

DATED THE 1<sup>ST</sup> DAY OF FEBRUARY, 2012

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

**and**

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

**AMENDED AND RESTATED TRUST DEED**

**constituting**

**Baring Emerging Markets Umbrella Fund**

**(an open-ended umbrella unit trust authorised pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011)**

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Dublin 2

(This Table of Contents does not form part of the Trust Deed)

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**THIS AMENDED AND RESTATED TRUST DEED** made the 1<sup>st</sup> day of February 2012

**BETWEEN:-**

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

**WHEREAS** the Managers and the Trustee have agreed to enter into this Deed in order to amend and restate the Trust Deed dated 6 September 2010. Baring Emerging Markets Umbrella Fund is an Authorised UCITS within the meaning of the Regulations.

**WITNESSETH** as follows:-

**DEFINITIONS**

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

- (5) "**Annual Distribution Date**" in relation to any Accounting Period means such date (being not later than eight weeks after the end of such Accounting Period) as may be determined by the Managers with the prior written approval of the Trustee for the purposes of making any distribution pursuant to Clause 23 in respect of such Accounting Period;
- (6) "**Auditors**" means a person or persons appointed, with the prior written approval of the Trustee, by the Managers pursuant to the provisions of Clause 34 hereof and who is empowered to audit accounts in accordance with the Companies Acts 1963 to 2009;
- (7) "**Authorised UCITS**" means an undertaking for collective investment in transferable securities, the sole object of which is the collective investment in transferable securities and/or other liquid financial assets referred to in Regulation 45 of the UCITS Regulations of capital raised from the public and which operates on the principle of risk spreading; the units of which are, at the request of unitholders, repurchased or redeemed, directly or indirectly, out of the undertakings' assets;
- (8) "**Business Day**" means such day or days as the Manager may determine and as may be described in the Prospectus;
- (9) "**Central Bank**" means the Central Bank of Ireland;
- (10) "**Certificate**" means a certificate issued at the request of a Holder evidencing the entitlement of a person entered in a Register to the Units represented thereby;
- (11) "**Collective Investment Scheme**" means: -
- (a) any arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of Investments or any other property whatsoever; and
  - (b) any corporation which is or holds itself out as being primarily in the business of investing or trading or proposes to engage primarily in the business of investing in Investments or any other property whatsoever and which is offering for sale or has outstanding any redeemable shares of which it is the issuer.

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

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

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

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

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

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

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

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

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

(c) any company 20 per cent. or more in aggregate of whose ordinary share capital is beneficially owned, directly or indirectly, by the relevant person and any company 20 per cent. or more in aggregate of the total votes attributable to the voting share capital of which can be exercised, directly or indirectly, by the relevant person; and

(d) any director or other officer of the relevant person or of any company which is a Connected Person of a relevant person pursuant to (a), (b) or (c) above;

(14) "**Dealing Day**" means each Business Day and/or such other day or days as the Managers may from time to time, with the prior written approval of the Trustee and the approval of the Central Bank, determine;

(15) "**Debt Instrument**" means any Investment which is a debenture, debenture stock, loan stock, bond, certificate of deposit or other instrument creating or acknowledging

indebtedness;

- (16) **"Deposited Property"** means all the assets for the time being held or deemed to be held upon the trusts of this Deed (or if the context so requires that part referable to a Portfolio) excluding any amount for the time being standing to the credit of the Distribution Account;
- (17) **"Distribution Account"** means the Distribution Account referred to in Clause 23 hereof;
- (18) **"Extraordinary Resolution"** means an extraordinary resolution (within the meaning of paragraph 20 of the Second Schedule hereto) of a meeting of Holders or, as the case may require, Holders of a particular class of Units, duly convened and held in accordance with the provisions contained in the Second Schedule hereto;
- (19) **"Equalisation Payment"** means:-
- (i) in relation to a Unit issued by the Managers, the capital sum deemed by the Managers to represent the amount included in the Issue Price or (as the case may be) the Fixed Price of such Unit for net undistributed income of the relevant Portfolio accrued up to the Dealing Day as at which such Unit is issued; and
  - (ii) in relation to a Unit of the same class sold by the Managers, a sum equivalent to the Equalisation Payment which would relate to a Unit issued on the same Dealing Day;
- (20) **"Fixed Price"** means the fixed price ascertained in accordance with the provisions of Clause 13(D) hereof;
- (21) **"Holder"** means a person for the time being entered on a Register as the holder of a Unit and, where the context so admits, shall include persons jointly so registered;
- (22) **"Interim Distribution Date"** in relation to any Interim Distribution Period means such date (being not later than eight weeks after the end of such Interim Distribution Period) as may be determined by the Managers, with the prior written approval of the Trustee, for the purpose of making a distribution pursuant to Clause 23;
- (23) **"Interim Distribution Period"** means a period commencing on the date of the commencement of the Trust or (if later) on the day following an Accounting Date and ending on 30th September or on such other date in each year during the continuance of the Trust as the Managers may, with the prior written approval of the Trustee, determine;

- (24) **"Investment"** means any share, stock, debenture, loan stock, bond, fixed rate security, variable or floating rate security, convertible security, financial instrument, money market instrument, certificate of deposit, commercial paper, acceptance, warrant, trade bill, depositary receipt, treasury bill, 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 or public international body and includes (without prejudice to the generality of the foregoing):-
- (a) any right or interest (howsoever described) in or in respect of any of the foregoing;
  - (b) any certificate of interest or participation in, temporary or interim certificate for, receipt for or warrant to subscribe or purchase, any of the foregoing;
  - (c) any unit or share in a Collective Investment Scheme;
  - (d) any instrument commonly known or recognised as a security;
  - (e) 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; and
  - (f) any bill of exchange and any promissory note;
- (25) **"Issue Price"** means the issue price of a Unit fixed in accordance with the provisions of this deed which price shall be calculated in accordance with the First Schedule hereto;
- (26) **"Japanese Persons"** means any person resident in Japan, including any corporation or other entity organised under the laws of Japan;
- (27) **"Management Fee"** means any sum to which the Managers may become entitled pursuant to the provisions of Clause 27 (A) hereof;
- (28) **"Managers"** means Baring International Fund Managers (Ireland) Limited or such other person or persons for the time being duly appointed managers of the Trust in succession to Baring International Fund Managers (Ireland) Limited under the provisions of Clause 36 hereof;
- (29) **"Market"** means the stock exchanges and other regulated markets listed in Clause 19(E) as amended by supplemental deed from time to time with the prior approval of the Central Bank.



- (30) **"Minimum Number of Units"** means the minimum number of Units (to include fractions of Units) as the Managers in any particular case or generally may from time to time permit or prescribe as the minimum number of Units which may be held by any Holder in any particular class or classes of Units and as may be specified in the Prospectus, provided that the Managers may waive the requirements to have a Minimum Number of Units either generally, or in any particular case, at their discretion;
- (31) **"Net Asset Value"** means the net asset value of the Deposited Property or, as the context may require, of a Portfolio calculated in accordance with the provisions of the First Schedule hereto;
- (32) **"Portfolio"** means the portfolio named in Clause 13 or any additional portfolio designated by the Managers from time to time with the consent of the Trustee constituting that part of the Deposited Property referable to any particular class of Units;
- (33) **"Preliminary Charge"** means the preliminary charge referred to in Clause 13(B) hereof;
- (34) **"Realisation Price"** means the realisation price of a Unit calculated in accordance with the First Schedule hereto;
- (35) **"Recognised Exchange"** means any regulated stock exchange or market on which any Portfolio may invest;
- (36) **"Register"** or **"Registers"** means where the context so admits a Register or the Registers kept or to be kept in accordance with Clause 10 hereof;
- (37) **"Registrars"** means the Managers or such other person as may from time to time be appointed by the Managers to keep the Registers on behalf of the Managers;
- (38) **"Registration Number"** means a number given to each Holder who has not requested the issue of a Certificate in respect of all of the Units registered in his name;
- (39) **"Regulations"** means the European Communities (Undertakings for Collective Investment in Transfer Securities) Regulations, 2011 (S.I. No. 352 of 2011) and any amendments thereto and any regulations or notices issued by the Central Bank pursuant thereto for the time being in force;
- (40) **"Share Price Index Futures Contract"** means any contract expressed as being in

respect of the sale or purchase of a share price index for settlement at a future date;

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

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

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

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

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

(44) "**Trust**" means the unit trust constituted by this Deed and to be called Baring Emerging Markets Umbrella Fund or such other name as the Trustee and the Managers may, with the approval of the Central Bank and subject to the provisions of Clause 36(C) hereof, from time to time determine;

(45) "**Trustee**" means Northern Trust Fiduciary Services (Ireland) Limited or such other person or persons for the time being duly appointed trustee or trustees of the Trust in succession to Northern Trust Fiduciary Services (Ireland) Limited under the provisions of Clause 35 hereof and with regard to any provision of this Deed providing for any act or matter to be done by the Trustee such act or matter may be performed on behalf of the Trustee by any person, firm or corporation appointed by the Trustee for such purpose or by any officer or responsible official of the Trustee or any such person, firm or corporation any act or matter so performed shall be deemed

for all the purposes of this Deed to be the act of the Trustee;

- (46) "**Trustee Fee**" means any sum to which the Trustee may become entitled pursuant to the provisions of Clause 27(B) hereof;
- (47) "**Trustee Ordinance**" means the Trustee Ordinance (Chapter 29 of the Laws of Hong Kong);
- (48) "**Unit**" means one undivided share in a Portfolio;
- (49) "**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 or any state thereof or any estate or trust the income of which is subject to United States federal income tax regardless of source and for such purpose "United States" means the United States of America, its territories, possessions and all areas subject to its jurisdiction (including the Commonwealth of Puerto Rico);
- (50) "**Unquoted Investment**" means any Investment which is not listed or quoted on, or the subject of an effective permission to deal on, a Market but does not include any Investment in respect of which application has been made for listing, quotation or permission to deal on a Market and of which subscription or purchase by the Managers is conditional upon the granting thereof;
- (51) "**Valuation Point**" means such time as the Managers, with the approval of the Trustee, may from time to time determine as shall be disclosed in the Prospectus;
- (52) "**Value**" in relation to any asset or liability means the value thereof determined in accordance with the First Schedule hereto;
- (53) "**year**" means calendar year;
- (54) "**may**" shall be construed as permissive; and
- (55) "**shall**" shall be construed as obligatory.

(B) References herein to "dollars" or "\$" or "cents" are to the currency of the United States of America, references to "pounds" or "£" are to the currency of the United Kingdom, references to "EUR" or "€" are to the currency of the European Union and references to HK\$ are to the currency of Hong Kong.

