

INDEPENDENT TRUSTEE COMPANY LIMITED

(Trustee)

**DECLARATION OF TRUST
DELTA FUND
(Closed-Ended Umbrella Unit Trust)**

**DILLON EUSTACE
SOLICITORS
GRAND CANAL HOUSE
1 UPPER GRAND CANAL STREET
DUBLIN 4**

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DELTA FUND

THIS DECLARATION OF TRUST is made the 2nd day of January, 2002

BY

INDEPENDENT TRUSTEE COMPANY LIMITED having its registered office at 35 Fitzwilliam Street Upper, Dublin 2 (hereinafter called the "Trustee").

WHEREAS

The Trustee has entered into this Declaration of Trust to constitute Delta Fund (the "Trust") as a Closed-Ended Umbrella Unit Trust for the purposes of facilitating the investment by Investors (as hereinafter defined) in the permitted investments set out herein and to conduct its duties in accordance with the provisions of Section 731 (5) (a) of the Taxes Consolidation Act, 1997.

NOW THIS DEED WITNESSETH as follows:-

1.00 **DEFINITIONS**

1.01 Unless the subject or context otherwise requires the words and expressions following shall have the following meanings respectively, that is to say:-

"Accounting Date" means 31 December in each year for all Series Trusts, or such other date as the Trustee may from time to time determine in respect of one or more Series Trusts within the Trust.

"Accounting Period" means, in respect of each Series Trust, a period ending on and including an Accounting Date and commencing (in the case of the first such period) from the initial closing of the Series Trust or from the day next following the preceding Accounting Date (as the case may be).

"Administration Expenses" means the sums payable out of the assets of the

relevant Series Trust necessary to provide for all costs, charges and expenses including, but not limited to courier's fees, telecommunication costs and expenses, out-of-pocket expenses, legal and professional expenses which the Trustee incurs whether in litigation on behalf of the relevant Series Trusts or in connection with the establishment of or ongoing administration of the relevant Series Trust or otherwise together with the costs, charges and expenses, including translation costs, of any notices including but not limited to reports, prospectuses, listing particulars and newspaper notices given to Unitholders in whatever manner plus value added tax (if any) on any such costs, charges and expenses and all properly vouched fees and reasonable out-of-pocket expenses of any delegate of the Trustee.

"Auditors" means any person or firm qualified for appointment as auditor and appointed as auditor or auditors of the Trust or any Series Trust within the Trust as the Trustee may from time to time determine.

"Business Day" means in respect of each Series Trust every day which is a bank business day in Dublin or such other place from time to time as the Trustee may in relation to one or more Series Trusts determine.

"Clause" or "sub-Clause" means a clause or sub-clause of this Declaration of Trust.

"Declaration of Trust" means this declaration of trust together with any Supplemental Declaration of Trust as may be modified or amended from time to time.

"Deposited Property" means the investments and cash of each Series Trust for the time being held by the Trustee under this Declaration of Trust and any declaration of trust supplemental to this Declaration of Trust.

"Disbursements" includes in relation to the Trustee all disbursements properly made by the Trustee in connection with its trusteeship of each of its Series Trusts hereunder including (but not limited to) courier's fees,

telecommunication costs and expenses and the fees and out-of-pocket expenses of any sub-custodian appointed by it pursuant to the provisions hereof and all costs, charges and expenses of every kind which it may suffer or incur in connection with such trusteeship of each of its Series Trusts (including the establishment thereof) and all matters attendant thereon or relative thereto and all legal and other professional expenses incurred or suffered by it in relation to or in any way arising out of each of its Series Trusts (including the establishment thereof) and any value added tax liability incurred by the Trustee arising out of the exercise of its powers or the performance of its duties pursuant to the provisions hereof.

"Distribution Account" means the account described in Clause 22.03.

"Duties and Charges" means in relation to any particular transaction, or dealing or valuation in relation to the assets of a Series Trust, all stamp and other duties, taxes, governmental charges, valuation fees, property management fees, agent fees, brokerage fees, bank charges, transfer fees, registration fees, legal fees, and other charges whether in respect of the constitution or increase of the assets of a Series Trust or the creation, exchange, sale, purchase or transfer of Units or the purchase, proposed purchase, transfer, sale or exchange of investments or in respect of the certificates representing Units of a Series Trust or otherwise which may have become or will become payable in respect of or prior to or upon the occasion of any transaction, dealing or valuation.

"Investment" means a permitted investment as set out in Clause 6.00.

"Investor" means such person or persons as are permitted to invest in the Trust by the Trustee, currently those person or persons exempt from Capital Gains Tax by virtue of their qualifications as a charity, approved retirement funds, exempt approved pension schemes, retirement annuity schemes, personal retirement savings account scheme or other similar entity or structure all as defined in the relevant taxation legislation.

"Net Asset Value " with reference to a Series Trust on any particular Valuation Day means the value of all assets of the Series Trust on the relevant Valuation Day less all liabilities on the relevant Dealing Day calculated in accordance with Clause 17.00.

"Net Asset Value per Unit" means the Net Asset Value of the relevant Series Trust divided by the number of Units of that Series Trust in issue or deemed to be in issue on the relevant Valuation Day (rounded down to the smallest fraction of the currency in which the Series Trust is denominated which is legal tender in the country of issue of that currency).

"Redemption Notice" means in relation to each Series Trust the notice referred to in Clause 20.00.

"Redemption Price" means in relation to Units of each Series Trust the price calculated pursuant to Clause 20.00.

"Register" means the register of Unitholders referred to in Clause 10.00 hereof.

"Series Trust" means each separate trust established hereunder in accordance with Clause 4.00.

"Series Trust Resolution" means a resolution passed at a general meeting (convened and held in accordance with Schedule One) of the Unitholders of such Series Trust in the manner prescribed in Schedule One.

"Supplemental Declaration of Trust" means a deed supplemental to this Declaration of Trust relating to a Series Trust in which shall be specified matters including any or all of the following matters relating to such Series Trust and/or such other matters as the Trustee in its discretion determines:

- (a) Initial Offer Period;
- (b) Term;

- (c) Application and Payment Date;
- (d) Initial Offer Price;
- (e) Base Currency;
- (f) Minimum Subscription;
- (g) Accounting Date;
- (h) Valuation Day;
- (i) Investment Objective and Policy;
- (j) Investment Restrictions;
- (k) Redemption Restrictions;
- (l) Distribution Policy;
- (m) Trustee Fee;
- (n) Subscription Fee;
- (o) Appointment of an Investment Adviser (if any) and the fee payable thereto out of the Deposited Property.

"Term" means the life span of a Series Trust as specified in the relevant Supplemental Declaration of Trust at the end of which the Series Trust shall be terminated.

"Trust" means Delta Fund and where the context so admits shall include any one or more Series Trusts established hereunder.

"Trustee" shall mean the said Independent Trustee Company Limited or such other institution as may be appointed as trustee in accordance with the provisions hereof from time to time.

"Unit" means one equal undivided share into which the beneficial interest of each Series Trust shall be divided from time to time and includes fractions of such Units.

"Unitholder" means a person for the time being entered on the Register of a Series Trust as the holder of a Unit including persons so entered as joint holders.

“Valuation Day” means each Accounting Date together with each Business Day or Days in respect of a Series Trust on which either a subsequent issue of Units shall be made in accordance with Clause 5.04 or a redemption of Units shall be made in accordance with Clauses 19.01 or 20.01.

1.02 Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender only shall include the feminine and neuter genders and words importing persons shall include firms, corporations, trusts, companies and incorporated and unincorporated bodies and the words "written" or "in writing" shall include printing engraving lithographing or other means of visible reproduction. The marginal notes and headings herein are inserted for convenience only and shall not affect the construction or interpretation hereof.

2.00 **DECLARATION OF TRUST BINDING ON ALL PARTIES**

The Trustee shall stand possessed of the Deposited Property upon trust exclusively for the Unitholders of the relevant Series Trust. The provisions of this Declaration of Trust shall be binding on the Trustee and the Unitholders and all persons claiming through them respectively as if such Unitholders and persons had been party to this Declaration of Trust.

