

SECTION 3 - CONSTITUTIONAL DOCUMENTS

DEED OF CONSTITUTION

Note: Deed of constitution must be governed by Irish law

| | | Clause Number |
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| 3.1 | General | |
| 3.1.1 | Provide that the Deed of Constitution cannot be amended or assigned without the prior approval of the Financial Regulator | |
| 3.1.2 | Provide that the custodian is responsible for the safekeeping of all of the assets of the QIF and include a statement to the effect that: | <input style="width: 100%; height: 20px;" type="text"/> |
| a) | The custodian agrees to act as custodian of all the securities and other assets (including cash) of the QIF; or, (where the custodian is a credit institution, the following may be provided) | <input style="width: 100%; height: 20px;" type="text"/> |
| b) | The custodian agrees to act as custodian of all the securities and all other assets of the QIF, save cash deposited with it as principal which shall constitute a debt due by the custodian | <input style="width: 100%; height: 20px;" type="text"/> |
| | Confirm that the definition of ‘assets’ includes all investments, e.g. cash and financial derivative instruments | <input style="width: 100%; height: 20px;" type="text"/> |
| c) | Include a statement to the effect that the management company undertakes to transfer to the custodian, forthwith on receipt thereof, all sums (if any)* received by it representing subscription application money for units and cash and all payment of income, principal, or capital distribution received by it in relation to all investments owned by the QIF from time to time. (*The following wording is acceptable if inserted here “(less any initial charge(s) payable to the investment manager or any other distributor in respect thereof)”) <p style="margin-left: 20px;">Note: It is permitted to include wording to the effect that - It is agreed and declared that the duties and obligations of the custodian to hold the assets shall extend only to sums actually received by it and its sub-custodians</p> | <input style="width: 100%; height: 80px;" type="text"/> |
| 3.2 | Issue / Allotment of Units | |
| 3.2.1 | Provide that units shall be issued or sold at a price arrived at by dividing the net asset value of the QIF by the number of units outstanding, (such price may be increased by duties and charges) | <input style="width: 100%; height: 40px;" type="text"/> |
| | Note: The deed of constitution must not include reference to issuing units of a QIF/sub-fund at a fixed price (other than the initial offer price). Share classes in a QIF/sub-fund may be launched at a fixed price within the initial offer period where it has been demonstrated that existing shareholders in this QIF/sub-fund are not prejudiced. | |
| 3.2.2 | Provide that units may not be issued unless the equivalent of the net issue price is paid into the assets of the QIF within : | <input style="width: 100%; height: 20px;" type="text"/> |
| a) | the usual time limits, or | |
| b) | a reasonable time (tick option provided for) | |

- 3.2.3 Provide for the issue of
- a) Unit certificates;
and/or
- b) a written confirmation of entry on the register.
(tick option provided for)
- 3.2.4 Provide that unit certificates must be signed by the custodian
(This signature may be reproduced mechanically)
- Yes/No
- 3.2.5 Does the Deed of Constitution provide for subscriptions in specie?
- If yes, provide wording to the effect that:
- a) The assets to be transferred into the QIF/sub-fund would qualify as investments of the QIF/sub-fund in accordance with the investment objectives, policies and restrictions which are set out in the prospectus
- b) (i) Assets to be transferred must be vested in the custodian¹ or
(ii) Arrangements are made to vest the assets in the custodian;
- c) The number of units to be issued must not exceed the amount that would be issued for the cash equivalent; and
- d) (i) The custodian is satisfied that the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the QIF/sub-fund;
or
(ii) The custodian is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the QIF

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| 3.3 | Redemption/Repurchase of Participating Units |
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- 3.3.1 Confirm the Deed of Constitution authorises the repurchasing of its own units by the QIF
- 3.3.2 Provide that units will be redeemed or repurchased at a price arrived at by dividing the net asset value of the QIF by the number of units outstanding (such price may be decreased by duties and charges)
- 3.3.3 Repurchase Charge
If relevant, provide for a repurchase charge
Note: in the case of open-ended QIFs, the maximum charge relating to repurchase cannot exceed 5%
- Limits in relation to redemption
Note: This paragraph does not apply to QIFs which are classified as limited liquidity funds
- 3.3.4 If the Deed of Constitution limits the amount which can be redeemed, provide that:
- a) In the case of monthly dealing, at least 10% of units in issue in the QIF/sub-fund must be redeemed on any dealing day
- b) In the case of quarterly dealing, at least 25% of units in issue in the QIF /sub-fund must be redeemed on any dealing day
- 3.3.5 Redemptions in Specie Yes/No
Where the Deed of Constitution provide for redemptions in specie, the following provisions are acceptable:

¹ In relation to NU 18 Property Schemes refer to Schedule 2

- a) Redemption in specie is at the discretion of the QIF and with the consent of the redeeming unitholder;
- b) Asset allocation is subject to the approval of the custodian;
- c) A determination to provide redemption in specie may be solely at the discretion of the QIF where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the QIF. In this event the QIF will, if requested, sell the assets on behalf of the unitholder. (The cost of the sale can be charged to the unitholder.)
- 3.3.6 Distributions in Specie Yes/No
- Does the Deed of Constitution provide for distribution in specie on a winding up?
- If yes, provide that:
- a) an ordinary/special resolution is required,
- and
- b) the management company / custodian agrees to sell the assets if requested by such unitholder (the costs of such sale can be charged to redeeming unitholders)
- 3.3.7 Cancellation of Units
- Provide that repurchased units are cancelled
- Settlement Period
- Note: This paragraph does not apply to QIFs which are classified as limited liquidity funds
- 3.3.8 Indicate the maximum period for payment of redemption proceeds to unitholders (period must not exceed 90 calendar days from dealing deadline to settlement date for a quarterly dealing QIF). In the case of QIFs which are feeder / fund of funds the 90 day settlement period can be extended to 95 days
- 3.3.9 Temporary Suspension of Redemptions
- a) List cases where repurchase of units may be temporarily suspended
- Provide that:
- b) Suspension can only be on a temporary basis; and
- c) The Financial Regulator will be notified immediately of any such suspension.
- d) Confirm that there is no provision in the Deed of Constitution permitting the custodian to request suspension

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| 3.4 | Determination of Net Value Asset |
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- 3.4.1 Specify the frequency of the calculation of
- a) the issue price;
- and
- b) the repurchase price
- (Note: In the case of open-ended QIFs, quarterly valuations at a minimum must be provided; in the case of QIFs which are classified as limited liquidity funds or are closed-end funds, assets must be valued at least twice yearly)
- 3.4.2 Valuation Provisions
- a) Methods to value individual asset types must comply with Guidance Note 1/00 - Valuation of the Assets of Collective Investment Schemes
- b) For Venture or Development Capital Investments
Provide that investments will be valued in accordance with guidelines published by an

appropriate professional bodye.g. *The European Venture Capital Association*

c) Property Investments (pursuant to NU 18)
Provide that property investments

i) will be valued in accordance with guidelines published an appropriate professional bodye.g. *The Royal Institute of Chartered Surveyors*

ii) Will be valued by a qualified independent valuer at market value

3.4.3 Anti dilution levy

a) The Deed of Constitution may provide that, in calculating the redemption price for the QIF the management company may on any dealing day when there are net redemptions adjust the redemption price by deducting an anti dilution levy to cover dealing costs and to preserve the value of the underlying assets of the QIF.

b) The Deed of Constitution may provide that in calculating the subscription price for the QIF the management company may on any dealing day when there are net subscriptions adjust the subscriptions price by adding an anti dilution levy to cover dealing costs and to preserve the value of the underlying assets of the QIF.

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| 3.5 | Fees and Expenses |
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3.5.1 Confirm that provision is made for the following:
a) Preliminary expenses

b) The regulatory fee; and
The cost of termination/liquidation

c) Other expenses

d) Fees and out of pocket expenses of:
(a) Management Company, including the method of calculation, frequency, maximum fee and whether payable in arrears or in advance
(b) Custodian
(c) Administrator
(d) Investment Manager
(e) Others (as applicable)
(Note: If provision is made for sub-custody fees and expenses to be recouped from the QIF, provide that they will be charged at normal commercial rates)

3.5.2 Provide that the maximum annual management fee may not be increased without the approval of the unitholders

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| 3.6 | Distributions/Dividends |
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3.6.1 Specify the conditions and manner of the application of income.