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

hereto.

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

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

### **CERTIFICATES**

2. (A) A Holder in a Portfolio shall have his title to Units evidenced by having his name, address, date of becoming a Holder and cessation of being a Holder in the relevant Register of the Portfolio and the number, Portfolio and, where applicable, class of Units held by him entered in the Register.

(B) A Holder whose name appears in the Register shall be issued with a written confirmation of entry in the Register of the number of Units held by him including without limitation, fractions of Units and his Registration Number. The Managers may at their discretion, decline to issue Certificates.

### **DENOMINATION**

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

### **SIGNATURE OF CERTIFICATES**

4. (A) Certificates, if issued (which shall be entirely at the discretion of the Managers), shall be signed by the Managers and the Trustee in such manner as may be respectively authorised by them. Any signatures by the Managers and the Trustee may be affixed lithographically or by such other mechanical means as may be approved by the Trustee and the Managers. No Certificate in respect of any Unit shall be issued or be valid until so signed. In case the Trustee or Managers shall cease to be Trustee or Managers respectively of the Trust or in case any person whose signature shall appear on any Certificate shall die or shall cease to be an official so authorised before the said Certificate shall have been issued such Certificate shall nevertheless be as valid and binding as though the Trustee or Managers or the person whose signature so appeared had lived or continued to be an official so authorised up to the date of the issue of such Certificate.

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

5. **THE** terms and conditions of this Deed shall be binding on each Holder and all persons

claiming through him as if he had been a party to this Deed.

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

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

### **TRUSTS AND EQUITIES**

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

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

### **MANAGERS AS HOLDER**

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

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

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

(B) The Managers may; (i) in the case of the loss, damage, theft or destruction of a Certificate(s) and upon proof thereof to the satisfaction of the Managers and on such indemnity as the Managers may deem adequate to be given, or (ii) in the case of a request for exchange or in the case of a partial redemption of Units in their absolute discretion, refuse to issue a new or replacement Certificate (s) and instead may cancel such Certificate (s) and may enter in the relevant Register against the relevant Holder's name, a Registration Number in lieu thereof.

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

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

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

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

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

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

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

- (1) the names and addresses of all Holders of Units of that class;
- (2) the number of Units held by every such Holder and the serial numbers of the Certificate or Certificates issued in relation thereto (if any) or the Registration Number issued in relation thereto whichever is the case;
- (3) the date on which the name of every Holder was entered in respect of the Units

standing in his name and (where he became a Holder by virtue of an instrument of transfer) a reference sufficient to enable the name and address of the transferor to be identified;

- (4) the date on which any transfer by a Holder is registered and the name and address of the transferee; and
- (5) the date on which any Units are cancelled pursuant to the provisions of Clause 16 or 17 hereof and the number of Units then cancelled.

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

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

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

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

- (1) Every Holder shall subject to Clause 14 be entitled to transfer the Units or any of the Units registered in his name by an instrument in writing (which need not be a deed) in common form (or in such other form as the Managers may from time to time approve) **PROVIDED THAT** no transfer of part of a holding of such Units shall be registered if in consequence thereof either the transferor or the transferee would be the Holder of a number of Units less than the Minimum Number of Units.
- (2) A purported transfer of Units shall not become effective and binding upon the Managers until such time as the transferee has completed the prescribed application form and any attendant documentation such as anti-money laundering documentation and the Administrator has received the originals thereof. In this

regard, the rights and obligations of the purported transferor will subsist and the purported transferor will continue to be regarded as the registered Holder, to the exclusion of the purported transferee, until receipt by the Administrator of the documentation outlined above.

(3) Every such instrument of transfer of Units must be signed by (or, in the case of a transfer by a body corporate, signed on behalf of or sealed by) the transferor and subject to the provisions of Clause 8 hereof and of sub-clause (M) of this Clause 10 the transferor shall be deemed to remain the Holder of the Units transferred until the name of the transferee is entered in the appropriate Register in respect thereof.

(4) Every instrument of transfer must be duly stamped with any applicable stamp duty and left with the Registrars for registration accompanied by any necessary declarations or other documents that may be required in consequence of any exchange control or other legislation for the time being in force and (subject to Clause 9 hereof) by the Certificate or Certificates (if any) relating to the Units to be transferred and such other evidence as the Registrar may require to prove the title of the transferor or his right to transfer the Units.

(5) All instruments of transfer which shall be registered may be retained by the Registrar.

(H) Save as herein provided no notice of any trust express, implied or constructive shall be entered on a Register.

(I) In the case of the death of any one of joint Holders the survivor or survivors shall be the only person or persons recognised by the Managers as having any title to or interest in the Units registered in the names of such joint Holders and upon producing such evidence of the death as the Trustee may require and delivering the relevant Certificate (if any) the survivor or survivors shall be entitled to have his details entered in the Register and issued with confirmation of ownership.

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

(K) The executors or administrators of a deceased Holder (not being one of several joint Holders) shall (subject to sub-clause (D) of this Clause 10) be the only persons recognised by the Trustee and the Managers as having title to the Units registered in his name.

(L) (1) Any person becoming entitled to a Unit in consequence of the death or bankruptcy of any sole Holder or of the survivor of joint Holders shall, subject as hereinafter provided and upon producing such evidence as to his title as the Registrar shall think sufficient, either be registered himself as the Holder of such Unit upon giving to the Registrar notice in writing of his desire to be registered or transfer such Unit to some other person. All the limitations, restrictions and provisions of this Deed relating to transfers shall be



applicable to any such notice or transfer as if the death or bankruptcy had not occurred and such notice or transfer were a transfer executed by the Holder.

- (2) A person becoming entitled to a Unit in consequence of death or bankruptcy as aforesaid may give a discharge for all moneys payable in respect of the Unit but he shall not be entitled to receive notices of or to attend or vote at any meeting of Holders until he shall have been registered as the Holder of such Unit.
- (3) The 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.

(M) 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, court order, deed poll or other document relating to or affecting the title to any Unit there shall be paid to the Registrars such fee (not exceeding the sum of \$1.00) as the Registrar may from time to time require.

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

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

#### **DEPOSITED PROPERTY**

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

(B) The Trustee shall establish a Portfolio for each class of Unit in issue from time to time

and the following provisions shall apply thereto:-

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

- (7) subject to paragraph (6) the assets of each Portfolio shall belong exclusively to that Portfolio, shall be segregated from the other Portfolios, shall not be used to discharge directly or indirectly the liabilities of or claims against any other Portfolio and shall not be available for any such purpose.

## TRUST

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

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

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

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

## ISSUE OF UNITS

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

**The Baring Global Emerging Markets Fund,**

**The Baring Latin America Fund,**

**The Baring Emerging Opportunities Fund,**

and may with the prior consent of the Central Bank and the approval of the Trustee at any time establish an additional Portfolio or Portfolios to be designated by such name or names and in such investment or investments as the Manager may deem appropriate and such other classes of Units, as

the Managers with the approval of the Trustee and the Central Bank may from time to time determine, subject to the Regulations, to be appropriate and for such purpose to accept subscription moneys and/or Investments for the account of the relevant Portfolio **PROVIDED THAT:** -

- (a) the Managers shall, before the initial issue of Units of any class determine, with the approval of the Trustee, the name of such class and the currency of such class;
- (b) the Managers shall, before the initial issue of Units of any class determine, with the approval of the Trustee, the terms and conditions applicable to such initial issue and determine the Issue Price therefor;
- (c) the Managers shall simultaneous to the creation and issue of any Units, notify the Trustee of such creation and issue;
- (d) all Units shall be issued on a Dealing Day;
- (e) Units shall not be issued in any manner which would result in any person appearing in a Register as the Holder of a number of Units less than the Minimum Number of Units for that class; and
- (f) the Managers shall have an absolute discretion to accept or reject in whole or in part any application for Units.

(B) The Manager shall have the right, whether on the establishment of a Portfolio or from time to time, to create one or more sub-classes of Units within each class of Units, the terms of issue of which may be differentiated by reference to Issue Price, the amount of the Preliminary Charge, Management Fee or other fees and expenses, currency of designation or such other terms and conditions of issue as the Manager may determine at the date of their creation, provided that all of the Holders of the Units of each respective sub-class within each class shall together rank *pari passu* in respect of the Portfolio to which the Units of such class are referable.

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

- (1) no Units shall be issued until the Investments shall have been vested in the Trustee or in the Trustee's custodian or nominee to the Trustee's satisfaction;
- (2) all charges, costs, fees and expenses arising in connection with such exchange so far as not paid by the person to whom the Units are to be issued may be paid out of the relevant Portfolio or Portfolios and (unless the Managers otherwise agree) there shall be also paid out of the relevant Portfolio or Portfolios to the Managers except in the case of the initial issue of Units of any class an amount equivalent to the

Preliminary Charge which the Managers would, if the Units to be issued had been issued for cash, have been entitled to add to the Issue Price of the Units;

- (3) except in the case of the initial issue of Units of any class the number of Units to be issued shall be that number (from the calculation of which, at the discretion of the Managers, fractions of a Unit may be excluded) which would have fallen to be issued for cash at the current Issue Price (plus the Preliminary Charge) against payment of a sum equal to the value of the Investments transferred plus such sum as the Managers may consider represents an appropriate provision for fiscal and purchase charges which would be involved in the acquisition of the Investments by purchase for cash but minus such sum as the Managers may consider represents any charges, costs, fees or other expenses as aforesaid to be paid out of the relevant Portfolio or Portfolios in connection with the vesting of the Investments;
- (4) the Investments to be transferred to the Trust shall be valued on such basis as the Managers may decide so long as such value does not exceed the highest amount that would be obtained on the date of the exchange by applying the provisions relating to the calculation of the Net Asset Value of Investments contained in the First Schedule hereto;
- (5) there may be paid to the incoming Holder out of the relevant Portfolio or Portfolios a sum in cash equal to the value at the current Issue Price of any fraction of a Unit excluded from the calculation aforesaid;
- (6) in the case of the initial issue of Units of any class, the Managers may, with the approval of the Trustee, determine the number of Units to be issued and may fix the Issue Price applicable thereto and shall be entitled to charge to the relevant Portfolio or Portfolios a charge of an amount not exceeding the maximum permitted percentage for the Preliminary Charge of the Value of the Investments transferred;
- (7) the Trustee shall be satisfied that the terms of such exchange shall not be such as are likely to result in any prejudice to the existing Holders.

