

SECTION 3 - CONSTITUTIONAL DOCUMENTS

MEMORANDUM AND ARTICLES OF ASSOCIATION

		Article No.
3.1	General	
3.1.1	Specify “Investment Company with Variable Capital” on cover page	<input style="width: 100px; height: 20px;" type="text"/>
3.1.2	Provide that the sole object of the company is “the collective investment of its property with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds”	<input style="width: 100px; height: 40px;" type="text"/>
3.1.3	Provide that the Memorandum and Articles of Association cannot be amended without the prior approval of the Financial Regulator	<input style="width: 100px; height: 25px;" type="text"/>
3.2	Share Capital	
3.2.1	Indicate the type of share	<input style="width: 100px; height: 20px;" type="text"/>
3.2.2	Note: - Bearer shares are not permitted - Shares in the company may not have a par value	
3.2.3	Provide that the amount of paid-up share capital of the company shall at all times be equal to the net asset value of the company. <i>(Ensure that the wording refers to the <u>company</u> and not to sub-funds/classes)</i>	<input style="width: 100px; height: 40px;" type="text"/>
3.2.4	Specify the maximum and minimum authorised share capital	<input style="width: 100px; height: 20px;" type="text"/>
3.3	Issue / Allotment of Participating Shares	
3.3.1	Provide that shares shall be issued or sold at a price arrived at by dividing the net asset value of the QIF by the number of shares outstanding, (such price may be increased by duties and charges)	<input style="width: 100px; height: 40px;" type="text"/>
3.3.2	Note: The Articles must not include reference to issuing shares of a QIF/sub-fund at a fixed price (other than the initial offer price). Share classes of 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 the QIF/sub-fund are not prejudiced.	<input style="width: 100px; height: 60px;" type="text"/>
3.3.3	Provide that shares may not be issued unless the equivalent of the net issue price is paid into the assets of the QIF within:	
a)	the usual time limits, or	<input style="width: 100px; height: 20px;" type="text"/>
b)	a reasonable time	<input style="width: 100px; height: 20px;" type="text"/>
	<i>(tick option provided for)</i>	
3.3.4	Provide for the issue of	
a)	share certificates;	<input style="width: 100px; height: 20px;" type="text"/>
	And/or	
b)	a written confirmation of entry on the register.	<input style="width: 100px; height: 20px;" type="text"/>
	<i>(tick option provided for)</i>	

3.3.5	Provide that share certificates must be signed by the custodian (This signature may be reproduced mechanically)	<input type="text"/>
		Yes/No
3.3.6	Do the Articles provide for <u>subscription in specie</u> ? If yes, provide wording to the effect that:	<input type="text"/>
a)	The assets to be transferred into the QIF would qualify as investments of the QIF in accordance with the investment objectives, policies and restrictions which are set out in the prospectus	<input type="text"/>
b)	Assets to be transferred	<input type="text"/>
(i)	must be vested with the custodian ¹ ;	<input type="text"/>
(ii)	or arrangements are made to vest the assets with the custodian;	<input type="text"/>
c)	The number of shares to be issued must not exceed the amount that would be issued for the cash equivalent; and	<input type="text"/>
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 shareholders of the QIF;	<input type="text"/>
	or	
(ii)	The custodian is satisfied that there is unlikely to be any material prejudice to the existing shareholders of the QIF	<input type="text"/>
3.4	Redemption/Repurchase of Participating Shares	
3.4.1	Confirm the Articles authorise the repurchasing of its own shares by the QIF;	<input type="text"/>
3.4.2	Provide that shares will be redeemed or repurchased at a price arrived at by dividing the net asset value of the QIF by the number of shares outstanding (such price may be decreased by duties and charges)	<input type="text"/>
	<u>Repurchase Charge</u>	
3.4.3	If relevant, provide for a repurchase charge. Note: in the case of open-ended QIFs, the maximum charge relating to repurchase cannot exceed 5%	<input type="text"/>
	<u>Limits in relation to redemption</u>	
	Note: This paragraph does not apply to QIFs which are classified as limited liquidity funds	
3.4.4	If the company limits the amount which can be redeemed, provide that	
a)	In the case of monthly dealing, at least 10% of shares in issue in the QIF/sub-fund must be redeemed on any dealing day	<input type="text"/>
b)	In the case of quarterly dealing, at least 25% of shares in issue in the QIF /sub-fund must be redeemed on any dealing day	<input type="text"/>
	<u>Redemptions in Specie</u>	Yes/No
3.4.5	Where the Articles provide for redemptions in specie, the following provisions are acceptable:	<input type="text"/>
a)	Redemption in specie is at the discretion of the QIF <u>and</u> with the consent of the redeeming shareholder;	<input type="text"/>
b)	Asset allocation is subject to the approval of the custodian;	<input type="text"/>
c)	A determination to provide redemption in specie may be made solely at the discretion of the	<input type="text"/>

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

QIF where the redeeming shareholder 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 shareholder. (The cost of the sale can be charged to the shareholder.)

Yes/No

3.4.6 Distributions in Specie

Do the Articles provide for distribution in specie on a winding up?

If yes, provide that:

a) an ordinary/special resolution is required,
and

b) the QIF agrees to sell the assets if requested by a shareholder (the costs of such sale can be charged to redeeming shareholders)

Cancellation of Shares

3.4.7 Provide that repurchased shares are cancelled

Settlement Period

(Note: This paragraph does not apply to QIFs which are classified as limited liquidity funds)

3.4.8 Indicate the maximum period for payment of redemption proceeds to shareholders (period must not exceed 90 calendar days from dealing deadline to settlement date for a quarterly dealings QIF). In the case of QIFs which are feeder /fund of funds the 90 day settlement period can be extended to 95 days

3.4.9 Temporary Suspension of Redemptions

a) List cases where repurchase of shares 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 Articles permitting the custodian to request suspension.