3.6.2 Provide for the power to make distributions / pay dividends and the basis under which such distributions /dividends may be paid

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| 3.7 | Borrowing Powers |
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3.7.1 Provide where relevant for the power to borrow

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| 3.8 | Umbrella Funds |
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| 3.8.1 | Specify "umbrella fund" on cover page | <input type="checkbox"/> |
| | Provide that: | |
| 3.8.2 | New sub-funds can only be established with the prior approval of the Financial Regulator; | <input type="checkbox"/> |
| 3.8.3 | Separate <u>records</u> (not books) will be maintained for each sub-fund with the assets and liabilities being allocated to each sub-fund; and | <input type="checkbox"/> |
| 3.8.4 | The assets shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose | <input type="checkbox"/> |
| 3.8.5 | Provide, where relevant, the procedures in relation to switching | <input type="checkbox"/> |
| 3.9 | Subsidiaries | |
| 3.9.1 | Provide, where relevant, for the power to establish wholly owned subsidiary (ies) | <input type="checkbox"/> |
| 3.9.2 | Provide that the shares and assets issued by the subsidiary and all of its assets will be held by the Irish Custodian or otherwise in accordance with the requirements of the Financial Regulator. | <input type="checkbox"/> |
| 3.10 | Share Classes | |
| | | Yes/No |
| 3.10.1 | Does the Deed of Constitution provide for the creation of share classes? | <input type="checkbox"/> |
| | If yes | |
| 3.10.2 | Where the common contractual fund is also an umbrella, confirm provisions for the creation of classes within sub-funds are clear and unambiguous | <input type="checkbox"/> |
| 3.10.3 | Confirm that the calculation of the net asset value per unit <u>of each share class</u> is clearly provided | <input type="checkbox"/> |
| 3.10.4 | Provide that the creation of further share classes must be | <input type="checkbox"/> |
| | a) notified to the Financial Regulator in advance; or | |
| | b) must be effected in accordance with the requirements of the Financial Regulator | |
| | <u>Hedged/Unhedged Classes</u> | Yes/No |
| 3.10.5 | Does the QIF intend to create hedged and/or unhedged currency share classes? | <input type="checkbox"/> |
| | If yes, | |
| a) | In the case of a hedged share class, confirm that there are clear provisions for the: | |
| | (i) valuations of the transactions; and | <input type="checkbox"/> |
| | (ii) charging of the resultant costs and gains/losses to the relevant share class | <input type="checkbox"/> |
| b) | Provide that: | |
| | (i) transactions can be clearly attributable to a specific class (e.g. currency exposures of different currency classes may not be combined or offset and currency exposures of assets of the QIF may not be allocated to separate share classes); and | <input type="checkbox"/> |
| | (ii) currency share classes must not be leveraged as a result of these transactions | <input type="checkbox"/> |
| | <u>or</u> | |
| | (iii) confirm the latter two requirements are provided for in the Prospectus | |
| 3.11 | Custodian Duties | |

3.11.1 Provide that the custodian will carry out the duties set out in Notice NU 7 of the NU Series of Notices

Or
List the duties in the Deed of Constitution

3.12 Control/Transfer of Assets

3.12.1 List all of the circumstances under which cash can be transferred, exchanged, surrendered, delivered etc. by the custodian and provide that cash can only be transferred in these specified circumstances

3.12.2 List all of the circumstances under which all other Assets can be transferred, exchanged, surrendered, delivered, etc. by the custodian and provide that assets can only be transferred in these specified circumstances

(Note: It is permitted to include a general clause to the effect that cash / assets can, under proper instruction, be delivered for a purpose other than those specified provided that such purpose is authorised in the Deed of Constitution and contemplated by the Prospectus)

3.12.3 If the Deed of Constitution provides that the custodian shall not be responsible for any assets which the management company has instructed the Custodian to deliver to third parties other than the sub-custodian appointed by the Custodian confirm that the instructions to transfer are in accordance with 4.12.1 or 4.12.2 above

3.12.4 If the Deed of Constitution² provides that:
a) Cash and other accounts (e.g. security accounts) can be opened in the name of the QIF, provide that such accounts are subject only to drawings, instructions and orders by the custodian

b) Assets may be registered in the name of the QIF:
(i) Provide that registration in the name of the QIF is standard market practice and
(ii) such Assets cannot be assigned, transferred, exchanged, delivered without the prior approval of the custodian.