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

- (1) the Managers shall forthwith close or procure to be closed such offer if by reason of fluctuations in the Net Asset Value of the relevant Portfolio the Fixed Price per 100

Units has on a particular day during such period exceeded by more than 2.5 per cent the Issue Price per 100 Units which would have prevailed for such day if such day had been a Dealing Day and if the Fixed Price per 100 Units exceeds by not more than 2.5 per cent the said Issue Price per 100 Units the Managers shall pay to the Trustee as an addition to the relevant Portfolio in respect of each 100 Units sold (as distinct from issued) by the Managers at the Fixed Price the excess of the Fixed Price per 100 Units over the said Issue Price per 100 Units; and

- (2) the Managers shall forthwith close or suspend or procure to be closed or suspended such offer if and whenever by reason of fluctuations in the Net Asset Value of the relevant Portfolio the Fixed Price per 100 Units is lower by more than 2.5 per cent than the said Issue Price per 100 Units.

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

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

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

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

(G) No confirmation of ownership shall be issued in respect of any Units until the Trustee is (or the Managers on behalf of the Trustee are) satisfied that the full amount of the Issue Price (or

the Fixed Price) therefor, in cleared funds, has been duly received by the Trustee (or the Managers on behalf of the Trustee) or such documentation for the purpose of verifying identity or such other information or representations as the Managers or their delegate may require. All amounts so received (apart from any Preliminary Charge and any additional amount charged by the Managers pursuant to the provisions of sub-clause (F) of this Clause 13) shall forthwith on receipt as aforesaid form part of the relevant Portfolio.

(H) The Managers shall furnish to the 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 they have determined to direct to be acquired for the account of the Trust, and also a statement of any Investments which in accordance with the powers hereinafter contained they have determined to direct to be sold for the account of the Trust, and all information which may be necessary so that the Trustee may be in a position to ascertain at any moment the Net Asset Value of the relevant Portfolio. 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 Clause 13 in regard to the issue of Units are being infringed;

(I) Any Units purchased by the Managers pursuant to Clause 17 hereof or subscribed by them on a Dealing Day and for the time being outstanding may, without notice, be sold by the Managers on the same or any subsequent Dealing Day in satisfaction of the whole or any part of any application for Units. Such sale shall be effected at any price not exceeding the aggregate of the Issue Price as at whichever Dealing Day is relevant for the purpose of Clause 13(B) in the case of such application plus the Preliminary Charge (if any) and any amount pursuant to sub-clause (F) of this Clause 13 which would have been charged on an issue of the same number of Units and the Managers shall be entitled to retain for their own use and benefit all moneys received by them on such sale.

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

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

(L) Payment for Units issued for cash shall be due forthwith upon the issue thereof. If payment in full in cleared funds shall not have been received by the Trustee (or the Managers on behalf of the Trustee) on or before the fourth business day (or such day or days as the Managers may from time to time determine in respect of all or any class or sub-class of Units) next following the Dealing Day as at which the relevant Units were issued then the Managers may in any event refuse the application and cancel the issue or transfer of the relevant Units and shall cancel such issue or

transfer if the Trustee and/or the Managers so require or alternatively the Managers may treat the application as an application for such number of Units as may be purchased or subscribed with such payment on the Dealing Day upon which such payment is received by the Trustee or such other Dealing Day as the Managers may determine. Upon such cancellation, the relevant Units shall be deemed never to have been issued and the applicant therefor shall have no right or claim in respect thereof against the Managers or the Trustee, provided that no previous valuations of the Deposited Property shall be re-opened or invalidated as a result of the cancellation of such Units. All the costs, charges and expenses incurred by the Trust, the Managers or the Trustee as a result of the cancellation of such Units shall be borne by the applicant.

(M) The Managers are entitled, with the approval of the Trustee, to limit the number of Units which may be subscribed on any Dealing Day to 10% of the total number of Units in issue of a Portfolio (the "Deferral Policy"). The Deferral Policy will apply pro rata amongst all Holders seeking to purchase Units on the relevant Dealing Day, and in such event, the Managers will carry out such subscription which, in aggregate, amount to 10% of the Units then in issue in the Portfolio. Where the Managers decide to invoke this Deferral Policy, the excess of Units above 10% which have not been purchased will be carried forward until the next Dealing Day and will be purchased on the next Dealing Day (subject to a further operation of the Deferral Policy on the next Dealing Day). Requests for subscription of Units carried forward from an earlier Dealing Day shall be dealt with in priority to any subscription requests received subsequently until all the Units to which the original request related have been purchased. If requests for subscriptions are so carried forward, the Managers will give immediate notice to the Holders affected. The Managers may, from time to time, with the consent of the Trustee and in accordance with the requirements of the Central Bank, reduce the threshold limits set out above. This power may be exercised by the Managers in extraordinary market circumstances on such basis as the Managers deem equitable, taking into account the interest of all Holders.

#### **QUALIFIED HOLDERS**

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

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

- (a) any person in breach of any law or requirement of any country or governmental authority or by virtue of which such person is not qualified to hold such Units; or
- (b) any United States Person other than pursuant to an exemption under the Securities Act; or



- d) any Japanese Person;
- (e) any person who in the opinion of the Managers is engaging in repeatedly purchasing and selling Units in responses to short-term market fluctuations, known as “market timing” or are otherwise excessive or potentially disruptive to the Trust;
- (f) any person or persons in circumstances which, (whether directly or indirectly affecting such person or persons and whether taken alone or in conjunction with any other person or persons connected or not, or any other circumstances appearing to the Managers to be relevant) in the opinion of the Managers might result in the Trustee or the Trust incurring any liability to taxation or suffering pecuniary disadvantages which the Trustee or Trust might not otherwise have incurred or suffered; or
- (g) Any person who holds less than the Minimum Number of Units

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

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

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

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

(G) If the Fund becomes liable to account for tax in any jurisdiction in the event that a Unitholder or beneficial owner of a Unit were to receive a distribution in respect of his/her Units or to

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

### **CONVERSION OF UNITS**

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

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

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

where:

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

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

#### **REALISATION OF UNITS BY MANAGERS**

16. (A) Subject to the provisions of Clause 17(G) hereof, the Managers shall have the right

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

(B) Any amount payable to the Managers under sub-clause (A) of this Clause 16 shall be payable as soon as practicable thereafter against surrender to the 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.

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

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

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

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

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

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

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

- (1) Where realisation is to be effected by cancellation of Units the Managers shall proceed to effect any sales of Investments necessary to provide the cash required, shall notify the Trustee that such Units are to be realised and cancelled in accordance with the provisions of this Clause 17 and shall (save where the Managers and the Trustee shall have exercised their discretion under the provisions of Clause 9(G) hereof) deliver to the Trustee for cancellation the Certificate if any representing the said Units and in such event the Trust shall be reduced by the cancellation of such Units and the Trustee shall pay to the Managers out of the relevant Portfolio in respect of the cancellation of such Units the Realisation Price in respect of such Units and the Managers shall pay over the same to the Holder;
- (2) The Managers shall be entitled in the name and on behalf of any Holder who has requested realisation of Units to execute an instrument of transfer in respect of any Units to be realised hereunder by purchase by the Managers and to endorse and sign on the appropriate Certificate (if any) in respect of any Units to be realised hereunder by cancellation such statement as may be necessary or desirable as evidence that such Holder no longer has any interest in the said Units **PROVIDED THAT** in either event the Managers shall within a reasonable period thereafter furnish to the Trustee the authority under which they 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 hereinbefore in this Clause 17 provided;
- (3) Any amount payable to a Holder by the Managers in respect of the realisation of Units may be paid sooner but shall be payable on the expiration of the fifth Business Day after the Dealing Day on which the relevant Units were realised or, if later, the fifth Business Day after the day on which the appropriate documents are received by the Managers or their duly appointed agent. For this purpose the appropriate documents shall be the confirmation of ownership with the realisation request on the reverse thereof duly completed or, where no Certificate has been issued, a realisation request duly completed in such form as the Managers may approve.
- (4) The Managers reserve the right to withhold any amount payable to a Holder by the Managers in respect of the realisation of Units where it is considered necessary or appropriate to carry out or complete identification procedures in relation to the Holder

pursuant to a statutory, regulatory or European Union obligation.

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

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

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

shall permit any applicant for Units of the relevant class to withdraw his application for the issue of Units, in either case such withdrawal to be effected by notice in writing to the Managers. If no such notice withdrawing any such application has been received by the Managers before termination of such suspension, the Managers shall, subject to and in accordance with the terms of this Deed, realise Units in respect of which they have received such application for realisation or (as the case may be) consider such application for the issue of Units as at the Dealing Day next following the termination of such suspension. Any suspension can only be on a temporary basis and the Central Bank will be notified immediately and in any event within the working day on which such suspension takes place.

(F) (1) Any such suspension shall be notified to the Central Bank and the Stock Exchange without delay.

(2) Any such suspension shall be publicised in a national daily newspaper circulating in Dublin and Hong Kong if in the opinion of the Managers it is likely to exceed fourteen (14) days and shall be notified to investors requesting issue or realisation of Units at the time of application or filing of the irrevocable written request for such realisation. Any such suspension of issue and realisation shall be notified to the Registrar without delay. Any suspension can only be on a temporary basis and the Central Bank will be notified immediately and in any event within the working day on which such suspension takes place.

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

(H) (1) On any Dealing Day where a Holder wishes to realise 5% or more of the net asset value of a class the Managers may at their discretion, satisfy any request for realisation of Units by the transfer in specie to those Unitholders requesting realisation of assets provided (a) the Holder requesting realisation

consents to such transfer in specie or (b) the Holder has requested such transfer in specie. The assets transferred in specie pursuant to this sub-clause (H) shall have a value (calculated in accordance with the First Schedule of this Deed) equal to the Realisation Price as if the realisation proceeds were paid in cash, less any charges or costs incurred in connection with the sale of in-specie transfer including an amount equivalent to any Stamp Duty Reserve Tax (SDRT) to be paid in relation to the cancellation of the Units. The assets to be transferred in specie to the relevant Holder will be selected in consultation with and subject to the approval of the Trustee on such terms as the Manager deems equitable and not prejudicial to the Unitholders in the relevant Portfolio or class. Holders may however, by notice in writing to the Managers, request the Managers to sell such assets, less such costs of the sale, which shall be borne by the relevant Holder.

