

*Last update: 14 December 2018*

*Template Instrument of Incorporation for an umbrella private OFC with privately offered sub-funds and multiple classes of shares<sup>1</sup>*

**THE SECURITIES AND FUTURES ORDINANCE (CHAPTER 571)  
SECURITIES AND FUTURES (OPEN-ENDED FUND COMPANIES) RULES  
(CHAPTER 571AQ)**

**INSTRUMENT OF INCORPORATION**

**of**

**[name] OFC**

**(An open-ended fund company with variable capital and segregated liability between sub-funds)**

**Company number as registered with the Companies Registry: [\*]**

**Incorporated on [date]**

**This Instrument is dated [date]**

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<sup>1</sup> *Points to note: (1) A private OFC which is a single OFC or without multiple classes of shares should modify the relevant provisions herein as appropriate; (2) this template sets out the baseline requirements of an instrument of incorporation for reference only, applicants may make additions or modifications (in particular to the bracketed parts) to the provisions herein as considered appropriate to suit their own particular OFCs provided that such revisions would not result in non-compliance with the applicable laws and regulations; (3) as each OFC is different, applicants should seek professional legal advice as to the appropriate contents of the instrument of incorporation for their particular OFCs and to ensure due compliance with the applicable laws and regulations. The adoption of this template should not be taken as an endorsement that the instrument of incorporation of a particular OFC is in compliance with all laws and regulations; and (4) this template may be updated from time to time, applicants should refer to the latest template available on the SFC's website when making an application.*

## CONTENTS

(This table of contents does not form part of this Instrument)

	Page No.
INTERPRETATION .....	4
NAME .....	11
REGISTERED OFFICE .....	11
TYPE OF COMPANY .....	12
OBJECT .....	12
ELIGIBLE INVESTMENTS.....	12
CURRENCY OF ACCOUNTS .....	12
SHARE CAPITAL .....	13
SUB-FUNDS .....	13
ISSUE AND CANCELLATION OF SHARES IN THE COMPANY .....	14
ISSUE OF SHARES .....	14
REDEMPTION OF SHARES .....	17
COMPULSORY REDEMPTION OF SHARES .....	20
[CONVERSION OF SHARES].....	21
VALUATION.....	21
SUSPENSION OF VALUATION.....	22
TITLE TO SHARES .....	24
[LIENS ON SHARES] .....	24
CALLS ON SHARES .....	25
TRANSFER AND TRANSMISSION OF SHARES .....	26
REGISTER OF SHAREHOLDERS .....	28
GENERAL MEETINGS .....	29
NOTICE OF GENERAL MEETINGS .....	30
PROXY.....	31
ATTENDANCE AND SPEAKING AT GENERAL MEETINGS .....	34
QUORUM FOR GENERAL MEETINGS .....	34
CHAIRING GENERAL MEETINGS .....	35
ADJOURNMENT OF GENERAL MEETINGS.....	35
GENERAL RULES ON VOTING .....	36
DEMANDING A POLL .....	36
NUMBER OF VOTES A MEMBER HAS .....	37
[VOTES OF JOINT HOLDERS OF SHARES].....	38
MEETING PROCEEDINGS - SUB-FUNDS AND CLASS MEETINGS.....	38
WRITTEN RESOLUTIONS .....	38
RECORDS OF RESOLUTIONS AND MEETINGS .....	39
DIRECTORS .....	40
DIRECTORS' MEETINGS.....	41
CONFLICTS OF INTEREST.....	43
VALIDITY OF ACTS OF MEETING OF DIRECTORS .....	44
APPOINTMENT, REMOVAL AND RETIREMENT OF DIRECTORS.....	45
DIRECTORS' REMUNERATION AND EXPENSES .....	46
[INDEMNITY].....	46
INVESTMENT MANAGER.....	47
CUSTODIAN .....	49
AMENDMENTS TO THIS INSTRUMENT .....	51
THE SEAL .....	52
DIVIDENDS AND ALLOCATION OF INCOME.....	52
RECORD DATES .....	53
AUDITOR .....	53
ACCOUNTS AND REPORTS.....	54
CHARGES AND EXPENSES .....	55
DESTRUCTION OF DOCUMENTS.....	56

NOTICES .....	56
AUTHENTICATION OF DOCUMENTS .....	58
TERMINATION OTHERWISE THAN BY WINDING UP .....	58
WINDING UP .....	59
[REPORTING TO TAX AUTHORITIES] .....	60
CONFLICT WITH REGULATIONS.....	61
GOVERNING LAW .....	61
THE SCHEDULE.....	62

## INTERPRETATION

1. In this Instrument the words and expressions set out in the first column below shall have the meanings set opposite them unless the context requires otherwise. Other words or expressions used in this Instrument have the same meaning as in the Laws and Regulations (as defined below) as amended from time to time.