3.00 **RIGHTS OF UNITHOLDERS**

The Unitholders shall not have or acquire any right against the Trustee in respect of Units save such as are expressly conferred upon them by this Declaration of Trust. No person, firm or corporation shall be recognised as a Unitholder except in respect of Units registered in his or its name.

4.00 **CONSTITUTION OF THE TRUST**

4.01 The Trust shall initially be constituted by and Units shall be issued in respect of cash received in accordance with the provisions of Clause 5.00 hereof.

4.02

(A) The Deposited Property of each Series Trust shall initially be constituted out of the proceeds of the initial issue of Units of the Series Trust. The Deposited Property of each Series Trust thereafter shall be constituted out of the investments and cash and other property arising from such proceeds and also out of the proceeds of Units of the relevant Series Trust subsequently issued (or in the case of Units issued against the vesting of investments, any moneys payable pursuant to the provisions of sub-Clause 5.08) but less any amount standing to the credit of the Distribution Account or distributed or paid up pursuant to any provisions of this Declaration of Trust and less the subscription fee payable to the Trustee.

(B) The Trustee shall establish a Series Trust or Series Trusts from time to time and the following provisions shall apply thereto:-

- (i) the records and accounts of each Series Trust shall be maintained in such currency as the Trustee shall from time to time determine;
- (ii) the proceeds from the issue of Units in each Series Trust (excluding the subscription fee) shall be applied in the records and accounts of the Trust for the relevant Series Trust and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Series Trust subject to the provisions of this Declaration of Trust;
- (iii) 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 Series Trust 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 Series Trust;

(iv) each Series Trust shall bear its own liabilities as may be determined at the discretion of the Trustee;

(v) the assets of each Series Trust shall belong exclusively to that Series Trust, shall be segregated from the other Series Trusts, shall not be used to discharge directly or indirectly, the liabilities of or claims against any other Series Trust and shall not be available for such purpose.

4.03 The Deposited Property shall be allocated for investment in a specific Series Trust as selected by the Trustee from time to time. Any Series Trust and the Units therein may at the discretion of the Trustee be denominated in any currency other than Euros.

4.04 The Trustee shall be entitled to issue Units as Units of a particular Series Trust. Upon the issue of a Unit, the Trustee shall allocate the proceeds of such issue to the appropriate Series Trust.

4.05 The Trustee may at any time establish an additional Series Trust or Series Trusts to be designated by such name or names and with such Term or Terms and to make such investment or investments as the Trustee may deem appropriate.

4.06 The Trustee may delegate to an administrator all or any part of the Trustee's powers relating to the administration of the assets of any or all Series Trust.

4.07 The Trustee may delegate to an investment adviser all or any part of the Trustee's powers relating to the investment of the assets of any or all Series Trust where specified in the relevant Supplemental Declaration of Trust or Supplemental Declaration of Trusts.

4.08 The Trustee shall have power to close any Series Trust by serving not less than thirty days notice of such closure on the holders of Units in that Series Trust.

5.00 **ISSUE OF UNITS**

5.01 The Trustee shall have the exclusive right to effect for the account of the relevant Series Trust or Series Trusts, the creation and issue of such number of Units as the Trustee may, at its sole discretion, from time to time determine for cash at prices ascertained in accordance with the following provisions of this Clause.

5.02 No Units shall be issued directly or beneficially to:- (i) any person in breach of any law or requirement of any country or governmental authority; (ii) or any person or persons in circumstances which in the opinion of the Trustee might result in the Series Trust incurring any liability for taxation or suffering any legal, pecuniary, regulatory or material administrative disadvantage which the Series Trust or the Trust might not otherwise have incurred or suffered; or (iii) any person who is not an Investor; or (iv) any person or person in circumstances which in the opinion of the Trustee might result in the Series Trust or the Trust being deemed to be a "unit trust scheme" as defined in Section 1(1) of the Unit Trusts Act, 1990.

5.03 The Trustee shall before the initial issue of Units in any Series Trust, determine the time at which the terms upon which and the subscription price per Unit at which the initial allotment of Units of that Series Trust shall be made.

5.04 Any subsequent issue of Units in that Series Trust shall be made at a price equal to the Net Asset Value per Unit on the Business Day on which Units are to be issued.

5.05 A subscription fee may be added to the price of the Units as specified in the relevant Supplemental Declaration of Trust and may be retained by the Trustee for its absolute use or benefit and shall not form part of the Deposited Property of the Series Trust. The Trustee may at its sole discretion waive such fees or differentiate between applicants as to the amount of such fee within the permitted limits.

5.06 Any person applying for Units shall complete an application in such form as the Trustee may from time to time prescribe and shall comply with such conditions as may be prescribed by the Trustee. All applications must be received by the Trustee at its place of business (or as the Trustee directs) prior to such time as the Trustee may determine. The Trustee shall have absolute discretion to accept or reject in whole or in part any application for Units. Fractions of Units (not calculated to more than three decimal places) may be issued at the discretion of the Trustee.

5.07 Persons wishing to subscribe for Units shall ensure receipt by the Trustee of the price payable therefor in accordance with this Declaration of Trust and with such terms and conditions, subject to this Declaration of Trust, as the Trustee may from time to time determine.

5.08 Applications for Units shall only be accepted in the base currency of the relevant Series Trust. Monies subscribed in a currency other than the base currency of the relevant Series Trust will be converted by the Trustee to the denominated currency of the relevant Series Trust at what the Trustee considers to be the appropriate exchange rate and such subscription shall be deemed to be in the amount so converted. Monies so paid shall be held by the Trustee as part of the assets of the relevant Series Trust. Following receipt by the Trustee of monies so payable, the certificates (if any) in respect of Units issued shall be available for delivery to the relevant Unitholders.

5.09 The Trustee may also from time to time make arrangements for the issue of Units to any person by way of exchange for Investments held by him upon such terms as the Trustee may think fit but subject to and in accordance with the following provisions:-

- (i) no Units shall be issued until the investments shall have been vested in the Trustee to the Trustee's satisfaction;

- (ii) subject to the foregoing any such exchange shall be effected on the terms (including provision for paying out of the assets of the relevant Series Trust the expenses of the exchange, and a subscription fee as specified in sub-Clause 5.05) that the number of Units to be issued shall be that number (from the calculation of which, at the discretion of the Trustee, fractions of a Unit may be excluded) which would have been issued for cash at the current price against payment of a sum equal to the value of the investments transferred less such sum as the Trustee may consider represents any fiscal or other expenses as aforesaid to be paid out of the assets of the relevant Series Trust in connection with the vesting of the investments;
- (iii) the investments to be transferred to the Trust for the account of the relevant Series Trust shall be valued on such basis as the Trustee 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 method of calculating the value of investments as set out in Clause 17.00;
- (iv) there may be paid to the incoming Unitholder out of the assets of the relevant Series Trust a sum in cash equal to the value at the current price of any fraction of a Unit excluded from the calculation aforesaid; and
- (v) 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 Unitholders.

5.10 All reasonable fees, expenses and disbursements (including Disbursements and Administration Expenses) of or incurred by the Trustee in connection with the ongoing administration and operation of each Series Trusts shall be borne by and payable out of the relevant Series Trust (where such costs have not otherwise already been discharged) including (but not limited to):

- (a) auditors and accountants fees;
- (b) lawyers fees,

- (c) estate agents' or valuers' fees;
- (d) the fees of any investment adviser appointed in respect of a Series Trust if disclosed in the relevant Supplemental Declaration of Trust;
- (e) property management or letting fees;
- (f) enhancement or development expenditure;
- (g) maintenance and repair charges;
- (h) merchant banking, stockbroking or corporate finance fees including interest on borrowings;
- (i) foreign exchange fees;
- (j) fire insurance, life insurance or health insurance premiums and expenses;
- (k) stamp duties or other taxes or duties imposed by any fiscal authority;
- (l) costs of preparation, translation and distribution of all prospectuses, reports, certificates, confirmations of purchase of Units and notices to Unitholders;
- (m) expenses of Unitholders' meetings;
- (n) insurance premia;
- (o) any other expenses incurred in connection with the issue or redemption of Units in the Trust or Series Trust or other expenses incurred in connection with the acquisition or disposal of the assets of the Trust or Series Trust;

- (p) the cost of preparing, printing and/or filing this Declaration of Trust and all other documents relating to the Trust or to the relevant Series Trust including annual, semi-annual and extraordinary reports with all authorities having jurisdiction over the Trust or any of the Series Trusts or the offer of Units of the relevant Series Trust and the cost of delivering any of the foregoing to the Unitholders;
- (q) the costs of publication of notices in local newspapers required by the Trustee; and
- (r) the total costs of any amalgamation or reconstruction of any Series Trust;

in each case plus any applicable value added tax.