- (2) Where a Holder has consented or requested such in-specie transfer pursuant to the provisions of sub-clause (H) (1) hereof amounting to 5% or more of the Units in issue in a class, the percentage of Units to be selected in specie will not be included in the calculation of the percentage of Units used to determine to the Deferral Policy as set out in the sub-clause (G). Where a Holder has elected or consented to receive in-specie transfer, the Managers shall advise the Holder that a Deferral Policy may operate if cash settlement is requested.

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

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

- (1) in cash or on deposit with, or in certificates of deposit or other banking instruments issued by the Trustee, (if it is a banker or other financial institution) or any banker or any other financial institution in any part of the world selected by the Managers and approved by the Trustee (including any Connected Person of the Managers) subject to the provisions of the Central Bank Acts, 1942 to 2003; or
- (2) on deposit in any other manner authorised by the Trustee Ordinance with any person



approved by the Trustee; or

- (3) on deposit pursuant to the provisions of Clause 20(C)(2) hereof with any person approved by the Trustee up to an amount approved by the Trustee in respect of each such banker or other financial institution or person (other than the Trustee).
- (B) The Trustee shall be entitled to procure: -
  - (1) any officer or responsible official of the Trustee jointly with Trustee; or
  - (2) any nominee appointed by the Trustee; or
  - (3) any such nominee and the Trustee; or
  - (4) any custodian, co-custodian or sub-custodian appointed pursuant to the provisions of this sub-clause (B); or
  - (5) Euro-clear Clearance System Limited, Cedel S.A. or any other depositary or clearing system,

to take delivery of and retain and/or to be registered as proprietor of any Investments or other property held upon the trusts of this Deed.

The Trustee may from time to time appoint such person or persons as it thinks fit (including without limitation, itself, or any Connected Person of the Trustee) as custodian or co-custodians of the Investments comprised in a Portfolio and may empower any such custodian or co-custodians to appoint, with the prior consent in writing of the Trustee, sub-custodians and the fees and expenses of such custodian, co-custodians and sub-custodians shall be paid out of the relevant Portfolio.

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

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

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

out of the relevant Portfolio.

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

(E) Subject to the Regulations, the purchase or sale of Investments (other than Unquoted Investments) and the entering into or granting of any Futures Contract for the account of the Trust shall be effected on a Market unless the Managers are satisfied and the Trustee agrees that it is possible to make such purchase or sale not less advantageously in some other manner. The Managers or any connected persons of the Managers may purchase and sell Investments for the account of the Trust as agents for the Trustee and shall be entitled to charge to the Trust commissions and/or brokerage on such transactions and to accept payment of and to retain for their own absolute use and benefit all commissions, brokerages and discounts on or rebates of brokerage commission which they may derive from or in connection with any such purchase or sale whether or not such commissions, brokerages, discounts or rebates would otherwise form part of the relevant Portfolio or fall to be treated as such.

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

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

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

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

be discharged out of or paid into the relevant Portfolio.

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

### **PERMITTED INVESTMENTS**

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

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

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

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

(E) With the exception of permitted investments in unlisted securities and off-exchange derivative instruments, each Portfolio will only invest in securities or financial derivative instruments traded on a stock exchange or market which meets with the regulatory criteria (regulated, operated regularly, be recognised and open to the public) and which are listed in the Prospectus.

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

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

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

Managers to replace any such property with other property not infringing the terms of this Deed.

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

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

- (6) For the purposes of securing any borrowing, interest thereon and expenses in connection therewith the Trustee shall be entitled with the concurrence of the Managers and after receiving permission from the Central Bank to charge or pledge in any manner all or any part of a Portfolio but where any part of a Portfolio or any document of title thereto is for the time being under the custody or control of some person other than the Trustee in consequence of any such charge or pledge the Trustee shall be responsible for the custody and control of such relevant Portfolio or documents of title thereto (including registration of Investments). Any such charge or pledge shall be made upon the terms that the lender or such other person as aforesaid provides a written commitment to the effect that under no such circumstances will it pledge or charge any of such part of a Portfolio to any other person or use any part thereof for the purpose of providing margin or to guarantee, secure, discharge or settle any borrowings, trades or contracts or dispose of any part thereof or treat such part of the relevant Portfolio as if any person other than the Trustee had any interest therein and that no step shall be taken to enforce the security thereby constituted until 30 days after notice in writing shall have been given to the Trustee demanding repayment of the moneys thereby secured. If such a notice shall be given the Trustee shall promptly advise the Managers who shall promptly effect such sales of the Investments or other property as may be necessary to enable such repayment to be effected within such period of 30 days;
- (7) The Trustee shall not incur any liability by reason of any loss which a Holder may suffer by reason of depletion in the Net Asset Value of the relevant Portfolio which may result from any borrowing arrangements made hereunder by reasons of fluctuations in rates of exchange or otherwise and (save as herein otherwise expressly provided) the Trustee shall be entitled to be indemnified out of and have recourse to the relevant Portfolio in respect of any liabilities, costs, claims or demands which it may suffer arising directly or indirectly from the operation of this sub-clause (C) and the arrangements referred to herein, **PROVIDED** that nothing contained in this Clause shall restrict or reduce any liability which the Trustee may incur under the Regulations.

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

21. (A) **EXCEPT** as otherwise expressly provided all rights of voting conferred by any Investment shall be exercised in such manner as the Managers may in writing direct and the Managers may refrain at their own discretion from the exercise of any voting rights and no Holder shall have any right to interfere or complain. The Trustee shall upon written request by and at the expense of the Managers from time to time execute and deliver or cause to be executed or delivered to the Managers or their nominees sufficient powers of attorney or proxies in such names as the Managers may request authorising such attorneys and proxies to vote, consent or otherwise act in respect of all or any part of the Deposited Property. The Trustee shall also give, or join in giving,

appropriate instructions to any depository or clearing system holding any part of a Portfolio if the Managers' sole instructions are not sufficient. The Managers shall be entitled to exercise the said rights in what they may consider to be the best interests of the Holders but neither the Managers nor the 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 Managers whether in person or by proxy and neither the Trustee nor the Managers nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or the Managers or by the holder of such proxy or power or 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 Managers or by any holder or any such proxy or power of attorney.

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

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

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

#### **DISTRIBUTIONS**

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

clauses (C)(1) and (2) below act as agent for such Reinvesting Holders in the manner referred to in sub-clause (C)(2) below.

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

- (1) the amount required to effect such interim distribution shall be transferred to the Distribution Account; and
  - (2) the amount so determined to be distributed shall, on the Interim Distribution Date next following such determination, be distributed by the Trustee among the Holders of Units of the relevant class. The amount so determined shall not exceed such sum as in the opinion of the Managers represents the amount available for distribution from the relevant Portfolio calculated from the commencement of such Accounting Period down to the day preceding the last day of such Interim Distribution Period.
- (C) (1) Subject to the election provided for in sub-clause (4) below, where the amount of a distribution payable to any Holder in accordance with sub-clause (A) or (B) above in respect of Units of each class registered in the name of such Holder is equal to or less than \$100, £50 or €100 (or the equivalent thereof in the currency of account of the relevant Portfolio if not dollars or sterling), the amount transferred to the Distribution Account in respect thereof shall be applied in payment for additional Units of the relevant class (including fractions of Units) (the "additional units"). Each Holder who has not made such an election (a "Reinvesting Holder") shall have issued to it such number of additional units credited as fully paid up, which, calculated by reference to the Issue Price of Units of the relevant class at the opening of business on the relevant Annual Distribution Date or Interim Distribution Date (the "relevant date") (or if the relevant date is not a Dealing Day, on the next succeeding Dealing Day) is nearly as possible equal to (but not in excess of), the cash amount of the relevant distribution and for such purpose the Managers as agent for the Reinvesting Holder will apply for the issue of the additional units. Notwithstanding the above the Managers will automatically be entitled to reinvest any distribution entitlement in further Units of the relevant class where the relevant Holder's anti-money laundering documentation or such other documents required to verify identity have not been received by the Managers.
- (2) The cash amount of the distribution on or in respect of a Unit of a Reinvesting Holder shall on the relevant date be paid out of the Distribution Account and transferred by the Trustee as agent for each Reinvesting Holder to the



account of the relevant Portfolio to be applied in payment in full of the price of the appropriate number of additional units to be issued to each Reinvesting Holder.

- (3) No Certificates will be issued in respect of the additional units unless specifically requested by a Reinvesting Holder.
- (4) A Holder may, by serving notice in writing on the Manager and the Trustee request that any distribution payable to any Holder in accordance with sub-clause (A) or (B) above in respect of Units of any class registered in the name of such Holder (and if Units of more than one class are so registered, identifying the class or classes to which the notice relates) which is equal to or less than \$100 or ,50 (or the equivalent thereof in the currency of account of the relevant Portfolio if not dollars or sterling) be paid to it, which notice must be received by the Manager and the Trustee at least twenty-one days before the next following relevant date to be effective in respect of any distribution to be paid on that date. Notwithstanding the above the Managers will automatically be entitled to reinvest any distribution entitlement in further Units of the relevant class where the relevant Holder's anti-money laundering documentation or such other documents required to verify identity have not been received by the Managers.
- (5) Any notice under sub-clause (4) above shall be personal to the Holder and shall automatically cease to have effect upon registration of the transfer or transmission of the relevant Units but shall continue in effect in respect of Units retained.
- (6) A Holder who has served notice in accordance with sub-clause (4) above shall be deemed to have made a request in respect of any further Units registered in his name in the Register in respect of all distributions made on such Units, until he revokes such request.

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

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

Distribution Account.