<b>Accounting Date</b>	such date in each year as the Directors may from time to time determine, subject to this Instrument and the Laws and Regulations, the first Accounting Date being [ <i>please insert</i> ]
<b>Accounting Period</b>	a period commencing on the date of incorporation of the Company or on the date next following an Accounting Date and ending on the next succeeding Accounting Date or the date when the Company completes its winding-up in accordance with this Instrument
<b>[Administrator</b>	the person appointed and acting as administrator of the Company for the time being]
<b>Auditor</b>	the person appointed and acting as auditor of the Company for the time being
<b>bank deposit</b>	deposits (as defined in section 2(1) of the Banking Ordinance (Cap. 155) made with a bank (as defined in Part 1 of Schedule 1 to the SFO)
<b>Base Currency</b>	in relation to a Sub-Fund, the currency in which the accounts of the Sub-Fund are to be prepared in accordance with the Clauses under the heading of [Currency of Accounts] of this Instrument
<b>Business Day</b>	any day (excluding Saturdays, Sundays, public holidays and days on which a tropical cyclone warning no. 8 or above or a “black” rainstorm warning signal is hoisted in Hong Kong at any time between the hours of 9:00 a.m. and 5:00 p.m.) on which licensed banks are open for general business in Hong Kong
<b>Class</b>	a particular Class of Shares as described in the Offering Documents
<b>Class Currency</b>	the currency of issue of a Class of Shares as described in the Offering Documents

<b>Class of Shareholders or Classes of Shareholders</b>	the Shareholders of a particular Class of Shares
<b>Code</b>	the Code on Open-ended Fund Companies issued by the SFC, as amended from time to time and supplemented by published guidelines or other guidance issued by the SFC
<b>collective investment scheme</b>	has the same meaning as defined in Part 1 of Schedule 1 to the SFO
<b>Company</b>	[ <i>name</i> ] OFC / Open-ended Fund Company
<b>[CRS]</b>	the Organisation for Economic Cooperation and Development standard for automatic exchange of financial account information – common reporting standard as implemented in Hong Kong pursuant to the Inland Revenue Ordinance (Cap. 112), as amended from time to time]
<b>Custodian</b>	[ <i>please insert name of the initial custodian</i> ] or such other person for the time being duly appointed custodian hereof by the Company in succession thereto under Clause 253(h) to whom all the Scheme Property of the Company is entrusted for safe keeping subject to and in accordance with the Laws and Regulations
<b>day</b>	a calendar day
<b>Dealing Day</b>	[each Business Day or such other day or days as the Directors may from time to time determine either generally or in respect of a particular Class or Classes of Shares provided that a Dealing Day for the issue of a Class of Shares may be a different day or days from the Dealing Day for the redemption of such Class of Shares]
<b>Directors</b>	the directors of the Company for the time being or the directors of the Company present at a meeting of directors at which a quorum is present and includes any committee of the Directors duly constituted for the purposes relevant in the context in which any reference to the Directors appears or the members of such committee present at a meeting of such committee at which a quorum is present, and “ <b>Director</b> ” shall be construed accordingly
<b>[FATCA]</b>	sections 1471 through 1474 of the US IRC, the United States Treasury Regulations promulgated