5.12 All stamp duty payable upon this Declaration of Trust or upon the issue of Units shall be payable out of the assets of the relevant Series Trust or Series Trusts.

6.00 PERMITTED INVESTMENTS

6.01 The Deposited Property of a Series Trust shall be invested and reinvested by the Trustee in any manner in which he may in his absolute discretion think fit subject to the investment objectives, policies and restrictions which are set out in the Supplemental Declaration of Trust of the relevant Series Trust.

7.00 TRUSTS OF THE DEPOSITED PROPERTY

7.01 The Trustee shall be responsible for the safekeeping of the Deposited Property in accordance with the provisions of this Declaration of Trust and shall stand possessed of the Deposited Property upon trust for the Unitholders in proportion to the number of Units held by them respectively in the relevant Series Trust according and subject to the provisions of this Declaration of Trust. Subject as hereinafter provided, the Trustee shall at all times retain in its own possession or that of its nominees or agents in safe custody all the investments and cash and all documents of title or value

connected therewith actually received by the Trustee or its nominees or agents and shall be responsible for the safe custody thereof.

7.02 The Deposited Property shall be divided and held according to the assets and liabilities represented by the relevant Series Trust and no Unit shall confer any interest or share in any particular part of the Deposited Property.

8.0 **DEALINGS WITH THE DEPOSITED PROPERTY AND BORROWING POWERS**

8.01 All cash and other property which ought in accordance with the provisions of this Declaration of Trust form part of the Deposited Property shall be paid or transferred to the Trustee, and shall be applied in the acquisition by the Trustee of investments at such times and in such manner as the Trustee shall determine. Any part of the Deposited Property may during such time as the Trustee may think fit be retained as an investment in any currency or currencies in cash or on current or deposit account or in certificates of deposit or other banking instrument issued by any bank or financial institution or local authority or building society. Any bank, financial institution, local authority or building society to which any monies are paid by the Trustee, which are accepted as an investment of the Series Trust shall not while it holds such monies be a sub-custodian, nominee, agent or delegate of the Trustee for such purposes and the Trustee shall not be liable for the acts or omissions of or any loss directly or indirectly caused by any such bank, financial institution, local authority or building society.

8.02 The investments and all rights which may appertain to the Trustee in respect of any investment shall be dealt with by the Trustee who shall have full power to direct any dealing with or disposition of the investments or any part thereof as if it were beneficial owner of the investments.

8.03 The Trustee shall have the following powers subject always to the powers and provisions of this Declaration of Trust and in particular to the provisions of Clause 6.01 of this Declaration of Trust:

- (a) to retain all or any part of the Deposited Property in such investments and for such time as it considers appropriate;
 - (b) to sell, call in, and convert into money any part of the Deposited Property not already in the form of money, and to vary and transpose investments; and
 - (c) to maintain, develop or improve any Deposited Property or turn to account any Deposited Property by way of letting, leasing or otherwise entering into contracts and arrangements of all kinds with builders, tenants and others.
- 8.04 The Trustee shall have power from time to time to borrow on behalf of a Series Trust from bankers and others and to secure such borrowings by pledging, mortgaging, assigning or charging all or part of the Deposited Property of that Series Trust only. The Trustee shall also have the power to acquire foreign currency by means of a back-to-back loan and such back-to-back loan shall not count as borrowing or leverage for the purposes of this sub-Clause.
- 8.05 The Trustee may at any time determine that any cash of a capital nature of a Series Trust which cannot conveniently be applied or dealt with as herein provided be returned to the Unitholders of that Series Trust and thereupon the Trustee shall distribute the same among the Unitholders in proportion to the number of Units held by them respectively.
- 8.06 The Trustee shall without delay forward to the Unitholders (if the Trustee in its sole discretion deems it necessary so to do) all notices of meetings, reports, circulars and other communications received by it or its nominees as holder of any investments. The Trustee shall not incur any liability hereunder if it exercises its discretion to forward any notices, reports or circulars to the Unitholders as aforesaid.
- 8.07 Except as otherwise expressly provided, all rights of voting conferred by any of the Deposited Property shall be exercised by the Trustee, and the Trustee may refrain at its own discretion from so acting and no Unitholder shall have any right to interfere or complain about the exercise or non-exercise of a vote or votes. The phrase "rights of voting" or the word "vote" used in this Clause shall be deemed to include not only a

vote at a meeting but any consent to or approval of any arrangement, scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the Deposited Property and the rights to requisition or join in a requisition or to circulate any statement.

8.08 Pursuant to this Clause the Trustee may appropriate and set aside cash or other property of a Series Trust approved and acceptable to the Trustee sufficient to provide for paying up such investments of the relevant Series Trust as are described above in full. The cash or other property so appropriated shall form part of the Deposited Property of the relevant Series Trust

8.09 Notwithstanding the other provisions of this Declaration of Trust:-

- (i) the Trustee may instruct brokers or other agents in its own name for the account of a particular Series Trust its own to effect acquisitions and disposals of investments on behalf of the relevant Series Trust;
- (ii) where a broker or other agent or dealer is instructed in relation to investments to be acquired or disposed of on behalf of a particular Series Trust, the Trustee shall as soon as practicable give written notice of the terms of those instructions. Upon receipt by the Trustee of notification of the precise terms on which the transaction has been effected, the Trustee shall procure the issue of a contract note by the relevant broker or other agent or dealer to the Trustee. The contract note shall state whether the transaction referred to herein formed part of a larger transaction in those investments carried out by the Trustee;
- (iii) each Series Trust shall be responsible for its own costs of purchase and sale (including but not limited to Duties and Charges and Administration Expenses) of any permitted investments purchased or sold by the Trustee on behalf of such Series Trust. For the avoidance of doubt there shall be no recourse to the assets of the Trustee in respect of such costs.

9.00 **DEALINGS BY THE TRUSTEE**

9.01 The Trustee or its officers, directors, executives or employees shall not deal with the assets of any Series Trust for its or their own account unless prior written consent is received from the Unitholders of the relevant Series Trust.

10.00 **THE REGISTERS**

10.01 There shall be a Register in respect of each Series Trust, listing the Unitholders who have been issued with Units in registered form.

10.02 All Units which have been issued shall be represented by entry in the relevant Registers of the relevant Series Trust.

10.03 The Registers of each Series Trust shall be kept by or under the control of the Trustee at its registered office or at such other place as the Trustee may think fit. The Trustee shall:-

- (a) maintain the Registers;
- (b) permit no alterations in the form or conduct of the Registers without its written consent;
- (c) supply on request any information or explanation that any appropriate regulatory authority might require in relation to the Registers and the conduct thereof; and

Provided Further that if the Registers are kept with the assistance of magnetic tape or other electronic recording, the output from such tape or other recording kept in Ireland and not the recording itself shall constitute the Registers.

10.04 The Registers of each Series Trust shall contain:-

- (a) the names and addresses or registered offices of the Unitholders to whom Units have been issued; and

(b) the number of Units held by every such Unitholder together with the Registration Number of such Unitholder or the serial number of the Registered Certificate or Registered Certificates issued in respect thereof whichever is the case; and

(c) the date on which the name of every such Unitholder was entered in respect of the Units standing in his name.

10.05 The Registers of each Series Trust shall be conclusive evidence as to the persons respectively entitled to the Units entered therein and no notice, whether actual or constructive, of any trust express or implied or constructive shall be binding on the Trustee.

10.06 Any change of name or address on the part of any Unitholder entered in the Registers of a Series Trust shall forthwith be notified to the Trustee which, on being satisfied thereof and on compliance with all such formalities as it may require, shall alter the Registers of that Series Trust or cause it to be altered accordingly.