### **DISTRIBUTABLE INCOME**

24. (A) The amount available for distribution from each Portfolio in respect of any Accounting Period or part thereof (in this Clause called the "relevant period") shall be assessed by: -

- (1) deducting the Management Fee, the Trustee Fee, the Administration Fee, any amounts paid or payable under sub-clauses (B), (C), (F), (G) (other than paragraph (7) thereof) and (H) of Clause 18 hereof for the relevant period (in any such case in so far as the same has been paid or is payable out of the income of the relevant Portfolio) and any amount written off or to be written off in respect of such Accounting Period by way of amortisation of establishment expenses under Clause 18(G)(7) hereof (or, where the relevant period is part only of such Accounting Period, the due proportion of such amount) from the total net amount receivable by the Trustee in respect of the relevant period of all interest, dividends and other amounts (accrued on a daily basis) deemed by the Managers after consulting the Auditors to be in the nature of income;
- (2) deducting any interest paid or payable in respect of the relevant period on borrowings effected under Clause 20(C) hereof and the amount of any expenses paid or payable out of the relevant Portfolio pursuant to Clause 20(C)(5) hereof deemed by the Managers after consulting the Auditors to be properly payable out of the income for the relevant period;
- (3) making such provision for taxation as the Managers after consulting the Auditors shall think appropriate;
- (4) adjusting the resulting figure by the addition of a sum representing the aggregate of all Equalisation Payments in respect of Units issued during the relevant period and the deduction of a sum representing income distributed upon the cancellation of Units during the relevant period;
- (5) adding such sum as shall have been received or is estimated by the Managers to be receivable by way of repayment of tax on income receivable during the relevant period; and
- (6) adding any amount brought forward from the previous Accounting Period pursuant to Clause 23(A) hereof

**PROVIDED THAT** there may be added, at the discretion of the Managers, to be distributed as income such proportion of a sum equal to the amount of any capital gains or other profits realised for the Portfolio during the relevant Accounting Period (less any capital losses realised for the Portfolio

during such Accounting Period and less any other amount which is, in the opinion of the Managers, after consulting with the Auditors, properly chargeable to capital) as may in the opinion of the Managers be appropriate to maintain a satisfactory level of distribution **AND PROVIDED FURTHER THAT** there may be added, at the discretion of the Managers, to be distributed as income such sums from the Deposited Property of such Portfolio as the Managers, after consulting with the Auditors, consider necessary to maintain an adequate level of distribution for the purposes of complying with any relevant fiscal regulations.

(B) As at each Accounting Date the Managers shall cause to be made up and audited a statement in respect of each Portfolio showing in respect of the Accounting Period then ending the matters set out in Clause 25(A) hereof. The statements relating to each Accounting Period in respect of all the Portfolios with the Auditors' reports thereon referred to in Clause 32(B) in respect of all the Portfolios hereof annexed thereto shall be available for inspection during usual business hours by any Holder at the specified office of the Managers. The Trustee and the Managers shall be absolutely protected in relying upon and shall act upon such statement.

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

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

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

## STATEMENTS

25. (A) The statement referred to in Clause 24(B) hereof shall show (where applicable) for each Portfolio for a convenient number of Units participating in the net income of the Accounting Period:-

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

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

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

(C) Such statement shall be included in the annual audited accounts to be sent to Holders pursuant to Clause 32(A).

## **PAYMENTS**

26. (A) Unless otherwise requested by the payee, any monies payable by the Managers or Trustee on the instructions of the Manager to a Unitholder in respect of any Unit under the provisions of this Deed shall be paid by bank transfer at the expense of the Unitholder or (at the request and expense of the Unitholder) by cheque sent by ordinary post to the registered address of the Unitholder, or, in the case of joint Unitholders, to the person whose name and address appears first on the Register or to such person and address as the Unitholder or joint Unitholders may direct, or by wire or electronic transfer at the risk and cost of the relevant Unitholder or Unitholders to a designated account and payment of every such cheque or warrant and transmission by wire or electronic transfer shall constitute a good discharge to the Managers and Trustee and neither the Managers nor the Trustee shall be responsible for any loss arising in respect of such payment or transmission.

(B) In the case of a realisation or a payment of capital moneys on the termination of the Trust or where any capital moneys are due to a Holder or former Holder other than on a distribution or interim distribution pursuant to Clause 23 hereof, payment shall be made to Holders in the same manner as is provided in sub-clause (A) of this Clause 26 PROVIDED THAT either the Managers or the Trustee may require that such payments may only be made against surrender of the relevant Certificate for endorsement of the amount paid.

(C) The Managers shall be entitled to receive any distribution in respect of Units to which they are entitled or deemed to be entitled, notwithstanding that no Certificate in respect thereof is in issue.

(D) Before making any distribution or other payment in respect of any Unit the Trustee or the Managers may make such deductions as, by the law of Ireland or any country in which such payment is made, it is or they are required or entitled to make in respect of any income or other taxes, charges or assessments whatsoever and the Trustee and the Managers may also deduct the amount of any stamp duties or other governmental taxes or charges payable by it or them for which it or they might be made liable in respect of such payment or any documents signed by it or them in connection therewith. Neither the Trustee nor the Managers shall be liable to account to any Holder or former Holder or otherwise for any payment made or suffered in good faith to any duly empowered fiscal authority of any country for duties, taxes or other charges in any way arising out of or relating to any

transaction of whatsoever nature under this Deed, notwithstanding that any such payment need not or ought not to have been made or suffered.

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

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

#### **REMUNERATION OF MANAGERS, TRUSTEE AND ADMINISTRATOR**

27. (A)(1) THE Managers shall be entitled to receive, in addition to the Preliminary Charge and any other amounts which they are entitled to retain for their own use and benefit hereunder, for their own account out of each Portfolio as soon as practicable after the last Dealing Day in each month (until upon determination of the Trust the final distribution shall have been made pursuant to Clause 39 hereof) the amount of Management Fee accrued to them and remaining unpaid. The Management Fee shall accrue on each Dealing Day in respect of the periods from (but not including) the last preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee, the Trustee Fee or the Administration Fee accruing on such Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing day) and the denominator of which is 365 (or 366 in a leap year) **PROVIDED THAT:-**

- (a) the first accrual of Management Fee shall be in respect of the period from the date of the initial issue of Units up to and including the first Dealing Day;
- (b) if the right of Holders to require realisation of units is suspended pursuant to Clause 17(E) hereof, there shall be deemed to be during such suspension a Dealing Day at the same intervals as the interval which elapsed between the penultimate and the last Dealing Days immediately preceding such suspension and there shall accrue as aforesaid on each such deemed

Dealing Day an amount of Management Fee equal to the amount of Management Fee which accrued on the last Dealing Day immediately preceding the suspension; and

- (c) if on any Dealing Day any Portfolio includes any unit or share of any Collective Investment Scheme managed by the Managers or any Connected Person of the Managers (a "connected fund"), the amount of Management Fee which would otherwise accrue on such Dealing Day in respect of such Portfolio shall be reduced by an amount in respect of each interest of the relevant Portfolio in any connected fund equal to the Management Fee which would notionally accrue on such Dealing Day on the value of the units or shares of such connected fund held for such Portfolio if such notional Management Fee were calculated at the same rate per annum as that at which the management fee payable to the manager of such connected fund is accruing in respect of the period in which such Dealing Day falls or (if lower) a rate per annum equal to the appropriate percentage.
- (2) The appropriate percentage shall be ascertained as follows:-
- (a) subject to sub-paragraph (b), the appropriate percentage shall be 2.5 per cent. or such higher percentage (or such scale of percentage applicable to different parts of the Net Asset Value of the relevant Portfolio, being a scale of percentages resulting or capable of resulting in a higher overall rate of Management Fee) as may be fixed by an Extraordinary Resolution or by a deed supplemental hereto sanctioned by an Extraordinary Resolution; and
  - (b) the Managers may from time to time by notice in writing to the Trustee fix as the appropriate percentage some smaller percentage, (or some scale or other scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio not resulting in or capable of resulting in a higher overall rate of Management Fee than that hereinbefore provided for) in which event and for such period as may be specified in such notice (or if no period is so specified in such notice then until further notice in writing shall be given to the Trustee, and not less than three months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage.
- (B) (1) The Trustee shall be entitled to receive for its own account out of the relevant Portfolio as soon as practicable after the last Dealing Day in each month (until upon determination of the Trust the final distribution shall have been made pursuant to Clause 39 hereof) the amount of Trustee Fee accrued to the Trustee and remaining unpaid. The Trustee Fee shall accrue on each Dealing Day in respect of the period from (but not including) the last

preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee the Trustee Fee or the Administration fee accruing on such Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing Day) and the denominator of which is 365 (or 366 in a leap year) **PROVIDED THAT:-**

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



given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage.

- (3) notwithstanding the provisions of this sub-clause 27(B) the Trustee shall be entitled to receive for its own account out of each Portfolio a Trustee Fee as may be agreed in writing between the Managers and the Trustee and as shall be disclosed in the Prospectus.
  - (4) the Trustee shall also be entitled to receive for its own account out of the relevant Portfolio a transaction charge for each security transaction effected for the account of that Portfolio which shall be at normal commercial rates.
- (C) (1) The Managers shall be entitled to receive for the account of the Managers an Administration Fee out of the relevant Portfolio as soon as practicable after the last Dealing Day in each month (until upon determination of the Trust the final distribution shall have been made pursuant to Clause 39 hereof) the amount of Administration Fee accrued and remaining unpaid out of which it shall pay to the Administrator and the Registrar such amounts of the Administration Fee as may be agreed between the Managers and the Administrator and between the Managers and any Registrar respectively. The Administration Fee shall accrue on each Dealing Day in respect of the period from (but not including) the last preceding Dealing Day up to (and including) such Dealing Day and the amount accruing on each such Dealing Day shall be a sum equal to the appropriate percentage of the Net Asset Value of the relevant Portfolio as at such Dealing Day (calculated without regard to the Management Fee, the Trustee Fee or the Administration Fee accruing on such Dealing Day) multiplied by the relevant fraction and for this purpose the expression "the relevant fraction" means the fraction the numerator of which is the number of days comprised in such period (including the Dealing Day on which such period ends but excluding the immediately preceding Dealing Day) and the denominator of which is 365 (or 366 in a leap year) **PROVIDED THAT: -**
- (a) for the purposes of calculating the amount payable under the "appropriate percentage" below, the accrual of the Administration Fee applying the appropriate percentage shall be deemed to commence from 1 April 2005; and
  - (b) if the right of Holders to require realisation of units is suspended pursuant to Clause 17(E) hereof, there shall be deemed to be during such suspension a Dealing Day at the same intervals as the interval which elapsed between the penultimate and the last Dealing Days

immediately preceding such suspension and there shall accrue as aforesaid on such deemed Dealing Day an amount of Administration Fee equal to the amount of Administration Fee which accrued on the last Dealing Day immediately preceding the suspension.