	under the US IRC or other official guidance or interpretations issued thereof or any agreements entered into thereunder, any intergovernmental agreement between the United States and another jurisdiction for the implementation of the foregoing, and any non-U.S. law relating to the foregoing]
<b>foreign currencies</b>	currencies other than the Hong Kong Dollar
<b>foreign exchange contract</b>	a contract under which the parties to the contract agree to exchange different currencies on a particular date
<b>FMCC</b>	the Fund Manager Code of Conduct issued by the SFC, as amended from time to time and supplemented by published guidelines or other guidance issued by the SFC
<b>futures</b>	has the same meaning as “futures contract” as defined in Part 1 of Schedule 1 to the SFO
<b>general meeting</b>	an extraordinary general meeting [or (if applicable) annual general meeting] of the Company <sup>2</sup>
<b>Hong Kong</b>	the Hong Kong Special Administrative Region of the People’s Republic of China
<b>Hong Kong Dollar</b>	the lawful currency for the time being and from time to time of Hong Kong
<b>in writing</b>	includes printing, lithography, photography, telex, facsimile, e-mail, media communications and any other form of transmission as enables the recipient to know and to record the time of receipt and to preserve a legible copy of such transmission, or partly in one such form and partly in another
<b>Instrument</b>	this instrument of incorporation, including the Schedule, as amended from time to time
<b>Investment Manager</b>	[ <i>please insert name of the initial investment manager</i> ] or any other person for the time being duly appointed investment manager by the Company in succession thereto under Clause 250 from time to time to whom all the investment management functions of the Company are

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<sup>2</sup> As the holding of annual general meetings is at the option of the individual OFC depending on its Instrument, please include/ exclude the reference to annual general meeting as appropriate to the relevant OFC.

	delegated subject to and in accordance with the Laws and Regulations]
<b>Investment Management Agreement</b>	the agreement for the time being subsisting between the Company and the Investment Manager relating to the appointment and duties of the Investment Manager in its capacity as investment manager of the Company
<b>Laws and Regulations</b>	all applicable laws and regulations including the SFO, OFC Rules, the Code and the FMCC
<b>mental incapacity</b>	has the meaning given by section 2(1) of the Mental Health Ordinance (Cap. 136)
<b>mentally incapacitated person</b>	a person who is found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs
<b>Minimum Holding of Shares</b>	[such number or value of Shares as the Directors in any particular case or in respect of any Class of Shares or generally may from time to time prescribe as the minimum number or value of Shares of any Class which may be held by any Shareholder]
<b>month</b>	a calendar month
<b>Net Asset Value</b>	the value of the Scheme Property of the Company (or, where the context requires, such part of the Scheme Property as is attributable to a particular Sub-Fund or Class of Shares) less all the liabilities of the Company (or such liabilities as are attributable to that Sub-Fund or Class of Shares as the case may be) determined in each case in accordance with this Instrument
<b>OFC</b>	an open-ended fund company as defined in section 112A of the SFO
<b>OFC Rules</b>	Securities and Futures (Open-ended Fund Companies) Rules (Cap. 571AQ), as amended from time to time
<b>Offering Documents</b>	the offering documents of the Company as amended from time to time
<b>Ordinary Resolution</b>	a resolution of the Company in general meeting or of a Class meeting or Sub-Fund meeting (as the

	case may be) passed by a simple majority of the votes validly cast for and against the resolution at such meeting in accordance with Rule 88 of the OFC Rules
<b>person</b>	any natural person, firm, company, joint venture, partnership, corporation, association or other entity (whether or not having separate legal personality) or any of them, as the context may require
<b>private OFC</b>	has the meaning of “private OFC” as defined in the Code issued by the SFC
<b>proxy notice</b>	the notice for appointing a proxy in accordance with Clause 130
<b>[Redemption Charge</b>	the redemption charge (if any) payable upon redemption of Shares in accordance with Clause 54]
<b>Redemption Deadline</b>	[in relation to any Dealing Day, such time by which a redemption request in respect of a Sub-Fund or a Class of Units must be received either on such Dealing Day or on such other Business Day or day as the Directors may from time to time determine either generally or in relation to any particular jurisdiction in which Shares of that Sub-Fund or the relevant Class may from time to time be sold]
<b>Redemption Price</b>	[the redemption price of a Share or of a particular Class of Shares as determined in accordance with the Schedule]
<b>Register or Register of Shareholders</b>	the register of Shareholders kept by or on behalf of the Company pursuant to the OFC Rules
<b>Registrar</b>	the person appointed to maintain the Register of Shareholders for the time being
<b>Scheme Property</b>	the property of the Company, required under the SFO to be entrusted to the Custodian for safekeeping
<b>Seal</b>	the common seal, if any, of the Company in such form as may be adopted by the Directors from time to time