10.07 The Trustee shall recognise a Unitholder entered in the Registers of a Series Trust as the absolute owner of the Units in respect of which he is so registered and shall not be bound by any notice, whether actual or constructive, to the contrary nor be bound to take notice of or to see to the execution of any trust and all persons may act accordingly and the Trustee shall not save as herein otherwise provided and except as ordered by a court of competent jurisdiction or as by statute required be bound to recognise (even when having notice thereof) any trust or equity affecting the ownership of such Units or the rights incident thereto. The dispatch to such Unitholder of any monies payable in respect of the Units held by him shall be a good discharge to the Trustee.

10.08 A body corporate may be registered as a Unitholder or as one of joint Unitholders. The holder of an office for the time being may be registered as a Unitholder or as one of joint Unitholders.

10.09 Certificates shall only be issued at the request of a Unitholder. A fee as may be decided by the Trustee from time to time may be charged by the Trustee for the issue of each such Certificate. If the Unitholder does not request the issue of a Certificate, an ownership confirmation shall be issued to him confirming his holding of Units and indicating his Registration Number.

11.00 **ISSUE OF CERTIFICATES**

As and when the Trustee shall effect the issue of Units for which Certificates have been requested, the Trustee shall from time to time deliver to or to the order of the Unitholders Certificates representing Units in such denominations as the Unitholders may request. Certificates shall be signed by or on behalf of the Trustee.

12.00 **FORM OF CERTIFICATES**

12.01 Certificates shall specify the serial number thereof and the number of Units represented thereby and shall be in such form as the Trustee may decide.

12.02 Certificates shall be signed by or on behalf of the Trustee in such manner as may be decided by the Trustee. Any signatures by the Trustee may be affixed lithographically or by other mechanical means as may be approved by the Trustee. No Certificate in respect of any Unit shall be issued or be valid until so signed. In case the Trustee shall cease to be Trustee 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 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.

13.00 **EXCHANGE OF CERTIFICATES**

13.01 A Unitholder shall be entitled to surrender any or all of his Certificates in relation to a particular Series Trust and have issued in lieu thereof one or more other Certificates representing in the aggregate a like number of Units of the same Series Trust.

13.02 A Unitholder shall be entitled to surrender any or all of his Registered Certificates and have entered in the relevant Register against his name a Registration Number in lieu thereof.

13.03 A Unitholder against whose name in the relevant Register there appears a Registration Number shall be entitled to have that Registration Number cancelled and have issued in lieu thereof a Registered Certificate or Registered Certificates representing in the aggregate a like number of Units.

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

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

14.00 DEFACED OR LOST CERTIFICATES

If any Certificate be worn out, mutilated or defaced, then the Trustee upon having the Certificate produced to it may cancel the same and may issue a new Certificate in place of it and if any Certificate be lost, stolen or destroyed then, upon proof thereof to the satisfaction of the Trustee, and on such indemnity (if any) as the Trustee may deem adequate being given, a new Certificate in lieu thereof may be given to the person entitled to such lost, stolen or destroyed Certificate. An entry as to the issue of the new Certificate and indemnity (if any) shall be made in the relevant Register.

15.00 FEES FOR ISSUING CERTIFICATES

Before issuing any Certificate under the provisions of Clause 14.00, the Trustee may require from the applicant for the Certificate the payment to it of the Registration Fee for each Certificate so issued and of a sum sufficient in the opinion of the Trustee to cover any stamp duty or other government taxes or charges that may be payable in connection with the issue of such Certificate. In the case of loss, theft or destruction of a Certificate, the person availing himself of the provisions of Clause 14.00 shall also pay to the Trustee all expenses incidental to the investigation of evidence of loss, theft or destruction and the preparation of the requisite indemnity as aforesaid.

16.00 CANCELLATION OF UNITS ON DEFAULT IN PAYMENT OF PURCHASE PRICE

If any applicant for Units (whether such applicant shall be acting as principal or agent) shall default in paying the price payable therefor to the Trustee, the Trustee shall, on such evidence being furnished to it, as the Trustee shall in its entire discretion deem sufficient, cancel such Units and make any necessary alteration in the relevant Register. Such Units shall be deemed never to have been issued and the Deposited Property shall be reduced accordingly.

17.00 DETERMINATION OF NET ASSET VALUE

17.01 The Net Asset Value of each Series Trust and the Net Asset Value per Unit of each Series Trust shall be calculated in respect of each Accounting Date. The Net Asset Value of a Series Trust shall be determined by ascertaining the value of the assets of

the Series Trust pursuant to Clause 17.02 and deducting therefrom the liabilities of the Series Trust calculated pursuant to Clause 17.04. The Net Asset Value per Unit of each Series Trust shall be determined by dividing the Net Asset Value of each Series Trust by the number of Units in issue or deemed to be in issue and rounding the result to such amount as the Trustee may determine.

17.02 The value of the assets on the Accounting Date of each Series Trust may be calculated as follows:-

(g) Real property shall be valued by obtaining an open-market valuation from an independent valuer in respect of each property or by such other method as the Trustee deems appropriate. The valuation report will identify the property and state:-

- sale (capital) value of the property
 - open market rental value of the property
 - aggregated rental income
 - extent to which it is occupied
 - for developing properties, the extent to which any allowance has been made in the valuation for any agreed sale or guaranteed rental when the development is completed;
- (ii) certificates of deposit acquired at their normal value and other deposits shall be valued at their principal amount plus accrued interest from the date of acquisition;
- (iii) certificates of deposit acquired at a discount or premium shall be valued in accordance with the normal dealing practice therein;
- (iv) the value of any, prepaid expenses, cash dividends and interest declared or accrued as aforesaid and not yet received shall be deemed to be the full amount thereof unless in any case the Trustee is of the opinion that the same is unlikely to be paid and received in full in which case the value thereof shall be

arrived at after making such deposit as the Trustee may consider appropriate in such case to reflect the true value thereof;

- (v) investments listed on a stock exchange or traded on any other organised market shall be valued at the last available price provided the value of any investment listed on a stock exchange or organised market, but acquired or traded at a premium or at a discount outside or off the relevant stock exchange on an over-the-counter market shall be valued taking into account the level of premium or discount as at the date of valuation of the investment;
- (vi) investments not listed on a stock exchange or traded on an organised market shall be valued at their last available bid market price; if there is no such market price, or if in the determination of the Trustee such market price is not representative of the fair market value thereof, such investments shall be valued prudently and in good faith by the Trustee on the basis of their cost or other method decided by the Trustee; and
- (vii) cash and other liquid assets shall be valued at their face value with interest accrued to the end of the relevant Valuation Day.

17.03 In addition, the Net Asset Value of a Series Trust and the Net Asset Value per Unit of a Series Trust shall be estimated on each Business Day on which either a subsequent issue of Units shall be made in accordance with Clause 5.04 or a redemption of Units shall be made in accordance with Clauses 19.01 or 20.01. The valuation will be estimated by the Trustee in such manner and using such methods as it deems appropriate and not necessarily in accordance with Clause 17.02. The estimate may not accurately reflect the true value of the assets and liabilities of the Series Trust, however, the estimate shall be final and the valuation will not subsequently be readjusted on the Accounting Date.

17.04 When a valuation is for the purpose of determining the issue price of Units, the value of any real property may be increased at the discretion of the Trustee by an amount which the Trustee considers appropriate to cover all incidental costs (including, but not limited to, stamp duty, estate agents fees, legal fees, fire insurance, health or life

insurance premiums and expenses and Duties and Charges) which would be incurred if the property were to be acquired for the Series Trust;

17.05 When a valuation is for the purposes of determining the redemption price of Units, the value of any real property may be reduced at the discretion of the Trustee by an amount which the Trustee considers appropriate to cover all incidental costs (including, but not limited to, stamp duty, agents fees, legal fees and Duties and Charges) which would be incurred if such real property were to be disposed of from the Series Trust;

17.06 Notwithstanding the methods of valuation in this Clause 17.00, where no method of calculation is stated or practicable or adequate, the Trustee shall be entitled in good faith to use such valuation method as the Trustee considers fair in the circumstances.

