive.

## APPENDIX K - RETIREMENT OR REMOVAL OF THE TRUSTEE OR THE MANAGER

### 1.

#### 1.1. Entitlement of Trustee to retire

The Trustee shall not be entitled to retire voluntarily except upon the appointment of a new Trustee.

#### 1.2. New Trustee

In the event of the Trustee desiring to retire the Trustee shall find a new trustee who is a qualified corporation approved by the Financial Regulator to act as trustee and, provided that such new trustee is acceptable to the Manager and agrees to enter into each such deed as is referred to below to secure the due performance of its duties as trustee, the Manager shall by deed or deeds supplemental to this Deed appoint such new trustee to be the Trustee in the place of the retiring Trustee. The Trustee shall remain as the Trustee until the Trust is terminated if no new Trustee is approved.

#### 1.3. Notice to Holders

The Trustee or (as the case may be) the new trustee shall as soon as practicable after the appointment of a new trustee give notice to the Holders specifying the name and the address of the offices of the new trustee.

### 2.

#### 2.1. Removal of Manager by Trustee

The Manager shall be subject to removal by notice in writing given by the Trustee in any of the following events:-

- 2.1.1. if the Manager goes into liquidation (except a voluntary liquidation for the purpose of reconstruction of amalgamation upon terms previously approved in writing by the Trustee) or if a receiver is appointed over any of its assets or if an examiner is appointed to the Manager or if an event having equivalent effect occurs;
- 2.1.2. if for good and sufficient reason the Trustee is of opinion and so states in writing to the Manager that a change of Manager is desirable in the interests of the Holders, provided that if the Manager shall be dissatisfied with such opinion the matter shall be referred to the President for the time being of the Incorporated Law Society of Ireland for determination and his or her determination shall be final and bind the parties; or
- 2.1.3. if a Holder or Holders who is or between them are registered as holding in aggregate 50 per cent. or more of the Units then in issue (other than those held or deemed to be held by the Manager) delivers or deliver to the Trustee in writing a request that the Manager should retire.

In any of the cases aforesaid the Manager shall upon notice by the Trustee as aforesaid ipso facto cease to be the Manager and as soon as practicable thereafter the Trustee, with the approval of the Financial Regulator, shall by writing under its seal appoint as Manager some other qualified corporation approved by the Financial Regulator subject to such corporation entering into such deed or deeds (being a deed or deeds supplemental to this Deed) as the Trustee 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 Manager, which deed shall provide (inter alia) that the former Manager shall be paid the Management Fee accrued up to the date of its removal and that on the Dealing Day of each Fund next following the date on which the appointment of the new Manager takes effect the new Manager shall purchase from the former Manager the Units of each Fund of which the former Manager is or is deemed to be the Holder at the Realisation Price applicable to the realisation of Units on such Dealing Day(s). Nothing in this sub-paragraph shall be construed as prejudicing the right of the Trustee herein contained to terminate the Trust or any Fund in any of the events in which in accordance with the provisions of this Deed the right to terminate the Trust or any Fund is vested in the Trustee.



## 2.2. Retirement of Manager

The Manager shall have power to retire in favour of some other qualified corporation approved by the Trustee and the Financial Regulator, upon and subject to such corporation entering into such deed or deeds as are mentioned in the preceding sub-paragraph. Upon such deed or deeds being entered into and upon payment to the Trustee of all sums due by the retiring Manager to the Trustee under this Deed at the date thereof the retiring Manager shall be absolved and released from all further obligations hereunder but without prejudice to the rights of the Trustee or of any other person in respect of any act or omission prior to such retirement.

## 2.3. Change of Name of Trust upon appointment of New Manager

On the appointment of a new Manager unless the Manager otherwise agrees by confirmation in writing delivered to the Trustee, the then Manager and/or the then Trustee shall change the name of the Trust to a name that shall not cause prospective Holders to assume that EII Real Estate Securities Advisors Limited is still the Manager.

## 2.4. Notice to Holders

The Trustee shall, as soon as practicable after the appointment of the new Manager pursuant to the provisions of sub-paragraph 2.1 or 2.2, give notice to the Holders specifying the name and address of the offices of the new Manager.