<b>securities</b>	has the same meaning as “securities” as defined in Part 1 of Schedule 1 to the SFO
<b>Service Providers</b>	includes, as the context may require, the Investment Manager, [the Administrator,] the Custodian, the Registrar and other service providers to the Company as specified in the Offering Documents or otherwise appointed to act in respect of the Company, including their respective delegates
<b>SFC</b>	Securities and Futures Commission of Hong Kong
<b>SFO</b>	Securities and Futures Ordinance (Cap. 571), as amended from time to time
<b>Share</b>	a share in the Company
<b>Shareholder</b>	a holder for the time being of Shares
<b>signed</b>	includes signed by way of a signature or representation of a signature affixed by photographic or mechanical means
<b>Special Resolution</b>	a resolution of the Company in general meeting or of a Class meeting or Sub-Fund meeting (as the case may be) passed by a majority of at least 75% of the votes validly cast for and against the resolution at such meeting in accordance with Rule 89 of the OFC Rules
<b>Sub-Fund</b>	a separate part of the Scheme Property of the Company which is established pursuant to this Instrument
<b>[Subscription Deadline</b>	in relation to any Dealing Day, such time by which an application for subscription in respect of a Sub-Fund or a Class of Units must be received either on such Dealing Day or on such other Business Day or day as the Directors may from time to time determine either generally or in relation to any particular jurisdiction in which Shares of that Sub-Fund or the relevant Class may from time to time be sold]
<b>[Subscription Price</b>	the subscription price of a Share or of a particular Class of Shares as determined in accordance with the Schedule]
<b>[Tax Authority</b>	any government, state or municipality or any local, state, federal or other authority, body or official

anywhere in the world exercising a fiscal, revenue, customs or excise function]

**transmittee**

means a person entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law

**[US IRC**

the United States Internal Revenue Code of 1986, as amended]

**Valuation Agent**

the Investment Manager or such other person as the Investment Manager may from time to time appoint to value the Company or a Sub-Fund

**Valuation Day**

each Business Day on which the Net Asset Value of a Sub-Fund and/or the Net Asset Value of a Unit or a Class falls to be calculated and in relation to each Dealing Day of any class or classes of Units means either such Dealing Day or such Business Day or day as the Directors may from time to time determine either generally or in relation to a particular Sub-Fund or Class

**Valuation Point**

the close of business in the last relevant market to close on a relevant Valuation Day or such other time on that day or such other day as the Directors may from time to time determine either generally or in relation to a particular Sub-Fund or Class

**Value**

in relation to an investment means, except where otherwise expressly stated, the value of that investment determined in accordance with the Schedule

**year**

a calendar year

2. Any reference in this Instrument to any statute, statutory provision or regulation shall be construed as including a reference to any modification, amendment, extension, replacement or re-enactment thereof for the time being in force.
3. In this Instrument, words denoting the singular shall include the plural and vice versa. Words denoting one gender only shall include all genders. Words denoting persons shall include companies and associations and unincorporated bodies of persons.
4. In this Instrument:
  - (a) the word "may" shall be construed as permissive and not as exhaustive; and
  - (b) the word "shall" shall be construed as imperative; [and]

- (c) [any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.]
5. Any reference in this Instrument to Shares being issued "in respect of" or "relating to" a Sub-Fund shall be construed as a reference to Shares issued by the Company which give the Shareholder thereof rights for the time being to participate in that part of the Scheme Property comprising the Sub-Fund in question.
6. Any reference in this Instrument to Clause numbers [or Schedule numbers] shall (unless the contrary intention is expressed) be construed as a reference to Clauses [or the Schedule (as applicable)] of this Instrument [and any reference in a Schedule to Paragraph numbers shall (unless the contrary intention is expressed) be construed as a reference to Paragraphs of the relevant Schedule].
7. [For the purposes of this Instrument, a facsimile or any communication or document in electronic form purporting to come from:
- (a) a Shareholder;
  - (b) a Director; or
  - (c) in the case of a corporation which is a Shareholder, from a director or the secretary of the corporation or a duly appointed attorney or duly authorized representative of the corporation for and on its behalf,
- shall in the absence of express evidence to the contrary available to the person relying on such facsimile, communication or document at the relevant time, be deemed to be a document or instrument in writing signed by such Shareholder or Director in the terms in which it is received.]
8. The headings in this Instrument are for convenience only and do not affect its construction.
9. A Special Resolution is effective for any purpose for which an Ordinary Resolution is expressed to be required under any Clause.