3.12.5 Provide that the Custodian may make or accept payment for, or delivery of Assets, in accordance with proper instructions.

a) Where provision is made for settlement in accordance with market practice confirm that it is clear from the Deed of Constitution that this is in accordance with proper instructions

b) Confirm that it there is no provision to permit the custodian to act against proper instruction without reverting to the management company

3.12.6 Where provision is made that the Custodian may release and deliver assets as security for borrowings include a statement to the effect that the value of the assets delivered is the minimum amount required to secure or continue the borrowing as appropriate and provided that the release and delivery of assets is in accordance with the requirements of the Financial Regulator

3.13 Delegation by the custodian

3.13.1 The Deed of Constitution may provide that the custodian may appoint a sub-custodian or agent to hold the assets of the QIF

² In relation to NU 18 Property Funds refer to Schedule 2.

In this case, provide that the liability of the custodian will not be affected by the fact that that it has entrusted to a third party some or all of the assets in its safe-keeping

3.13.2 The Deed of Constitution may provide that in order for the custodian to discharge its responsibility under the Notices, the custodian must exercise due care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The custodian must maintain an appropriate level of supervision over the safekeeping agent to confirm that the obligations of the agent continue to be competently discharged.

3.13.3 The Deed of Constitution may include the following statements provided that it follows the provisions set out in 4.13.2 and is disclosed in the prospectus

(i) As the QIF may invest in markets where custodial and/or settlement systems are not fully developed, the assets of the QIF which are traded in such markets and which have been entrusted to sub-custodian(s) in the circumstances where the use of such sub-custodians is necessary, may be exposed to risk in circumstances whereby the custodian will have no liability; and

(ii) details of the potential risks to investors of investing in such markets will be set out comprehensively in the prospectus in accordance with the requirements of the Financial Regulator

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| 3.14 | Liability/Indemnity |
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3.14.1 The Deed of Constitution must provide that the custodian must exercise due care and diligence in the discharge of its duties and will be liable to the management company and the unitholders for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties

3.14.2 Confirm that there are no provisions detracting from this minimum standard which could limit liability - e.g. words such as “hereunder” or “under this Deed of Constitution”

3.14.3 **In general the Deed of Constitution should not contain any clauses limiting the liability of the custodian**

The following clauses are permitted options provided the exact wording is included:

a) Subject and without prejudice to (*the general liability clause referred to in 4.14.1*) the custodian is not responsible for any loss directly or indirectly caused by the failure of a central depository/securities settlement/clearing system in the performance of its obligations.

or

Subject to and without prejudice to (*the general liability clause*) the custodian is not responsible for any loss directly or indirectly caused by the failure of a securities system/clearing system to effect a settlement

or

Subject and without prejudice to (*the general liability clause*) the custodian is not responsible for any loss caused by the actions or inaction of a central securities depository

In this case:

Confirm that it is clear that the term “central depository/securities settlement/clearing system” in this context does not include the participants in the system

- b) If the Deed of Constitution provides that the custodian is not liable for uninvested moneys, include the following: “provided that it is acting under specific proper instructions regarding investment of such money”
- c) Any clearing broker to which margin monies or margin assets are deposited in respect of futures and options or other hedging contracts shall not be a sub-custodian or agent of the custodian for such purposes and the custodian shall not be liable for the acts or omissions or any loss directly or indirectly caused by any such clearing broker
- d) Where the Deed of Constitution provides an indemnity to the custodian (for example that “The management company shall indemnify and keep indemnified and hold harmless the custodian (and each of its directors, officers, servants, employees and agents) from and against any and all third party actions, proceedings, claims ... etc. include “other than as a result of the custodian’s negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties’
- e) Subject and without prejudice to (*the general liability clause*) the custodian shall not be liable to the management company or the unitholders or any other person for consequential or indirect or special damages or losses arising out of or in connection with the performance or non-performance by the Custodian of its duties and obligations
- 3.14.4 If there are other clauses which limit the liability of and/or indemnify the custodian, these provisions must be subject to the general liability clause and relevant clauses identified here

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| 3.15 | Force Majeure Events |
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- 3.15.1 Where the Deed of Constitution provides for "Force Majeure", include a statement to the effect that the custodian will use its reasonable efforts to minimise the effect of any such event
- 3.15.2 Where the Deed of Constitution provides that the obligations of the custodian under the Deed of Constitution shall be suspended for so long as "Force Majeure" events continue, include a statement to the effect that such suspension shall only be to the extent that the custodian is prevented, hindered or delayed by such event(s).
- 3.15.3 Confirm that ‘failure of a securities system’ is not classified as such an event