3.5. Determination of Net Value Asset

3.5.1 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 closed end QIFs, assets must be valued at least twice yearly)

Valuation Provisions

3.5.2 a) Methods to value individual asset types, which must comply with Guidance Note 1/00 - Valuation of the Assets of Collective Investment Schemes.

b) It is permitted, in lieu of listing valuation rules, to include a general provision to the effect that assets will be valued in accordance with rules which are set out in the prospectus. In this case a statement must be included, to the effect that any change in those rules will require confirmation from the custodian that the proposed amendment will not, in the view of the custodian, materially prejudice investors.

For Venture or Development Capital Investments

c) Provide that investments will be valued in accordance with guidelines published by an

appropriate professional body *e.g. The European Venture Capital Association*

Property Investments (pursuant to NU 18)

- d) Provide that property investments will be valued 'in accordance with guidelines published
- i) by an appropriate professional body *e.g. The Royal Institute of Chartered Surveyors* and
- ii) Will be valued by a qualified independent valuer at market value

3.5.3 Anti dilution levy

- a) The Articles may provide that in calculating the redemption price for the QIF the directors 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 Articles may provide that in calculating the subscription price for the QIF the directors 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.

3.6	Fees and Expenses
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3.6.1 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
(b) Custodian
(c) Administrator
(d) Investment Manager
(e) Directors
(f) Others (as applicable)

3.7	Appointment of Custodian
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3.7.1 Provide that the QIF appoints a custodian who is responsible for the safekeeping of all the assets of the company.

3.7.2 Specify the procedure for the replacement of the custodian and rules to protect the interests of shareholders in the event of such replacement

3.7.3 Provide that:

- a) The appointment of the replacement custodian must be approved by the Financial Regulator;
- b) The old custodian may not retire until a new custodian is appointed; and
- c) Where no new custodian is appointed, it is permitted to include the following:
- (i) a general meeting will be convened at which an ordinary resolution to wind up the company will be considered;
- (ii) the old custodian appointment shall only be terminated on the

revocation of the QIF's authorisation

3.7.4 Confirm that there are no provisions limiting the custodian liability, indemnities etc. (except as provided for in the custodian agreement)

3.8	Procedure for the replacement of a management company
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3.8.1 Where relevant, specify the procedure for the replacement of the management company and the rules to protect the interests of shareholders in the event of such replacement

3.8.2 Provide that the appointment of the replacement management company must be approved by the Financial Regulator

3.9	Distributions/Dividends
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3.9.1 Specify the conditions and manner of the application of income

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

3.10	Borrowing Powers
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3.10.1 Provide where relevant for the power to borrow

3.11	Umbrella Funds
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3.11.1 Specify 'an umbrella scheme with segregated liability between sub-funds' on cover page

Provide that:

3.11.2 New sub-funds can only be established with the prior approval of the Financial Regulator;

3.11.3 Separate records will be maintained for each sub-fund with the assets and liabilities being allocated to each sub-fund;
and

3.11.4 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;

3.11.5 Provide, where relevant, the procedures in relation to switching.

3.12	Subsidiaries
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3.12.1 Provide, where relevant, for the power to establish wholly owned subsidiary (ies)

3.12.2 Provide that the shares and assets issued by the subsidiary and all of its assets will be held by the custodian or otherwise in accordance with the requirements of the Financial Regulator.

3.13	Share Classes
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3.13.1 Do the Articles provide for the creation of share classes?

Yes/No

If yes

3.13.2 Where the company is also an umbrella, confirm that the provisions for the creation of classes within sub-funds are clear and unambiguous

3.13.3 Confirm that the calculation of the net asset value per share of each class is clearly provided

- 3.13.4 Provide that the creation of further share classes must be:
- a) notified to the Financial Regulator in advance; or
- b) must be effected in accordance with the requirements of the Financial Regulator

Hedged/Unhedged Classes

Yes/No

- 3.13.5 Does the QIF intend to create hedged and/or unhedged currency share classes?

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
- (ii) charging of the resultant costs and gains/losses to the relevant share class

- 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
- (ii) currency share classes must not be leveraged (or in any event will not exceed specific parameters) as a result of these transactions

or

- (iii) confirm the latter two requirements are provided for in the Prospectus

3.14	Qualifying Investors
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- 3.14.1 Specify that the QIF has a minimum subscription requirement of €250,000 (or its equivalent in other currencies)

- 3.14.2 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

- 3.14.3 Specify that 'to be entered on the register, shareholders (applicants) must apply for, or acquire, shares in the company 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'

- 3.14.4 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 investor falls 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 out in 3.16.3 above

3.15	Closed-ended QIF
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3.15.1 Specify the finite closed-ended period of the QIF (i.e. duration)

3.15.2 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 a 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 shareholder approval to extend the duration in accordance with Guidance Note 2/97 (Duration of closed-ended collective investment schemes)
(tick option(s) provided for)

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

a) For the right of shareholders to request redemption of their holdings by the company;

b) That notwithstanding this right certain sub funds may be established with no right of redemption, subject to any conditions set down by the Financial Regulator; and

c) That the duration of the closed-ended period of any sub-fund will comply with Guidance Note 2/97