#### **NAME**

10. The name of the Company is [*please insert name*] OFC / Open-ended Fund Company<sup>3</sup>.

#### **REGISTERED OFFICE**

11. The registered office of the Company is situated in Hong Kong at such place as the Directors may from time to time decide<sup>4</sup>.

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<sup>3</sup> Please refer to the requirement under section 112K(2)(a) of the SFO.

<sup>4</sup> Please refer to the requirement under section 112K(2)(b) of the SFO.

## TYPE OF COMPANY

12. The Company is an open-ended fund company with variable share capital<sup>5</sup>.
13. The Company is an umbrella OFC for the purposes of the Laws and Regulations.
14. The Company is not authorized by the SFC under section 104 of the SFO and is a private OFC for the purposes of the Code.
15. The Shareholders are not liable for the debts of the Company<sup>6</sup>. A Shareholder is not liable to make any further payment after he has paid the price of his Shares in the Company in full and no further liability can be imposed on him in respect of the Shares which he holds.
16. The Scheme Property of the Company shall be entrusted to the Custodian for safekeeping in compliance with the Laws and Regulations<sup>7</sup>.

## OBJECT<sup>8</sup>

17. The object of the Company is the operation of the Company as a collective investment scheme<sup>9</sup> to invest the Scheme Property in accordance with [*please insert the Clauses under the heading of “Eligible Investments” below*].

## ELIGIBLE INVESTMENTS<sup>10</sup>

18. The Company and the Sub-Funds have the power to invest in (i) securities, futures and any other assets the management of which would constitute an “asset management” activity under Schedule 5 to the SFO, and/or (ii) cash, bank deposits, certificates of deposit, foreign currencies and foreign exchange contracts.
19. The Company and the Sub-Funds also have the power to invest in any other assets not set out in Clause [18] of a value not exceeding a maximum of 10% of the gross asset value of each Sub-Fund as well as of the Company as a whole at any time.
20. The Company and the Sub-Funds shall not make investments pursuant to which the Company and/or the Sub-Funds would become a business undertaking for general commercial or industrial purpose.

## CURRENCY OF ACCOUNTS

21. The records and accounts of each Sub-Fund shall be maintained in the Base Currency of the Sub-Fund. The Base Currency of the Sub-Fund is [*please insert*] / [set out in [the Schedule]].

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<sup>5</sup> Please refer to the requirement under section 112K(2)(e) of the SFO.

<sup>6</sup> Please refer to the requirement under section 112K(2)(g) of the SFO.

<sup>7</sup> Please refer to the requirement under section 112K(2)(h) of the SFO.

<sup>8</sup> Please refer to the requirement under section 112K(2)(c) of the SFO.

<sup>9</sup> Please refer to the requirement under rule 13 of the OFC Rules.

<sup>10</sup> Please refer to the requirements under section 112K(2)(d) of the SFO and Chapter 11 of the Code.

## SHARE CAPITAL

22. [The capital of the Company shall be represented by Shares of no par value.]
23. The amount of paid-up share capital of the Company shall at all times be equal to the Net Asset Value of the Company<sup>11</sup> in the Base Currency.
24. [The authorized share capital of the Company is *[please insert]* divided into *[please insert]* shares of *[please insert]* each and *[please insert]* shares of no par value initially designated as unclassified shares.]

## SUB-FUNDS

25. The assets of a Sub-Fund of the Company belong exclusively to the Sub-Fund and are not to be used to discharge the liabilities of, or the claims against, any other person, including the Company and any other Sub-Fund<sup>12</sup>.
26. Subject to the Laws and Regulations, all consideration received for the account of the Company for the issue of Shares in respect of a Sub-Fund together with the investments in which such consideration is invested or reinvested, and all income, earnings, profits and proceeds thereof and liabilities and expenses relating thereto which are pooled for the Sub-Fund shall be kept separate from all other monies, investments, assets, liabilities and expenses of the Company and any other Sub-Fund and the following provisions shall apply to each Sub-Fund:
  - (a) for each Sub-Fund the Company shall keep books in which all transactions relating to the relevant Sub-Fund shall be separately recorded and the assets and the liabilities, income and expenditure attributable to that Sub-Fund shall be applied or charged to such Sub-Fund subject to this Clause;
  - (b) any asset derived from any other asset (whether cash or otherwise) comprised in any Sub-Fund shall be applied in the books of the Company to the same Sub-Fund as the asset from which it was derived and any increase or diminution in the value of such asset shall be applied to the relevant Sub-Fund;
  - (c) each Sub-Fund shall be charged with the liabilities, expenses, costs and charges of the Company in respect of or attributable to that Sub-Fund; and
  - (d) any assets, liabilities or contingent liabilities received or incurred by the Company on behalf of the Sub-Funds or in order to enable the operation of the Sub-Funds and which are not attributable to any particular Sub-Fund may be allocated between the Sub-Funds, and may subsequently be reallocated, in such manner as the Directors may reasonably determine provided that such

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<sup>11</sup> Please refer to the requirement under section 112K(2)(f) of the SFO.