17.07 The assets of each Series Trust shall be deemed to include:-

- (i) all property;
- (ii) all cash on hand, on deposit or on call including any interest accrued thereon and any dividends or other distributions accrued but not yet received;
- (iii) all bonds and other securities;
- (iv) all bills, demand notes, promissory notes and accounts receivable;
- (v) all interest accrued on any interest-bearing securities except that the same is included in the principal value of such security;
- (vi) all other assets attributable to the Series Trust including prepaid expenses as valued and defined from time to time by the Trustee.

17.08 The liabilities attributable to each Series Trust shall be deemed to include:-

- (i) in respect of real property; (a) any stamp duty, legal fees, estate agents' or valuers' fees, fire insurance, health or life insurance premiums and expenses or other Duties and Charges payable in relation to the acquisition or disposal of the property; (b) any enhancement or development expenditure incurred in relation to the property; (c) property management or letting fees; and (d) maintenance and repair charges;
- (ii) all borrowings plus interest thereon;
- (iii) all bills, notes and account payable;
- (iv) all administrative expenses payable and/or accrued, the latter on a day-to-day basis;
- (v) all other liabilities (including such amount in respect of contingent liabilities as the Trustee shall determine) of the Series Trust of whatsoever kind and nature including, without limitation, at the discretion of the Trustee, a provision for Duties and Charges.

17.09 The Net Asset Value of each Series Trust shall be calculated in the currency in which such Series Trust is denominated.

17.10 Every Unit of a Series Trust agreed to be issued shall be deemed to be in issue at the close of business on the Valuation Day on which the application was effected and the relevant Series Trust shall be deemed to include not only cash in the hands of the Trustee but also the amount of any cash to be received in respect of Units agreed to be issued after deducting therefrom (in the case of Units agreed to be issued for cash) or providing thereout the Duties and Charges.

17.11 Where investments in a Series Trust have been agreed to be purchased or sold but such purchase or sale has not been completed such investments shall be included or excluded and the gross purchase or net sale consideration excluded or included as the case may require as if such purchase or sale had been duly completed.

17.12 Any value expressed otherwise than in currency in which the Series Trust is denominated (the "Denominated Currency") and any borrowing other than in the Denominated Currency shall be converted into the Denominated Currency at the rate (whether official or otherwise) which the Trustee deems appropriate in the circumstances having regard (inter alia) to any premium or discount which may be relevant and to costs of exchange;

17.13 The Trustee shall not be liable to account to any Unitholder or otherwise for any payment made or suffered by the Trustee in good faith to any duly empowered fiscal authority of any jurisdiction for Duties and Charges or other taxes or charges or other assessments in any way arising out of or relating to any transaction of whatsoever nature pursuant to the provisions of this Declaration of Trust, notwithstanding such payments ought not to be or need not have been made or suffered.

18.00 **TRANSFER OF UNITS**

18.01 No sale, assignment, transfer, exchange, pledge, encumbrance or other disposition of a Unitholder's holding in a Series Trust shall be valid or effective without the prior written consent of the Trustee. No transfer of legal or beneficial ownership in violation of these provisions shall not be valid nor effective.

18.02 Every instrument of transfer must be signed by the transferor and the transferor shall be deemed to remain the holder of the Units intended to be transferred until the name of the transferee is entered in the relevant Register in respect thereof.

18.03 Every instrument of transfer shall be left with the Trustee for registration accompanied by the Certificate or Certificates if any relating to the Units to be transferred and such other evidence or documents as the Trustee may require to prove the title of the transferor or his right to transfer the Units. The Trustee may dispense with the production of any Certificate which shall have become lost, stolen or destroyed upon compliance by the transferor with the like requirements to those arising in the case of an application by him for the replacement thereof.

18.04 All instruments of transfer which shall be registered may be retained by the Trustee.

- 18.05 A fee as may be decided by the Trustee from time to time may be charged by the Trustee for the registration of each transfer and the issue of a new Certificate if requested in the name of the transferee and a balance Certificate, if necessary and requested in the name of the transferor and such fee must, if required by the Trustee, be paid before the registration of the transfer.
- 18.06 No transfer or purported transfer of a Unit represented by an entry in a particular Register other than a transfer made in accordance with this Clause shall entitle the transferee to be registered in respect thereof nor shall any notice of such transfer or purported transfer (other than as aforesaid) be entered in the relevant Register.
- 18.07 No Units may be transferred to, or for the benefit of:- (i) any person in breach of any law or requirement of any country or governmental authority; (ii) or any person or persons in circumstances which in the opinion of the Trustee might result in the Series of the Trust incurring any liability for taxation or suffering any legal, pecuniary, regulatory or material administrative disadvantage which the Trust might not otherwise have incurred or suffered; or (iii) by any person who is not an Investor; or (iv) any person or persons which in the opinion of the Trustee might result in the Series Trust or the Trust being deemed to be a "unit trust scheme" as defined in Section 1(1) of the Unit Trusts Act 1990.

19.00 **CANCELLATION OF UNITS AND REDUCTION OF TRUST AND SERIES TRUSTS**

- 19.01 The Trustee shall have the exclusive right on any Business Day to effect reductions of any one or more of its Series Trusts where necessary by the surrender of Certificates to the Trustee for cancellation of Units represented thereby or by requiring the Trustee to cancel Units in respect of which no Certificates have been issued. Such notice shall state the number of Units to be cancelled, the Series Trust to which they relate and the amount payable to the Trustee in respect thereof. Before giving notice to exercise such right it shall be the duty of the Trustee to ensure that the relevant Series Trust includes (or will upon the completion of the sale of investments agreed to be

sold include) cash at least sufficient to pay the amount payable to the Trustee upon such reduction.

19.02 In respect of any such cancellation of Units the Trustee shall be entitled to receive out of the relevant Series Trust an amount per Unit equal to the Net Asset Value per Unit.

19.03 Upon such payment and surrender the Units in question shall ipso facto be cancelled and withdrawn from issue.

19.04 If it shall come to the notice of the Trustee or if the Trustee shall have reason to believe that any Units are owned directly or beneficially by:- (i) any person in breach of any law or requirement of any country or governmental authority; (ii) or any person or persons in circumstances which in the opinion of the Trustee might result in the Trust incurring any liability for taxation or suffering any legal, pecuniary, regulatory or material administrative disadvantage which the Trust or Series Trust might not otherwise have incurred or suffered; or (iii) by a person who is not an Investor; or (iv) any person which in the opinion of the Trustee might result in the Series Trust or Trust being deemed to be a "unit trust scheme" as defined in Section 1(1) of the Unit Trusts Act, 1990, the Trustee shall be entitled to give notice (in such form as the Trustee deems appropriate) to such person requiring him to request in writing the repurchase of such Units. If any person upon whom such notice is served as aforesaid does not within 30 days after such notice has been served request in writing the Trustee to repurchase such Units, he shall be deemed forthwith upon the expiration of the said 30 days to have so requested the repurchase of all his Units the subject of such notice on the terms and subject to the provisions of Clause 20.00 below;

20.00 **REDEMPTION OF UNITS FROM UNITHOLDERS**

20.01 A Unitholder shall not be entitled to request the repurchase of some or all of his/her Units during the Term of a Series Trust. However, the Trustee may in its absolute discretion permit such a request on a Business Day upon such prior notice as the Trustee may from time to time determine provided that the Trustee is satisfied that there is sufficient liquidity in the relevant Series Trust to permit such a redemption or

that sufficient liquidity can be generated. The redemption price payable in respect of each Unit shall be equal to the Net Asset Value per Unit of the Series Trust.

- 20.02 Unless otherwise determined by the Trustee, all requests to redeem under sub-Clause 20.01 must be received by the Trustee or its authorised agent at its place of business for the purpose of this Declaration of Trust by such time and in such form as the Trustee may from time to time determine. Any such request shall be irrevocable unless otherwise approved in writing by the Trustee.
- 20.03 On surrender of part only of the Units comprised in a holding the Unitholder shall pay to the Trustee any stamp duty and all or any other governmental taxes and charges (if any) arising upon the issue of a new Certificate if requested and thereupon the Trustee shall procure such a Certificate to be issued.
- 20.04 The Trustee may at its option dispense with the production of any Certificate which shall have become lost, stolen or destroyed upon compliance by the Unitholder with the like requirements to those arising in the case of an application by him for the replacement thereof.
- 20.05 The redemption price shall be payable to the Unitholder, or in the case of joint Unitholders, to the joint Unitholder who actually requested the redemption, within a reasonable period following the sale or disposal of sufficient assets of the Series Trust subject to receipt by the Trustee or its authorised agent of the original redemption request and the Certificate or Certificates (if any) representing the Units to be redeemed and, in the case of Certificates, with the endorsement or endorsements thereon duly completed by the Unitholder or in the case of joint Unitholders by both or all of them.
- 20.06 The Trustee shall on surrender of Units cancel the Certificate or Certificates if any in respect of the Units surrendered and where appropriate remove the name of the Unitholder from the Register in respect of such Units but shall not enter the name of the Trustee in the Register as the Unitholder of such Units or issue a Certificate therefor. Such removal shall not be treated for any purposes of this Declaration of Trust as a cancellation of the Units or as withdrawing the same from issue.