- (2) The appropriate percentage shall be ascertained as follows:-
  - (a) subject to sub-paragraph (b), the appropriate percentage shall be 0.575 per cent. in respect of the first \$50,000,000 of the Net Asset Value of the relevant Portfolio and 0.45 per cent. in respect of the amount by which such Net Asset Value exceeds \$50,000,000 or in the case of the Baring Latin America Fund, 0.45 per cent. which may be increased to an amount not exceeding 0.575 per cent. in respect of the first \$50,000,000 of the Net Asset Value and 0.45 per cent. of the Net Asset Value in excess thereof, on the giving of not less than three months notice to Unitholders (or such scale of percentages applicable to different parts of the Net Asset Value of the relevant Portfolio, being a scale of percentages resulting or capable of resulting in a higher overall rate of Administration Fee) as may be fixed by an Extraordinary Resolution or by a deed supplemental hereto sanctioned by an Extraordinary Resolution; and
  - (b) the Managers may from time to time by notice in writing to the Trustee fix as the appropriate percentage some smaller percentage, (or some scale or other scale of percentages applicable to different parts of the Net Assets Value of the relevant Portfolio not resulting in or capable of resulting in a higher overall rate of Administration Fee than that hereinbefore provided for) in which event and for such period as may be specified in such notice (or if no period is so specified then until further notice in writing shall be given to the Trustee and not less than three months' notice in writing shall be given to the Holders, cancelling the previous notice) such smaller percentage or scale of percentages shall be the appropriate percentage
- (3) Notwithstanding the provisions of this sub-clause 27(C) the Managers shall be entitled to receive for the account of the Administrator out of each Portfolio an Administration Fee as agreed in writing between the Managers and the Administrator and as disclosed in the Prospectus.

(D) The Management Fee provided for in Clause 27(A), the Trustee Fee provided for in Clause 27(B) and the Administration Fee provided for in Clause 27(C) shall apply to the Portfolio maintained for the class of Units established upon the constitution of the Trust and any other

Portfolios established by the Managers and the Trustee in respect of classes of Units issued pursuant to sub-clause 13(A), unless by deed supplemental hereto entered into prior to the initial issue of such Units the Managers and the Trustee shall provide that a different level and/or different basis for calculation of the Management Fee and/or the Trustee Fee and/or the Administration Fee shall apply to any such Portfolios; and the execution of such supplemental deed shall not require the sanction of an Extraordinary Resolution.

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

1. all charges, costs, fees and expenses necessarily incurred or to be incurred in the preparation of supplemental trust deeds, which may be discharged out of the relevant Portfolio; and
2. all other charges, costs, fees and expenses expressly authorised by this Deed including (without limitation) amounts payable out of or to be written off against the relevant Portfolio pursuant to sub-clauses (B), (C), (E), (F), (G) and (H) of Clause 18 hereof or specifically authorised by law.

#### **RELIEF FROM LIABILITY**

28. Subject to the Regulations:-

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

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

(C) Neither the Trustee nor the Managers shall be responsible for the authenticity of any signature on or any seal affixed to any endorsement on any certificate or to any transfer, form of application, endorsement or other document affecting the title to or transmission of Units or be in any

way liable for any forged or unauthorised signature on or any seal affixed to such endorsement, transfer, form or other document or for acting on or giving effect to any such forged or unauthorised signature or seal. The Trustee and the Managers respectively shall nevertheless be entitled but not bound to require that the signature of any Holder or joint Holder to any document required to be signed by him under or in connection with this Deed shall be verified by a banker or broker or other responsible person or otherwise authenticated to its or their reasonable satisfaction. The Trustee and the Managers shall further be entitled (but not bound) to accept and execute any instructions given in respect of Units for which a Certificate has been issued, by the Holder by telephone or by untested telex, irrespective of the number of Units and name of the beneficiary. In respect of Units for which a Registration Number has been assigned the Trustee and the Managers shall be entitled (but not bound) to accept and execute any instructions in respect thereof given by telephone or by untested telex by any person quoting that Registration Number.

- (D) (1) Any indemnity expressly given to the Trustee or to the Managers in this Deed is in addition to and without prejudice to any indemnity allowed by law **PROVIDED THAT** nothing contained in any of the provisions of this Deed shall in any case in which the Trustee or the Managers (as the case may be) have failed to show the degree of diligence and care required of it or them by the provisions of this Deed exempt it or them from or indemnify it or them against any liability for breach of trust or any liability which by virtue of any rule of law would otherwise attach to it or them in respect of any unjustifiable failure to perform its or their obligations.
- (2) Notwithstanding the generality of the foregoing, the Trustee will indemnify the Managers 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. The liability of the Trustee will not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping.
- (E) (1) The Trustee and the Managers may accept as sufficient evidence of the value of any Investment the cost price or sale price thereof or any Market quotation or a certificate by a stockbroker or dealer or other person, firm or association qualified in the opinion of the Managers to provide such a certificate.
- (2) At all times and for all purposes of this Deed the Trustee and the Managers may rely upon the established practice and rulings of any Market and any committees and officials thereof on which any dealing in any Investment is from time to time effected in determining what shall constitute a good delivery and any similar matters and such practice and rulings shall be conclusive and binding upon all persons under this Deed.
- (F) Nothing herein contained shall be construed so as to prevent the Managers and the

Trustee in conjunction or the Managers or the Trustee separately from establishing or acting as manager or trustee for trusts separate and distinct from the Trust.

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

(H) Except if and so far as herein otherwise expressly provided the Trustee and the Managers shall as regards all the trusts, rights, powers, authorities and discretions vested in each of them have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and the time for the exercise thereof and in the absence of unjustifiable failure to perform its obligations neither of them shall be in any way responsible for any losses, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

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

(J) Nothing herein contained shall be construed so as to prevent the Trustee or the Managers from contracting or entering into any financial, banking or other transaction with one another or any Holder or any company or body any of whose securities form part of a Portfolio or from being interested in any such contract or transaction and neither the Trustee nor the Manager shall be in any way liable to account to the Trust or the Holders or any of them for any profit or benefit made or derived thereby or in connection therewith.

(K) The Trustee or the Managers or any other person on behalf of the Trustee shall (subject as hereinafter provided) be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of 12 years from the date of registration thereof and all Certificates and distribution mandates which have been cancelled at any time after the expiration of 3 years from the date of cancellation thereof and all notifications of change of address after the expiration of 3 years from the date of the recording thereof and all forms of proxy in respect of any meeting of Holders after the expiration of 3 years from the date of the meeting at which the same are

used and all registers, statements and other records and documents relating to the Trust at any time after the expiration of 6 years from the termination of the Trust. Neither the Trustee nor the Managers nor any such other person as aforesaid shall be under any liability whatsoever in consequence thereof and unless the contrary be proved every instrument of transfer so destroyed shall be deemed to have been a valid and effective instrument duly and properly registered and every Certificate or distribution mandate (as the case may be) duly and properly cancelled and every register, statement or other record or document hereinbefore mentioned so destroyed shall be deemed to have been valid and effective in accordance with the recorded particulars thereof **PROVIDED THAT:-**

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

#### **RESTRICTIONS ON DEALING**

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

The Interested Party shall not be liable to account either to the other or others of them or to the Holders or any of them for any profits or benefits made or derived by or in connection with any such transaction, provided that:

- (i) in the case of a sale or vesting the amount charged to the Trustee for account of the Trust is no greater than that which would have been applicable to such a sale or vesting on the same day by a person who is not an Interested Party and in the case of a purchase the amount received by the Trustee for account of the Trust is no less than that which would have been applicable to such a purchase on the same day from a person who is not an Interested Party; and

- (ii) the Trustee is satisfied that in its opinion the terms of such transaction do not immediately result in any prejudice to Holders. In connection therewith the Trustee shall be entitled (but not required) to request that the value of such transaction be certified by a stockbroker, market maker or other professional person approved by the Trustee as qualified to value such investment.

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

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

#### **CONCERNING THE TRUSTEE**

30. (A) ALL Investments forming part of a Portfolio 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. Notwithstanding anything herein contained the Trustee shall remain liable for any act or omission of any agent (other than Euro-clear Clearance System Limited, Cedel S.A. or any other depositary or clearing system which may from time to time be approved by the Central Bank and the Commission), nominee, custodian or co-custodian in relation to any Investment in bearer form deposited with such agent, nominee, custodian or co-custodian (other than as aforesaid) as if the same were the act or omission of the Trustee.

(B) Subject to the Regulations, the Trustee shall not be under any liability on account of anything done or suffered to be done by the Trustee in good faith in accordance with or in pursuance of any request or advice of the Managers. Whenever pursuant to any provision of this Deed any certificate, notice, instruction or other communication is to be given by the Managers to the Trustee the Trustee may accept as sufficient evidence thereof a document signed or purporting to be signed on behalf of the Managers by any one person whose signature the Trustee is for the time being authorised by the Managers to accept.

(C) In no event shall the Trustee be bound to make any payment to the Managers or any

Holder except out of the funds held by it for that purpose under the provisions of this Deed.

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

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

### **CONCERNING THE MANAGERS**

31. (A) IT shall be the duty of the Managers to prepare all cheques, warrants, statements and notices which the Trustee has to issue, send or serve as hereby provided, to stamp the same as necessary 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 ample time to examine and sign the same and despatch them on the proper day. It shall also be the duty of the Managers to prepare all Certificates required to be issued and to deposit the same with the Trustee for signature.

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

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

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

(E) The Managers may, with the prior written approval of the Trustee, appoint such person or persons at such places as the Managers may deem fit to act as investment managers,



investment advisers or as an Administrator or otherwise as agents of the Managers for such purposes in relation to the investment of the Deposited Property and/or the administration of the Trust by the Managers as the Managers may determine. The Managers may, and shall at the request of the Trustee, revoke any such appointment. The remuneration of any investment adviser, investment manager, administrator or other agent so appointed shall be the responsibility of the Managers and (subject to Clause 27 (C) hereof) no part thereof shall be borne by the Trust.

(G) In any agreement appointing an investment manager, investment adviser or other delegate, the Managers shall be entitled to extend the indemnity contained in this Clause 31 (E) to any investment manager, investment advisor or other delegate as if reference to the "Managers" were references to the investment manager or other delegate.

### **ANNUAL ACCOUNTS**

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

(B) Such accounts shall be audited by the Auditors and shall be accompanied by a certificate of the Auditors to the effect that the accounts and statements attached thereto have been examined with the books and records of the Trust and of the Managers in relation thereto and that the Auditors have obtained all the explanations and information they have required. The Auditors shall further report whether the accounts and the statement described in Clause 25 hereof are in their opinion properly drawn up in accordance with such books and records to disclose the profits or losses accruing to the Managers from the Trust.

(C) There shall be produced to the Commission, and there shall accompany the accounts (other than copies of the accounts forwarded to Holders or otherwise available for inspection), a certificate signed by two Directors of the Managers stating whether the Managers or any other person on their behalf have or have not:-

- (1) transferred Units to another person for sale, re-sale, cancellation or subsequent transfer to the Managers for sale, re-sale or cancellation; or
- (2) disposed of Units to another person for a price lower than the Issue Price current at the time of such disposal; or

- (3) acquired Units for a price higher than the Realisation Price current at the time of such acquisition; or
- (4) acquired or disposed of Investments or other property otherwise than through a Market;

and (if so) to what extent in each case. The Managers may append any explanation they deem desirable.