## 3. Removal of Trustee by Manager

The Trustee shall be subject to removal by notice in writing given by the Manager in any of the following events:-

- (i) if the Trustee goes into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Manager) or if a receiver is appointed over any of its assets or if an examiner is appointed to the Trustee or if an event having equivalent effect occurs;
- (ii) if for good and sufficient reason the Manager is of opinion and so states in writing to the Trustee that a change of Trustee is desirable in the interests of the Holders, provided that if the Trustee shall be dissatisfied with such opinion the matter shall be referred to the President for the time being of the Incorporated Law Society of Ireland for determination and his or her determination shall be final and bind the parties;
- (iii) if a Holder or Holders who is or between them are registered as holding in aggregate 50 per cent. or more of the Units then in issue (other than those held or deemed to be held by the Manager) delivers or deliver to the Manager in writing a request that the Trustee should retire.

In any of the cases aforesaid, and subject to finding another qualified corporation willing and able to act as Trustee approved by the Financial Regulator and whose appointment is approved by the Financial Regulator, the Trustee shall upon notice by the Manager as aforesaid ipso facto cease to be the Trustee subject to such corporation to be appointed as new Trustee entering into such deed or deeds (being a deed or deeds supplemental to this Deed) as the Manager 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 Trustee, which deed shall provide (inter alia) that the former Trustee shall be paid the Trustee Fee accrued up to the date of its removal.

## APPENDIX L - MEETINGS OF HOLDERS

### 1. Convening meeting

The Trustee or the Manager may (and the Manager shall at the request in writing of Holders together registered as holding not less than one-tenth 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 Appendix shall apply thereto. The Manager shall be entitled to receive notice of and attend any such meeting. Any director and any other duly authorised official and the solicitors of the Trustee and any director and the secretary and the solicitors of the Manager and any other person authorised on its behalf by the Manager shall be entitled to attend the meeting. Any such meeting shall be held in Ireland or at such other place as the Trustee may determine or approve. All expenses incurred by the Trustee or the Manager in connection with the holding of a meeting of Holders shall be charged against the Trust Assets.

### 2. Powers of meeting

A meeting of Holders duly convened and held in accordance with the provisions of this Appendix shall be competent by Extraordinary Resolution:-

#### 2.1. Change Deed

to sanction any modification, alteration or addition to the provisions of this Deed which shall be agreed by the Trustee and the Manager as provided in Clause 10; or

#### 2.2. Alter fees

To fix (or sanction the fixing of) any higher percentage as provided in Clause 7(A)(3); or

#### 2.3. Termination of Trust or any Fund

To approve any termination of the Trust or any Fund as provided in Clause 8.7; or

#### 2.4. Approve terms of Investment and Operational Guidelines

To approve any terms of Investment and Operational Guidelines which impose an additional liability on Holders or require a change to the investment objective of a Fund; or

#### 2.5. Approve scheme of reconstruction and amalgamation

To approve a scheme of reconstruction and amalgamation as provided in Clause 11(ii),

but shall not have any further or other powers.

### 3. Notice of meeting

Twenty-one days' notice at the least (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 all Holders in the manner provided in this Deed. The notice shall specify the place, day and hour of the meeting and the terms of the resolutions to be proposed. A copy of the notice shall be delivered to the Trustee unless the meeting shall be convened by the Trustee. 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. Quorum

AT any meeting Holders present in person or by proxy and registered as holding in aggregate 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 which shall be Holders present in person or by proxy and registered as holding in aggregate 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. Adjournment of meeting**

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 fifteen days thereafter and to such place as may be appointed by the Chairman of the meeting; and at such adjourned meeting the Holder or Holders present in person or by proxy shall be a quorum for all purposes at such adjourned meeting. 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 Holder or Holders present at the adjourned meeting, whatever his or their number and the number of Units held by him or them, will form a quorum.

**6. Chairman**

Some person nominated in writing by the Trustee 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 fifteen minutes after the time appointed for holding the meeting the Holders present shall choose one of their number to be Chairman.

**7. Business at adjourned meeting**

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.

**8. Voting procedure for Extraordinary Resolution**

At any meeting an Extraordinary 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 registered as holding in aggregate 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 lost 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. Poll**

If a poll is duly demanded it shall be taken in such manner as the Chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

**10. Taking of poll**

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.