21.00 DISTRIBUTIONS

- 21.01 The Trustee at its sole discretion may from time to time and in respect of some (but not all) of its permitted investments acquired on behalf of one or more Series Trusts within the Trust make provision for the income from such permitted investments to be paid directly to the Unitholders (and not to the Trustee on their behalf). In such cases where any such arrangements are in place the following provisions of Clause 21.00 will not apply to such income. In all other cases distributions shall be made as set out below.
- 21.02 The amount available for distribution to Unitholders in respect of any Distribution Period shall be (i) the net income received by the Trustee (whether in the form of dividends, interest or otherwise) during the Distribution Period in relation to the relevant Series Trust, and (ii) if considered necessary in order to maintain a reasonable level of dividend distributions, realised and unrealised capital gains less realised and unrealised capital losses made during the Distribution Period on the disposal/valuation of assets arising from the Net Asset Value of the relevant Series Trust subject to such adjustments as may be appropriate under the following headings:
- (a) addition or deduction of a sum by way of adjustment to allow for the effect of sales or purchases cum or ex dividend;
 - (b) addition of a sum representing any interest or dividends or other income accrued but not received by the Trustee at the end of the Distribution Period and deduction of a sum representing (to the extent that an adjustment by way of addition has been made in respect of any previous Distribution Period) interest or dividends or other income accrued at the end of the previous Distribution Period;
 - (c) addition of the amount (if any) available for distribution in respect of the last preceding Distribution Period but not distributed in respect thereof, pursuant to sub-Clause 21.02;

- (d) addition of a sum representing the estimated or actual repayment of tax resulting from any claims in respect of income tax relief or double taxation relief or otherwise;
- (e) deduction of the amount of any tax or other estimated or actual liability properly payable out of the income of that proportion of the Net Asset Value of the Trust attributable to the relevant Series Trust;
- (f) deduction of a sum representing participation in income paid upon the cancellation of Units of the relevant Series Trust during the Distribution Period; and
- (g) deduction of such amount as the Trustee or its delegate may certify necessary in respect of any expenses, remunerations or other payments (including without limitation, Administration Expenses and Disbursements) accrued during the Distribution Period and properly payable out of the income or capital of that proportion of the Net Asset Value of the Trust attributable to the relevant Series Trust.

Provided always that the Trustee shall not be responsible for any error in any estimates of income tax repayments or double taxation relief expected to be obtained or of any sums payable by way of taxation or of income receivable, and if the same shall not prove in all respects correct they shall ensure that any consequent deficiency or surplus shall be adjusted in the Distribution Period in which a further or final settlement is made of such tax repayment or liability or claim to relief or the amount of any such estimated income receivable is determined, and no adjustment shall be made to any Distribution previously made.

21.02 The amount, if any, to be distributed in respect of each Distribution Period shall be determined by the Trustee (subject as hereinafter provided) provided that any amount which is not distributed in respect of such Distribution Period may be carried forward to the next Distribution Period.

- 21.03 On the Distribution Date the amount of cash required to effect the Distribution shall be transferred from the Deposited Property in respect of the relevant Series Trust to an account to be called "the Distribution Account" and the amount standing to the credit of the Distribution Account shall not for any of the purposes of this Declaration of Trust be treated as part of the Deposited Property but shall be held by the Trustee upon trust to distribute the same as herein provided.
- 21.04 Should the Trustee decide to make a Distribution such Distribution shall be distributed to the persons who were registered in the Register as Unitholders of the relevant Series Trust as of the Distribution Date (so that, subject to Clause 22.08 below, the same amount shall be distributed in respect of every Unit of the relevant Series Trust which was in issue as of the Distribution Date and which has not been cancelled).
- 21.05 The Trustee shall decide whether a Distribution shall be made or not.
- 21.06 It shall be the duty of the Trustee to ensure that the Distribution Account includes or will, upon the completion of the sale of investments agreed to be sold, include cash at least sufficient to pay the amount so payable to a Unitholder or former Unitholder of the relevant Series Trust.
- 21.07 Unless otherwise requested by the payee, any moneys payable by the Trustee to a Unitholder or former Unitholder of the relevant Series Trust in respect of any Unit of the relevant Series Trust under the provisions of this Declaration of Trust shall be paid in the denominated currency of the relevant Series Trust by bank transfer or cheque at the expense of the Unitholder. Every such bank transfer or cheque shall be made payable to the order of such Unitholder or, in the case of joint Unitholders, made payable to the order of the first named joint Unitholder on the relevant Register at the risk of such Unitholder or joint Unitholders or in the event of a Unitholder having or in the case of joint Unitholders all of them having given a mandate in writing to the Trustee in such form as the Trustee shall approve for payment to the bankers or other agent or nominee of the Unitholder or Unitholders then the same shall be dealt with in accordance with the instructions in such mandate contained.

21.08 Where the amount of any Distribution payable to an individual Unitholder is not material: (a) that amount shall not be distributed but shall be retained and reinvested within and for the benefit of the relevant Series Trust or; (b) the Trustee at its sole discretion may elect not to make any such Distribution and, in lieu thereof, to issue and credit to the account of the relevant Unitholder the number of Units in the relevant Series Trust corresponding to the relevant Euro amount (or its foreign currency equivalent) calculated at the Net Asset Value per Unit pertaining on the relevant Distribution Date. A placing or subscription fee, as provided, for in Clause 5.04 hereof, shall not be deducted from such amount.

21.09 Distributions not claimed within six years from their due date will lapse and revert to the Deposited Property.

22.00 **DUTIES, LIABILITIES, INDEMNITIES, RIGHTS AND POWERS OF TRUSTEE**

22.01 The Trustee must exercise due care and diligence in the discharge of its duties and will be liable to the Trustee and the Unitholders for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties. 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 safekeeping. The Trustee must exercise care and diligence in choosing and appointing a third party as a safekeeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The Trustee must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be completely discharged. Without prejudice to any indemnity allowed by law or elsewhere herein given to the Trustee the following provisions in sub-Clauses 22.02 to 22.16 shall apply.

22.02 The Trustee or any agent of the Trustee shall not be responsible for the authenticity of any signature on or any seal affixed to any endorsement on any Certificate or to any transfer or form of application, endorsement or other document affecting the title to or transmission of Units or be in any way liable to make good any loss incurred by any

person for any forged or unauthorised signature on or a seal affixed to such endorsement, transfer or other document or for acting on or giving effect to any such forged or unauthorised signature or seal, (and, without prejudice to the generality of the foregoing, the Trustee or any agent of the Trustee may act upon a certificate given by the Trustee or by any agent of the Trustee as to the validity of any signature or seal on any document).

- 22.03 Subject and without prejudice to the right of the Trustee or any Unitholder to apply in any particular case to a court of competent jurisdiction for determination of their respective rights and liabilities hereunder, the Trustee shall have full power to determine all questions and doubts arising in relation to any of the provisions hereof and every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive and shall bind the Trustee and all persons interested under this Declaration of Trust and the Certificates.
- 22.04 Notwithstanding the provisions of sub-Clause 7.01, but subject to sub-Clause 22.01, hereof the Trustee shall be entitled to procure any agent, securities depository, clearing system, sub-custodian or nominee of the Trustee ("nominee") to be registered as proprietor of any investment held upon the trust of this Declaration of Trust and to receive and make on behalf of the Trustee any payments which otherwise would have been received or made by the Trustee and any reference in this Declaration of Trust to the Trustee in relation to the vesting, registration or holding in its name of investments or to its rights obligations or discretions hereunder as the registered proprietors of Investments or to the receiving or making of payments by the Trustee shall, where the context admits, be deemed also to be a reference to such nominee as nominee of the Trustee in relation to the aforesaid matters or in relation to any payment received or made or which ought to have been received or made by the Trustee.
- 22.05 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 the Deposited Property or any part thereof or take part in or consent to any corporate or shareholders' or stockholders' action which in its opinion might involve it in any expense or liability but may at its absolute discretion agree to prosecute or defend any

such action or suit provided that the Trustee shall be indemnified and held harmless out of the Deposited Property against any cost, liability or expense which it may suffer or incur as a result of taking such action in terms satisfactory to the Trustee.