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| 3.16 | Procedures for the replacement of the Custodian |
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- 3.16.1 Specify the procedure for the replacement of the custodian and the rules to protect the interests of unitholders in the event of such replacement
- 3.16.2 Provide that the termination of the appointment of the custodian is only permitted:
- a) Upon the appointment of a successor custodian;
- or
- b) Upon the revocation of the authorisation of the QIF
- 3.16.3 Provide that any replacement custodian must be approved by the Financial Regulator

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| 3.17 | Procedures for the replacement of the Management Company |
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- 3.17.1 Specify the procedures for the replacement of the management company and the rules to protect the interests of unitholders in the event of such replacement
- 3.17.2 Provide that any replacement management company must be approved by the Financial Regulator

3.18 Qualifying Investors

3.18.1 Specify that the QIF has a minimum subscription requirement of €250,000 (or its equivalent in other currencies)

3.18.2 Define Qualifying Investor as follows:

- a) Any natural person with a minimum net worth (which excludes main residence and household goods) in excess of €1,250,000; or
- b) Any institution (an entity other than a natural person)
- which owns or invests on a discretionary basis at least €25,000,000 or its equivalent in other currencies or
 - the beneficial owners of which are qualifying investors in their own right

3.18.3 Specify that 'to be entered on the register, unitholders (applicants) must apply for, or acquire, units to the value of not less than the minimum subscription amount as set out in the Financial Regulator's Notice NU 24, certify that they meet the Qualifying Investor criteria as set out in NU 24 and certify that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investment is the potential to lose all of the sum invested'

3.18.4 If an exemption from the minimum subscription requirement and qualifying investor criteria is available, in accordance with NU 24 :

- a) Provide that an exemption from the minimum subscription requirement and qualifying criteria can be granted to the individuals/entities specified in the prospectus, subject to the conditions and requirements of the Financial Regulator
- or
- b) Provide that an exemption from the minimum subscription requirement can be granted to the following:

- (i) the management company or general partner;
- (ii) the promoter or an entity within the promoters group
- (iii) a company appointed to provide investment management or advisory services to the QIF;
- (iv) A director of the management company, investment company or general partner or a director of a company appointed to provide investment management or advisory services to the QIF;
- (v) An employee of the management company, investment company or general partner, or an employee of a company appointed to provide investment management or advisory services to the QIF, where the employee:
- is directly involved in the investment activities of the QIF, or
 - is a senior employee of the company and has experience in the provision of investment management services

c) Where investment is permitted by an employee, as set out in (b)(v) above, provide that the management company, investment company or general partner, as appropriate, must be satisfied that prospective investors fall within the criteria outlined

d) Provide that the investors must certify that they are availing of the exemption provided and that they are aware that the QIF is normally marketed solely to qualifying investors who meet a high net worth test and are subject to a minimum subscription of €250,000

e) Provide that the investors must complete the certification requirements set 4.18.3 above

3.19 Closed-ended QIF

3.19.1 Specify the finite closed-ended period of the QIF (i.e. duration)

3.19.2 Provide that at the end of the specified duration the QIF will undertake one of the following option(s):

- a) Wind-up and apply to the Financial Regulator for revocation of authorisation
 - b) Redeem all outstanding units and apply to the Financial Regulator for revocation of authorisation
 - c) Convert into an open-ended QIF; or
 - d) Obtain unitholder approval to extend the duration in accordance with Guidance Note 2/97 (Duration of closed-ended collective investment schemes)
- (tick option(s) provided for)**
- | |
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| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

3.19.3 In the case of an umbrella QIF with both open (or limited liquidity) and closed-end sub-funds, provide

- a) for the right of unitholders to request redemption of their holding by the QIF
 - b) that notwithstanding this right certain sub-funds may be established with no rights of redemption, subject to conditions set down by the Financial Regulator; and
 - c) that the initial duration of the closed-ended period of any sub-fund will comply with Guidance Note 2/97
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| <input type="checkbox"/> |
| <input type="checkbox"/> |
| <input type="checkbox"/> |

3.20 Prime Brokers and Related Issues

3.20.1 Indicate the clause number that provides for passing of assets to the Prime Broker, etc.

3.20.2 Where the Custodian's procedures for monitoring compliance with the Prime Broker conditions, and/or OTC counterparty criteria, are provided for in the Deed of Constitution Confirm the provisions are consistent with the draft Prime Broker Guidance Note _/04