**11. Demand for a poll**

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.

**12. Voting rights**

On a show of hands every Holder who (being an individual) is present in person or (being a firm) is present in the person of one of the partners thereof or (being a corporation) is present by a duly authorised representative appointed in accordance with paragraph 16 shall have one vote. 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 registered in the name of such Holder. A person entitled to more than one vote need not use all his votes or cast them the same way.

**13. No voting right in respect of a fraction of a Unit**

The Holder of a fraction of Unit may not exercise any voting rights in respect of such Unit.

**14. Joint Holders**

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 other joint Holders and for this purpose seniority shall be determined by the order in which the names stand in the Register, the first name being the senior.

**15. Voting by Holder**

A Holder may attend and vote in person or, on a poll, by proxy. A proxy need not be a Holder.

**16. Voting by a corporation**

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.

**17. Requirements for instrument of proxy**

The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing either under the common seal or under the hand of an officer or attorney so authorised.

**18. Validity of instrument of proxy**

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the Trustee or the Manager with the approval of the Trustee may in the notice convening the meeting direct or if no such place is appointed then at the registered office of the Manager not less than forty-eight 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 twelve months from the date named in it as the date of its execution.

**19. Form of instrument of proxy**

An instrument of proxy may be in any usual or common form or in any other form which the Trustee shall approve.

**20. Vote given by proxy**

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 Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

**21. Voting by Trustee and Manager**

Notwithstanding any other provision of this Appendix, neither the Trustee nor the Manager (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 Trustee or (as the case may be) the Manager and, in either case, its Connected Persons shall be ignored for all purposes in establishing whether or not a quorum is present as if such Units were not then in issue.

**22. Minutes**

Minutes of all resolutions and proceedings at every meeting shall be made and duly entered in books to be from time to time provided for that purpose by the Manager at the expense of the Manager and any such minutes 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.

### **23. Meetings of Holders of Different Funds**

With regard to the respective rights and interest of Holders of Units of different Funds, the foregoing provisions of this Appendix shall have effect subject to the following modifications:-

- 23.1.1. a resolution which in the opinion of the Trustee affects one Fund shall be deemed to have been duly passed at a separate meeting of the Holders of Units of that Fund;
- 23.1.2. a resolution which in the opinion of the Trustee affects more than one Fund but does not give rise to a conflict of interest between the Holders of the Units of the respective Funds shall be deemed to have been duly passed if passed at a single meeting of the Holders of the Units of each of those Funds;
- 23.1.3. a resolution which in the opinion of the Trustee affects more than one Fund or may give rise to a conflict of interest between the Holders of Units of the respective Funds 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 Funds, it shall be passed at separate meetings of the Holders of Units of each of those Funds; and
- 23.1.4. to all such meetings as aforesaid all the provisions of this Appendix shall, mutatis mutandis, apply as though references therein to Units and Holders were references to the Units of the Fund in question and to the Holders for the time being of such Units respectively.

### **24. Further regulations regarding meetings**

Subject to all other provisions contained in this Deed, the Trustee 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 Trustee may in its absolute discretion determine.

## APPENDIX M - MARKET

### 1. Markets

For the purposes of the Trust, a Market shall be:-

1. IN relation to any Investment which constitutes a transferable security or money market instrument:

(i) any stock exchange which is:

- located in any Member State; or
- located in any of the following countries:-

Australia  
Canada  
Japan  
New Zealand  
Norway  
Switzerland  
United States of America; or