- 22.06 (i) The Trustee shall not be responsible for the purchase selection or acceptance of any investment nor for the sale, exchange or alteration of any investments
- (ii) The Trustee shall have no liability for any loss or damage arising from the failure of any counterparty to deliver investments or cash to the Trustee or its nominee, or to return such investments or cash as may have been delivered by the Trustee or its nominee to such counterparty, such failure to include the delivery of forged or stolen investments or cash.
- (iii) Any clearing broker with or to which contract and/or margin monies or other investments are deposited or paid by the Trustee in respect of any futures contracts or any other hedging contracts shall not while it holds such monies or investments be a sub-custodian, nominee, agent or delegate of the Trustee for such purposes and the Trustee shall not be liable for the act or omissions of or any loss directly or indirectly caused by any such clearing broker.

22.07 The Trustee shall not be liable to account to any Unitholder or otherwise for any payment made or suffered by the Trustee in good faith to any duly empowered fiscal authority of Ireland or elsewhere for taxes or other charges in any way arising out of or relating to any transaction of whatsoever nature under this Declaration of Trust notwithstanding that any such payment ought not to be or need not have been made or suffered.

22.08 The Trustee shall as regards all the powers and discretions vested in it by this Declaration of Trust have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and in the absence of fraud, negligence, bad faith, recklessness or wilful default on the part of the Trustee, the Trustee, subject to Clause 22.01, shall not be in any way responsible for any loss, claim, expense, costs or damages that may result from the exercise or non-exercise thereof.

22.09 The Trustee may reasonably act upon the advice of or information obtained from lawyers, accountants or other experts and it may also act upon statements of or information or advice obtained from any bankers, accountants, brokers, lawyers, agent or other person acting hereunder as agent or adviser of the Trustee and the Trustee, in selecting an adviser or in acting upon such statements, information or advice shall not be responsible for the correctness of any such statements, information or advice or for any loss occasioned by it so acting.

22.10 The Trustee shall in no way be liable to make any payment hereunder to any Unitholder or to any third party except out of funds held by or paid to it for that purpose under the provisions hereof.

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

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

- 22.12 If for any reason it becomes impossible or impracticable to carry out any of the provisions of this Declaration of Trust, the Trustee shall not be under any liability therefor or thereby and neither shall incur liability by reason of any error of law or any matter or thing done or suffered to be done or omitted to be done by them in good faith hereunder and in particular the Trustee shall not be liable for any loss or damage to the Deposited Property or for any failure to fulfil its duties if such loss or failure shall be directly or indirectly caused by, or due to war, civil commotion, rebellion, storm, tempest, fire, act of God, strike, lock-out, power failure, computer failure or error, breakdown or delay in communications, the act of any government or other competent authority or other cause PROVIDED THAT any such occurrence is beyond the reasonable control of the Trustee and PROVIDED FURTHER THAT the Trustee shall take all reasonable steps to minimise the effect of same.
- 22.13 The Trustee shall without prejudice to any indemnity allowed by law or elsewhere, and subject to the provisions of sub-Clause 22.01, be indemnified out of the Deposited Property of the relevant Series Trust in respect of all liabilities and expenses properly incurred by it in the execution or purported execution of the trusts hereof or of any powers, duties, authorities or discretions vested in it pursuant to this Declaration of Trust or the terms of its appointment and against all actions, proceedings, costs, claims, damages, expenses and demands in respect of any matter or thing done or omitted or suffered in any way relating to each relevant Series Trust (other than by reason of the Trustee's fraud, negligence, bad faith, recklessness or wilful default).
- 22.14 The Trustee shall be entitled to refuse to effect any investment, realisation or other transaction of whatsoever nature on behalf of the Trust if, in the reasonable opinion of the Trustee.:
- (i) such investment, realisation or other transaction would be in conflict with this Declaration of Trust or any offer document for Units or would be unlawful or would violate the requirements of any government body or any other body with whose requirements (whether legally binding or not) financial institutions in general or the Trustee in particular may be required by law, custom or practice to conform provided that the Trustee shall not be under any obligation

to ensure that any instruction received by it would not contravene any of the laws, authorities or documents referred to; or

- (ii) there are reasonable grounds for estimating that liabilities to be incurred in the course of such investment, realisation or other transaction may not be adequately covered by the investments or cash of the Trust held for the time being by or on behalf of the Trustee; or
- (iii) personal liability may be incurred by the Trustee pursuant to such investment, realisation or other transaction.

23.00 **OTHER TRUSTS**

Nothing herein contained shall be construed to prevent the Trustee from establishing or acting as Trustee for trusts separate and distinct from the Trust.

24.00 **REMUNERATION OF TRUSTEE**

- 24.01 The Trustee shall receive by way of remuneration for its services a fee out of the assets of the relevant Series Trust (plus value added tax, if any) as specified in the Supplemental Declaration of Trust.
- 24.02 The Trustee shall also be entitled to be repaid all Disbursements. Remuneration and all Disbursements shall be retained by the Trustee out of the Deposited Property of the relevant Series Trust. Such repayment of Disbursements shall be in addition to any sums the Trustee may be entitled to receive or retain pursuant to any other provision hereof.

25.00 **DEALINGS AT REQUEST OF UNITHOLDERS**

Notwithstanding anything herein contained the Trustee shall not be required to effect any transaction or dealing with any Certificate or with any part of the investments or of the Deposited Property on behalf or for the benefit or at the request of any Unitholder unless such Unitholder shall first have paid in cash to the Trustee any

necessary stamp duty which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Trustee shall be entitled if it so thinks fit to pay and discharge all or any of such stamp duty on behalf of the Unitholder and to retain the amount so paid out of any moneys or property to which such Unitholder may be or become entitled in respect of his Units or otherwise howsoever hereunder.

26.00 **RETIREMENT OF TRUSTEE**

The Trustee shall not be entitled to retire voluntarily except upon the appointment of a new Trustee or the termination of the Trust or Series Trust, including termination of the Trust by the Trustee pursuant to sub-Clause 29.01 (d). In the event of the Trustee desiring to retire, the Trustee may by deed supplemental hereto appoint any duly qualified corporation to be the Trustee in the place of the retiring Trustee. The Trustee will use reasonable endeavours to appoint such a duly qualified corporation upon receipt of notification from the Trustee of its desire to retire.

27.00 **DURATION AND TERMINATION OF TRUST AND SERIES TRUSTS**

27.01 The Trust or any of its Series Trusts may be terminated immediately by the Trustee by notice in writing as hereinafter provided upon the occurrence of any of the following events, namely:

- (a) if the Trustee shall go into liquidation (except a voluntary liquidation for the purpose of reconstruction or amalgamation upon terms previously approved in writing by the Trustee) or ceases business or becomes (in the reasonable judgment of the Trustee) subject to the de facto control of some corporation or person of whom the Trustee does not reasonably approve or if a receiver is appointed in respect of any of the assets of the Trustee or if an examiner is appointed to the Trustee pursuant to the Companies (Amendment) Act, 1990;
- (b) if any law shall be passed which renders it illegal to continue the Trust or any of its Series Trusts; or

- (c) if in the reasonable opinion of the Trustee it is impracticable or inadvisable to continue the Trust or any of the Series Trust

The decision of the Trustee in any of the events specified in this sub-Clause 27.01 shall subject as provided in this Clause 27.00 be final and binding upon all the parties concerned and the Trustee shall, in the absence of fraud, negligence or failure to comply with its obligations hereunder, be under no liability on account of any failure to terminate the Fund pursuant to this Clause 27.00 or otherwise.