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

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

#### **INTERIM REPORTS**

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

#### **AUDITORS**

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

#### **RETIREMENT AND REMOVAL OF TRUSTEE**

35. (A) The Trustee shall not be entitled to retire voluntarily except upon the appointment of a

new Trustee with the prior approval of the Central Bank or except upon the termination of the Trust and revocation of authorisation of the Fund by the Central Bank. In the event of the Trustee desiring to retire, the Managers may, subject to the prior approval of the Central Bank as approved by Extraordinary Resolution, by deed supplemental hereto appoint any corporation approved by the Central Bank to act as trustee of collective investment schemes to be the Trustee in the place of the retiring Trustee. The Managers will use reasonable endeavours to appoint such a duly qualified corporation upon receipt of notification from the Trustee of its desire to retire, and subject also to approval of such replacement Trustee by Extraordinary Resolution. If no new Trustee is appointed within six months of the date of the Trustee's notification of its intention to retire, the Trustee shall serve notice of termination of the Trust pursuant to Clause 38.00 hereof provided that the Trustee will continue to act as Trustee until such time as the Trust has been terminated in accordance with Clause 38.00 and authorisation of the Trust by the Central Bank has been revoked. The Central Bank may replace the Trustee in accordance with the relevant provisions of the Regulations.

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

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

36. (A) THE Managers shall be subject to removal by notice in writing given by the Trustee in any of the following events:-

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

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

(B) The Managers shall have power to retire in favour of some other qualified corporation approved by the Central Bank and the Trustee upon and subject to such corporation entering into such deed or deeds as are mentioned in sub-clause (A) of this Clause 36. Upon such deed or deeds being entered into and upon payment to the Trustee of all sums due by the retiring Managers to the Trustee under this Deed at the date thereof the retiring Managers shall be absolved and released from all further obligations hereunder but without prejudice to the rights of any Holder, former Holder or other person in respect of any act or omission prior to such retirement.

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

(D) In this Clause 36 and Clause 35 hereof the expression "qualified corporation" means a corporation acceptable to the Commission in relation to a unit trust authorised pursuant to the Securities Ordinance of Hong Kong.

(E) The Trustee shall, as soon as practicable after the appointment of new Managers pursuant to the provisions of sub-clause (A), (B) or (C) of this Clause 36 give notice to the Holders specifying the name and address of the registered office of the new Managers.

#### **ADVERTISEMENTS**

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

(B) The Managers may issue any announcement relating only to the Net Asset Value and/or Issue Price and/or the Realisation Price and/or the yield from Units PROVIDED THAT the Trustee has had a reasonable opportunity of considering the terms of the announcement and no such announcement shall be so issued without the approval of the Trustee or unless within seven days after the announcement first comes under the Trustee's consideration the Trustee has not notified its disapproval of the terms thereof in writing to the Managers.

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

#### **TOTAL REALISATION OF UNITS AND OF TERMINATION OF TRUST**

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

1. if the Managers shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Trustee) or if a receiver is appointed over any of their assets; or
2. if in the opinion of the Trustee the Managers shall be incapable of performing or shall in fact fail to perform their duties satisfactorily or shall do any other thing which in the opinion of the Trustee is calculated to bring the Trust into disrepute or to be harmful to the interest of the Holders **PROVIDED ALWAYS** that if the Managers shall be dissatisfied with such opinion the matter shall be referred to the chairman of the Commission or some person appointed by him for determination and his determination shall bind the Trustee and the Managers;
3. if the Trust shall cease to be authorised or otherwise officially approved pursuant to the Regulations or the Securities Ordinance of Hong Kong 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
4. if within a period of six months from the date the Trustee expressing in writing to the Managers its desire to retire, the Managers shall have failed to appoint a new Trustee.

Subject as mentioned in paragraph (2) of this sub-clause (B) the decision of the Trustee in any of the events specified in this sub-clause (B) 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 pursuant to this Clause 38 or otherwise. Subject as aforesaid, the Managers shall accept the decision of the Trustee and relieve the Trustee of any liability to the Managers therefor and hold the Trustee harmless from any claims whatsoever on the part of the Managers for damages or for any other relief.

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

- (1) one year from the date hereof or any date thereafter if on such date the aggregate Net Asset Value of the Deposited Property shall be less than US\$25,000,000 or its

equivalent; or

- (2) if the Trust shall cease to be authorised or otherwise officially approved pursuant to the Regulations or the Securities Ordinance of Hong Kong; or
- (3) if any law shall be passed which renders it illegal or in the opinion of the Managers impracticable or inadvisable to continue the Trust.

(D) Any Portfolio may be terminated by the Managers in its absolute discretion by notice in writing to the Holders of Units of the class to which that Portfolio relates as hereinafter provided if one year from the date hereof or from the date of the first issue of Units of that class or any date thereafter the Net Asset Value of that Portfolio shall be less than US\$10,000,000 or its equivalent.

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

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

#### **PROCEDURE UPON TERMINATION**

39. UPON the Trust or any Portfolio being terminated the Trustee shall proceed as follows:-

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

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

### **UNTRACED UNITHOLDERS**

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

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

(b) at the expiration of the said period of six years by notice sent by pre-paid letter addressed to the Unitholder or to the person entitled by transmission to the Unit at his address on the Register or to the last known address given by the Unitholder or the person entitled by transmission or by advertisement in a national daily newspaper published in Ireland or in a newspaper circulating in the area in which the Unitholder is located the Managers has given notice of its intention to realise such Unit;

(c) during the period of three months after the date of the advertisement and prior to the exercise of the power of realise the Managers has not received any communication from the Unitholder or person entitled by transmission; and

(d) if the Units are quoted on a stock exchange the Managers has first given notice in writing to the appropriate section of such stock exchange of its intention to realise such Unit, if it is required to do so under the rules of such stock exchange.

40.02 The proceeds of such realisation shall form part of the assets of the Trust and neither the Managers nor the Trustee shall be deemed to be considered a trustee in respect thereof for any Unitholder or any other person.

### **NOTICES**

41. (A) Any notice or other document required to be served upon or sent to a Holder shall be given in the case of Holders entered on the Register if sent by pre-paid post, telex or by transmitting the same by fax or other means of electronic communication to a fax number, e-mail address or other

electronic identification provided to the Managers or their delegates or left at the Holder's address as appearing on the Register (and in the case of joint Holders if so sent to or left at the address of the first named Holder on the Register) or if issued or published in such manner as the Managers shall determine subject to the approval of the Trustee or by such other means as the Managers may determine and notify in advance to Holders. Any notice sent by post as provided in this Clause shall be deemed to have been duly given 2 days after posting and any notice sent by facsimile or by telex or left as stated in this Clause shall be deemed to have been duly given on receipt of a positive transmission receipt, on receipt of an answerback or on the Business Day on which it was so left, only if the notice has been left during usual business hours on such Business Day, and if the notice is left outside usual business hours, it shall be deemed to have been left on the next following Business Day. Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting. Any notice sent by electronic communication shall be deemed to have been duly given when it has been transmitted to the electronic information system designated by the Holder for the purpose of receiving electronic communications and otherwise as determined by the Manager and notified in advance to Holders and in the case of joint Holders shall be deemed duly given if so done upon or to the first named on the Register. Any notice issued or published shall be deemed to have been duly given on the date of such notice's first issue or publication.

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

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

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

(E) Any notice or other communication to be given to the Managers or the Trustee shall be sent to it at its specified office for the time being and the provision of sub-clause 40(A) shall apply.

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

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

1. does not materially prejudice the interests of the Holders, does not operate to release to any material extent the Trustee or the Managers or any other person from any responsibility to the Holders and will not result in any increase in the amount of costs



and charges payable from the Deposited Property; or

2. is necessary in order to make possible compliance with any fiscal statutory or official requirement (whether or not having the force of law); or
3. is solely for the purpose of enabling Units to be issued in bearer form,

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

(B) The Trustee 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 the first proviso to sub-clause (A) of this Clause 41, give notice of such modification, alteration or addition to the Holders except where, in the opinion of the Trustee, such modification, alteration or addition is not of material consequence to the Holders or was made to correct a manifest error.

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

#### **MEETINGS OF HOLDERS**

43. **THE** provisions set out in the Second Schedule hereto shall have effect as if the same were included herein.

#### **COVENANT OF MANAGERS AND TRUSTEE**

44. The Managers and the Trustee hereby mutually covenant that at all times during the life of the Trust, the Trust will be carried out in compliance with the Regulations.

#### **APPLICABLE LAW**

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

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

#### **DEALINGS BY MANAGER, TRUSTEE, INVESTMENT MANAGERS, ADMINISTRATOR AND ASSOCIATES**

46. (A) There is no prohibition on dealings in the assets of any Portfolio by the Managers, the Trustee, the Investment Managers, Administrator or entities related to the Managers, to the Trustee, to the Investment Managers or the Administrator or their respective officers, directors or executives, provided that the transaction is carried out as if effected on normal commercial terms negotiated at arms length. Such transactions must be consistent with the best interests of Unitholders.

Transactions permitted are subject to: -

- (i) certified valuation by a person approved by the Trustee as independent and competent; or
- (ii) execution on best terms on organised investment exchanges under their rules; or
- (iii) where (i) and (ii) are not practical, execution on terms which the Trustee is satisfied conform with the principle set out in the first paragraph above.

(B) Subject to sub-clause (A) above, the Managers or any connected persons of the Manager may purchase and sell Investments for the account of each Portfolio or otherwise effect a transaction in circumstances in which either of them has a material interest and shall be entitled to charge to the Portfolio commissions and/or brokerage on such transactions and to accept payment of and to retain for their own absolute use and benefit all commissions and/or brokerages which they may derive from or in connection with any such purchase or sale.

(C) The Managers shall (without incurring any liability for failing so to do) endeavour to procure that no person who is a director or engaged in the management of the Manager or any subsidiary or holding company or subsidiary of a holding company of the Manager shall carry out transactions for himself or make a profit for himself from transactions in any assets of the Portfolio.

(D) Subject to the provisions of the Regulations, the prohibition of sub-clause (C) above shall not prevent transactions of the Managers or any Associate of the Manager when any such company has no beneficial interest in the assets in question.