(ii) any stock exchange included in the following list:-

Argentina	-	Bolsa de Comercio de Buenos Aires;
Botswana	-	the Botswana Stock Exchange;
Brazil	-	Bolsa de Valores do Sao Paulo and Bolsa de Valores do Rio de Janeiro;
Chile	-	Bolsa de Comercio de Santiago;
China	-	the Shanghai Stock Exchange and Shenzhen Stock Exchange;
Colombia	-	Bolsa de Bogota S.A., Bolsa de Medellin SA and the Cali Stock Exchange;
Czech Republic	-	the Prague Stock Exchange;
Egypt	-	the Cairo stock exchange and the Alexandria stock exchange;
Ghana	-	the Ghana Stock Exchange;
Hong Kong	-	the Stock Exchange of Hong Kong Limited;
Hungary	-	the Budapest Stock Exchange;
Iceland	-	the Iceland Stock Exchange;
India	-	the Bombay Stock Exchange, the Madras Stock Exchange Ltd., the Ahmedabab Stock Exchange Association Ltd., the Cochin Stock Exchange Ltd., the Guahatia Stock Exchange Ltd., the Magadh Stock Exchange Association Ltd., the Pune Stock Exchange Ltd., the Hyderabad Stock Exchange, the Ludhiana Stock Exchange Association Ltd., the Uttar Pradesh Stock Exchange Association Ltd., the Bangalore Stock Exchange Limited, the Delhi Stock Exchange Association Ltd. and the Calcutta Stock Exchange Association Ltd.
Indonesia	-	the Jakarta Stock Exchange and the Surabaya Stock Exchange;
Israel	-	the Tel Aviv Stock Exchange;
Jordan	-	the Amman Financial Market;
Malaysia	-	the Kuala Lumpur Stock Exchange;
Mexico	-	Bolsa Mexicana de Valores;
Morocco	-	Boures de Valores de Casablanca;
Nigeria	-	the stock exchanges in Lagos, Kaduna and Port Harcourt;
Pakistan	-	the Karachi Stock Exchjange and the Lahore Stock

		Exchange;
Peru	-	Bolsa de Valores de Lima;
Philippines	-	the Philippine Stock Exchange;
Poland	-	the Warsaw Stock Exchange;
Slovakia	-	the Bratislava Stock Exchange;
Singapore	-	the Stock Exchange of Singapore Limited;
South Africa	-	the Johannesburg Stock Exchange;
South Korea	-	the Korean Stock Exchange in Seoul;
Sri Lanka	-	the Colombo Stock Exchange;
Taiwan	-	the Taiwan Stock Exchange Corp. in Taipei;
Thailand	-	the Stock Exchange of Thailand in Bangkok;
Turkey	-	the Istanbul Stock Exchange;
Uruguay	-	Bolsa de Valores de Montevideo;
Venezuela	-	Bolsa de Valores de Caracas;
Zimbabwe	-	the Zimbabwe Stock Exchange;

(iii) any of the following:

the International Capital Market Association;

the **listed money market institutions**, as described in the Bank of England publication **The Regulation of the Wholesale Markets in Sterling, Foreign Exchange and Bullion** dated April 1988 (as amended from time to time);

the market in US government securities conducted by primary dealers regulated by the Federal Reserve Bank of New York;

the over the counter market in the United States regulated by the National Association of Securities Dealers Inc;

AIM - the Alternative Investment Market in the United Kingdom which is regulated and operated by the London Stock Exchange;

the French market for **Titres de Creance Negotiable** (over-the-counter market in negotiable debt instruments);

EASDAQ (European Association of Securities Dealers Automated Quotation). EASDAQ is a recently formed market and the general level of liquidity may not compare favourably to that found on more established exchanges;

Moscow Interbank Currency Exchange and Russian Trading System 1 and 2;

NASDAQ; and

the Over-the-Counter market in Japan regulated by the Securities Dealers Association of Japan.

2. In relation to any derivative contract used, any market or exchange on which such contract may be acquired or sold which is referred to in 1(ii) above or which is in the European Economic Area which is regulated, recognised, operates regularly, and is open to the public

3. In relation to any option any organised exchange or market on which such option is regularly traded.

PROVIDED THAT the Trustee and the Manager shall be entitled by deed supplemental hereto and without the sanction of an Extraordinary Resolution to modify this definition by adding to or deleting from the countries, markets and exchanges described above. The markets and exchanges described above are set out herein in accordance with the requirements of the Financial Regulator which does not issue a list of approved markets and exchanges.

**IN WITNESS WHEREOF** the parties hereto have caused this Deed to be duly executed the day and year first before written.

**EXECUTION PAGE**

GIVEN UNDER THE COMMON SEAL of  
EII REAL ESTATE SECURITIES ADVISORS LIMITED

..... Director  
..... Director/Secretary

GIVEN UNDER THE COMMON SEAL of  
BNY TRUST COMPANY (IRELAND) LIMITED

..... Director  
..... Director/Secretary