- 27.02 A Series Trust shall terminate automatically upon the expiry of the Term of the Series Trust.

28.00 **PROVISIONS ON TERMINATION OF TRUST AND SERIES TRUSTS**

- 28.01 The Trustee shall procure the sale of all investments then remaining in the hands of the Trustee as part of the Deposited Property and such sale shall be carried out and completed in such manner and within such period before or after the termination of the Trust or of the Series Trust as the Trustee thinks desirable.

- 28.02 The Trustee shall at such time or times as it shall deem convenient and at its entire discretion procure the distribution to the Unitholders pro rata to the number of Units of each Series Trust held by them respectively, all net cash proceeds derived from the realisation of the investments of the relevant Series Trust and any cash then forming part of the relevant Series Trust so far as the same are available for the purpose of such distribution. Every such distribution shall be made only after the Certificates relating to the Units in respect of which the same is made shall have been lodged with the Trustee together with such form of request for payment and receipt as the Trustee shall in its absolute discretion require provided that any unclaimed net proceeds or other cash held by the Trustee under the provisions of this Clause may at the expiration of twelve 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 carrying out this provision.

29.00 NOTICES

- 29.01 Any notice or other document required to be served upon or sent to a Unitholder shall be given in the case of Unitholders entered on the Register of a relevant Series Trust if sent by pre-paid post, facsimile or by telex or left at his address as appearing on the Register and in the case of joint Unitholders if so sent to or left at the address of the first named Unitholder on the Register or if issued or published in such manner as the Trustee shall determine subject to the approval of the Trustee. Any notice sent by post as provided in this Clause shall be deemed to have been duly given 7 Business Day 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 issued or published shall be deemed to have been duly given on the date of such notice's first issue or publication.
- 29.02 Service of a notice or document on any one of several joint Unitholders entered in the Register of a relevant Series Trust shall be deemed effective service on himself and the other joint Unitholders entered in the Register.
- 29.03 Any notice or document served in accordance with such sub-Clause 31.01 shall notwithstanding that such Unitholder be then dead or bankrupt and whether or not the Trustee has notice of his death or bankruptcy be deemed to have been duly served or sent and such service shall be deemed a sufficient service on or receipt by all persons interested (whether jointly with or as claiming through or under him) in the Units concerned.
- 29.03 Any Certificate or notice or other document which is sent by post, telex or fax or left at the registered address of the Unitholder entered in the Register of a relevant Series Trust named therein or despatched by the Trustee in accordance with any Unitholder's instructions shall be so sent left or despatched at the risk of such Unitholder.

29.04 Any notice or other document required to be served upon or sent to one party to this Declaration of Trust by the other party shall be deemed to have been properly served upon or received by that party if delivered or sent by pre-paid post, facsimile or by telex to or left at the other party's address as hereinbefore set out. Any notice sent by post as provided in this Clause shall be deemed to have been duly given 48 hours 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 issued or published shall be deemed to have been duly given on the date of such notice's first issue or publication.

30.00 **COPIES OF DECLARATION OF TRUST**

A copy of this Declaration of Trust and of any deeds supplemental hereto shall be at all times during usual business hours obtainable by Unitholders from the Trustee at its registered office in Ireland at a small fee.

31.00 **MODIFICATION OF DECLARATION OF TRUST**

31.01 With the sanction of an Extraordinary Resolution of a meeting of Unitholders, the Trustee shall be entitled by deed supplemental hereto to modify, alter or add to the provisions of this Declaration of Trust in such manner and to such extent as it may consider necessary or expedient for any purpose.

32.00 **GOVERNING LAW**

This Declaration of Trust shall be governed by and construed in accordance with the laws of Ireland.

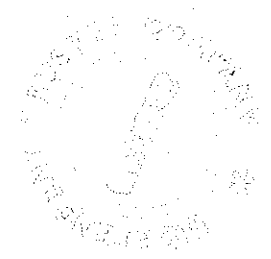
IN WITNESS whereof the parties hereto have executed this Declaration of Trust the day and year above referred to.

EXECUTED as a deed under

seal by

for and on behalf of

INDEPENDENT TRUSTEE COMPANY LIMITED



Sean M Longlin

Paula Reilly

SCHEDULE

Meetings of Unitholders

1. The Trustee may, and the Trustee shall, at the request in writing of Unitholders together holding not less than 15 per centum in aggregate of the Units (excluding Units held by the Trustee) in respect of which Unitholders are then registered, at any time convene a meeting of Unitholders 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 Trustee shall be entitled to receive notice of, attend and speak at any meeting.
2. A meeting of Unitholders 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 the foregoing Declaration of Trust which shall be agreed by the Trustee as provided in Clause 34.00 of the said Declaration of Trust or to terminate the Trust as provided in sub-Clause 29.04 of the said Declaration of Trust, or to sanction any scheme for the reconstruction of the Trust and any modification, alteration or addition to the investment objective and policies or the investment restrictions set out in the prospectus issued in respect of the Trust and all amendments and supplements thereto but shall not have any further or other powers.
3. Fourteen days notice at the least (inclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of every meeting shall be given to the Unitholders in the manner provided in the foregoing Declaration of Trust. The notice shall specify the place, day and hour of meeting and the terms of the resolution to be proposed. The accidental omission to give notice by any of the Unitholders shall not invalidate the proceedings at any meeting.
4. The quorum shall be Unitholders present in person or by proxy holding or representing at least one tenth in number 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 fifteen days thereafter and to such place as may be appointed by the Chairman; and at such adjourned meeting the Unitholders present in person or by proxy shall be a quorum. Notice of any adjourned meeting of Unitholders shall be given in the same manner as for an original meeting; provided that such notice shall state that the Unitholders 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 Unitholder or a representative of a Unitholder) nominated in writing by the Trustee shall preside at every meeting and if no such person is nominated or if at any meeting the person nominated shall not be present within fifteen minutes after the time appointed for holding the meeting the Unitholders 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.
8. At any meeting an Extraordinary Resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or by one or more Unitholders present in person or by proxy and holding or representing one-twentieth of the number 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 lost shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
9. If a poll is duly demanded, it shall be taken in such a manner as the Chairman may direct and the result of a poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

10. 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.
11. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
12. On a show of hands every Unitholder who is present in person or by a proxy shall have one vote. On a poll every Unitholder who is present in person or by proxy shall have one vote for every Unit of which he is the Unitholder. A person entitled to more than one vote need not use all his votes or cast them the same way.
13. In the case of joint Unitholders entered in the Register of a relevant Series Trust 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 such other joint Unitholders and for this purpose seniority shall be determined by the order in which the names stand in the Register of the relevant Series Trust.
14. Votes may be given either personally or by proxy.
15. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney authorised in writing or if the appointor is a corporation either under the common seal or under the hand of an officer or attorney so authorised. A person appointed to act as a proxy need not be a Unitholder.
16. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited at such place as the Trustee may in the notice convening the meeting direct or if no such place is appointed then at the Registered Office of the Trustee not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll), at which the person named in the instrument proposes to vote

and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date named in it as the date of its execution.

17. An instrument of proxy may be in the following form or in any other form which the Trustee shall approve:-

A resolution in writing signed by all the Unitholders for the time being entitled to attend and vote on such resolution at a meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a meeting duly convened and held.

18. With regard to the respective rights and interests of Unitholders of different Series Trusts, the foregoing provisions of this Schedule shall have effect subject to the following modifications;

- (a) a resolution which affects one Series Trust only shall be deemed to have been duly passed if passed at a separated meeting of the Unitholders of that Series Trust; and
- (b) in relation to such meeting, all the provisions of this Schedule shall, *mutatis mutandis*, apply as though references therein to Units and Unitholders were references to Units of the Series Trust in question and to the Unitholders of that Unit Trust.

INDEPENDENT TRUSTEE COMPANY LIMITED
(Trustee)

DECLARATION OF TRUST
DELTA FUND
(Closed - Ended Close-ended Umbrella Unit Trust)

DILLON EUSTACE
SOLICITORS
GRAND CANAL HOUSE
1 UPPER GRAND CANAL STREET
DUBLIN 4

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