## FIRST SCHEDULE

above referred to

### VALUATION RULES

1. The Net Asset Value per Unit of each class or, if sub-classes are in issue, of each sub-class and the Issue Price and Realisation Price of Units of each class or, if sub-classes are in issue, of each sub-class on each Dealing Day shall be calculated by the Managers as at the relevant Valuation Point in accordance with the following Rules.
2. The Net Asset Value of each Portfolio shall be calculated in the currency of account referred to in Clause 11(B)(1) by valuing the assets of the Portfolio in accordance with Rules 5 and 6 below and deducting the liabilities of the relevant Portfolio in accordance with Rule 6. The resultant sum shall be divided by the number of Units of the relevant class in issue at the relevant Valuation Point and the resultant amount shall be the Net Asset Value of a Unit of the relevant class. Where sub-classes are in issue, the Net Asset Value of each Portfolio calculated as above shall be allocated between each sub-class in accordance with the respective values in the currency of account of the Portfolio of the subscriptions and redemptions of Units of each sub-class received or made from time to time. The portion of the Net Asset Value of each Portfolio allocated to each sub-class shall be then be divided by the number of Units of the relevant sub-class in issue on the relevant Dealing Day, and the resultant amount shall be the Net Asset Value of a Unit of the relevant sub-class. Rule 3 shall then apply to the calculation of Issue and Realisation prices of Units of each sub-class as if such sub-class were the class referred to in Rule 3.
3. (A) With the exception of the initial issue of Units of any class, the Issue Price of Units of a particular class on each Dealing Day shall be the amount equal to the Net Asset Value (calculated at the relevant Valuation Point as provided in this Schedule) of one Unit plus at the discretion of the Managers a service charge determined by the Managers and not exceeding one per cent of such Net Asset Value (in respect of fiscal and purchase charges which would have been incurred on the assumption that all the Investments held in the relevant Portfolio at the relevant Valuation Point had been purchased at that Valuation Point). Where the resultant total is not a whole multiple of one cent or the smallest unit of currency in the currency of account of the relevant Portfolio such amount shall be rounded up to the nearest cent or nearest such unit.  
  
(B) The Realisation Price of Units of any class on each Dealing Day shall be the amount equal to the Net Asset Value (calculated at the relevant Valuation Point as provided in this Schedule) of one Unit less at the discretion of the Managers a service charge determined by the Managers and not exceeding one per cent of such Net Asset Value (in respect of fiscal and sale charges which would have been incurred on the

assumption that all the Investments held in the relevant Portfolio at the relevant Valuation Point had been sold at that Valuation Point). Where the resultant total is not a whole multiple of one cent or the smallest unit of currency in the currency of account of the relevant Portfolio such amount shall be rounded down to the nearest cent or nearest such unit.

4. The Value of the assets comprised in each Portfolio shall be calculated on the following basis:-

- i. The value of investments which are listed or traded on a regulated market or exchange shall be valued at their last traded price (or, if no last traded price is available, at mid-market prices).
- ii. Unquoted investments shall be valued at the probable realisable value estimated with care and in good faith by the Managers or a competent person, firm or corporation (including the Investment Manager) selected by the Managers and approved by the Trustee.
- iii. Cash deposits and similar investments shall normally be valued at face value (together with accrued interest).
- iv. Certificates of deposit shall be valued by reference to the best bid price for certificates of deposit of like maturity, amount and credit risk on the relevant Dealing Day; and
- v. Treasury bills and bills of exchange shall be valued with reference to prices ruling in the appropriate markets for such instruments of like maturity, amount and credit risk on that Dealing Day.
- vi. Collective investment schemes are valued, where appropriate, on the basis of last published net asset value per share or if unavailable, the last bid price per share excluding any preliminary charges.
- vii. Interest and other income and liabilities are, where practicable, accrued from day-to-day.
- viii. Forward foreign exchange contracts shall be valued with reference to the prevailing market maker quotation, namely, the price at which a new forward contract of the same size and maturity could be undertaken or, if unavailable, at the settlement price as provided by the counterparty.
- ix. Derivatives traded on a regulated market shall be valued at the settlement price as determined by the market. If the settlement price is not available, the

value shall be the probable realisation value estimated with care and in good faith by the Managers or a competent person, firm or corporation (including the Investment Manager) selected by the Managers and approved by the Trustee.

- x. OTC derivative contracts shall be valued daily either (i) on the basis of a quotation provided by the relevant counterparty and such valuation shall be approved or verified at least weekly by a party who is approved for the purpose by the Trustee and who is independent of the counterparty (the "Counterparty Valuation"); or (ii) using an alternative valuation provided by a competent person appointed by the Managers or the Managers and approved for the purpose by the Trustee (the "Alternative Valuation"). Where such Alternative Valuation method is used the Managers will follow international best practice and adhere to the principles on valuation of OTC instruments established by bodies such as IOSCO and AIMA and will be reconciled to the Counterparty Valuation on a monthly basis. Where significant differences arise these will be promptly investigated and explained.
- xi. If the Managers deem it necessary, a specific investment may be valued using an alternative method of valuation approved by the Trustee.
- xii. Where the value of an investment is not ascertainable as described above, the value shall be the probable realisation value estimated by the Managers with care and good faith or by a competent person appointed by the Managers and approved for the purpose by the Trustee. Notwithstanding the above, the Managers may with the consent of the Trustee adjust the Value of any Investment if, having regard to currency, applicable rate of interest, maturity, marketability and/or such other considerations as they may deem relevant, they consider that such adjustment is required to reflect the fair value thereof. A description of fair value pricing and the circumstances where it may be applied is set out below.
- xiii. In the case of any Investment or any option which is quoted, listed or normally dealt in on a market but in respect of which for any reason, prices on that market may not be available at the relevant time, the value thereof shall be based on the probable realisation value estimated by the Managers with care and in good faith or by a competent person approved by the Trustee.
- xiv. Notwithstanding any of the foregoing sub-paragraphs, the Managers may with the consent of the Trustee adjust the Value of any Investment if, having regard to currency, applicable rate of interest, maturity, marketability and/or

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

- xv. Where any Investments or any options do not fall to be valued in accordance with any of the foregoing paragraphs they shall be valued by such method available to the Managers as they with the consent of the Trustee shall determine, provided that such method of valuation has been approved by the Central Bank.
- xvi. Notwithstanding any of the foregoing sub-paragraphs, the Managers may with the approval of the Trustee (i) value the assets at lowest market dealing bid prices where on any Dealing Day, the value of all realisation requests received exceeds the value of all applications for Units or (ii) at highest market dealing offer prices where on any Dealing Day the value of all applications for Units received for that Dealing Day exceeds the value of all realisation requests received on that Dealing Day, provided that in each case, the valuation policy by the Managers shall be applied consistently through the various categories of assets and will be applied consistently (with effect from the date of this Amended and Restated Trust Deed) through the lifetime of the Unit Trust or each Fund, for as long as the Unit Trust or each Fund is operated on a going concern basis.

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

(A) every Unit agreed to be issued by the Managers prior to the date as at which the valuation is made and not subsequently cancelled shall (subject to the provisions of Clause 13(L) be deemed to be in issue and the relevant Portfolio shall (subject as aforesaid) be deemed to include not

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

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

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

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

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

- (i) any amount of Management Fee, Administration Fee and Trustee Fee accrued to the date as at which the valuation is made but remaining unpaid;
- (ii) the amount of tax (if any) on capital gains accrued up to the end of the immediately preceding Accounting Period remaining unpaid;
- (iii) the aggregate amount for the time being outstanding of any borrowing effected under Clause 20(C) hereof and the amount of any interest and expenses accrued pursuant to Clause 20(C)(5) hereof but not paid;
- (iv) an amount equal to the value of any Futures Contract which is a negative amount;
- (v) any other costs or expenses payable but not paid which are expressly authorised by the terms of this Deed to be paid out of the Deposited Property; and

(vi) an appropriate allowance for any contingent liabilities;

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

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

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

(I) Any entity wholly owned by the Trust pursuant to the provisions of Clause 19(D) shall be valued on the basis of its net assets (being the difference between the Value of its assets and liabilities) and in valuing its net assets, the provisions of this Schedule shall mutatis mutandis apply.

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



## **THE SECOND SCHEDULE**

above referred to

### **MEETINGS OF HOLDERS**

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

2. A meeting of Holders duly convened and held in accordance with the provisions of this Schedule shall be competent by Extraordinary Resolution to sanction any modification, alteration or addition to the provisions of this Deed which shall be agreed by the Trustee and the Managers as provided in Clause 41(A) of this Deed or to increase any or all of the appropriate percentages referred to in sub-clauses (A), (B) and (C) of Clause 27 of this Deed or to terminate the Trust as provided in Clause 38(E) of this Deed but shall not have any further or other powers.

3. At least 21 days' notice (inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of every meeting shall be given to the Holders in the manner provided in this Deed. The notice shall specify the place, day and hour of meeting and the terms of the resolutions to be proposed. A copy of the notice shall be delivered to the 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. At any meeting Holders present in person or by proxy and holding or representing one-tenth of the Units for the time being in issue shall form a quorum for the transaction of business except for the purpose of passing an Extraordinary Resolution. The quorum for passing an Extraordinary Resolution shall be Holders present in person or by proxy and holding or representing not less than one-quarter of the Units for the time being in issue. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

5. If within half an hour from the time appointed for the meeting a quorum is not present the

meeting shall stand adjourned to such day and time not being less than 15 days thereafter and to such places as may be appointed by the Chairman; and at such adjourned meeting the Holders present in person or by proxy shall be a quorum. Notice of any adjourned meeting of Holders shall be given in the same manner as for an original meeting and such notice shall state that the Holders present at the adjourned meeting, whatever their number and the number of Units held by them, will form a quorum.

6. Some person, who need not be a Holder, nominated in writing by the 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 15 minutes after the time appointed for holding the meeting the Holders present shall choose one of their number to be Chairman.

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

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

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

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

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

12. A Holder may attend and vote in person or on a poll by proxy. A corporation, being a Holder,

may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of Holders and the person so authorised shall, upon production of a copy of such resolution certified by a director of the corporation to be a true copy, be entitled to exercise the powers on behalf of the corporation so represented as the corporation could exercise in person if it were an individual Holder.

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

14. A proxy need not be a Holder.

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

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

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

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

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

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

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

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

22. Subject to all other provisions contained in this Deed, the 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.

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

## **THE THIRD SCHEDULE**

above referred to

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

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

SEALED with the COMMON SEAL  
of **BARING INTERNATIONAL FUND  
MANAGERS (IRELAND) LIMITED**  
in the presence of:-

SEALED with the COMMON SEAL  
of **NORTHERN TRUST FIDUCIARY SERVICES (IRELAND) LIMITED**  
in the presence of: -