<sup>12</sup> Please refer to the requirement under section 112K(3) of the SFO.

allocation or reallocation shall be done in a manner which the Directors reasonably believe is fair to the Shareholders of the Company<sup>13</sup>.

27. [The Sub-Funds of the Company for the time being constituted and their respective investment objectives and categories are set out in the Schedule to this Instrument.]<sup>14</sup>.
28. [The Directors may, subject to the approval of the SFC and the Laws and Regulations<sup>15</sup>, by resolution from time to time create such additional Sub-Fund or Sub-Funds with such investment objectives and such restrictions or specialisations as to geographic area, economic sector or otherwise, and denominated in such currencies, as the Directors shall from time to time determine.]
29. [The Directors may, subject to the Laws and Regulations, by resolution from time to time change the investment objectives, restrictions, Base Currency and other terms of a Sub-Fund as the Directors shall from time to time determine.]
30. [On creation of any such Sub-Fund or Sub-Funds a new Part of the Schedule to this Instrument including the specified details of the new Sub-Fund or Sub-Funds (as well as those of the other extant Sub-Funds) will be substituted for the previous one and shall form part of this Instrument to the exclusion of the previous Part of the Schedule.]

#### **ISSUE AND CANCELLATION OF SHARES IN THE COMPANY<sup>16</sup>**

31. The Company shall issue or cancel Shares by making a record of the issue or cancellation of such Shares, and the number of Shares in each Class concerned.

#### **ISSUE OF SHARES**

32. [Subject to the Laws and Regulations, this Instrument and the Offering Documents, the unissued Shares (whether forming part of the original or any increased capital) shall be at the disposal of the Directors, who may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Directors may reasonably determine.]
33. Subject to the Laws and Regulations, this Instrument and the Offering Documents, the Company may from time to time issue Shares of different Classes<sup>17</sup> in respect of a Sub-Fund. The rights attaching to each Class of Shares shall be as set out in the Laws

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<sup>13</sup> Please refer to the requirement under section 112S of the SFO for segregated liability of sub-funds. Correspondingly, while the wording in the instrument of incorporation may vary, it is generally expected that the OFC will have due mechanisms in place to ensure the separation of the income, expenses, assets and liabilities of each sub-fund as well as in keeping separate records for each sub-fund.

<sup>14</sup> The OFC may modify the clauses in this part ("Sub-funds") referring to the Schedule as appropriate depending on whether it will set out the Sub-Fund(s) in the Instrument or by way of directors' resolution, coupled with appropriate updates to the Offering Documents to reflect the relevant provisions on the Sub-Funds.

<sup>15</sup> Please refer to the requirement under rule 160 of the OFC Rules.

<sup>16</sup> Please refer to 8.1(b) of the Code which requires the OFC to specify the terms of issuance and cancellation of shares in the instrument of incorporation.

<sup>17</sup> Please refer to the requirement under 8.1(b) of the Code.

and Regulations, this Instrument, and the Offering Documents<sup>18</sup>. The rights attached to a Class of Shares or Shares of a Sub-Fund shall not be varied except [*please insert the circumstances in which the rights may be varied, subject to compliance with the Laws and Regulations*]<sup>19</sup>.

34. A Class of Shares may be issued with a Class Currency that is different from the Base Currency of the Sub-Fund to which such Class relates. The Net Asset Value per Share of such Class shall be calculated in the Sub-Fund's Base Currency, and converted into the relevant Class Currency at the prevailing market rate (whether official or otherwise) which the Directors shall deem appropriate in the circumstances having regard to any premium or discount which may be relevant and to costs of exchange.
35. The Classes of Shares available for issue at any time are those set out in the Offering Document at that time.
36. [Subject as provided in this Clause, the Company may (but shall not be obliged to) on receipt by it or its duly authorized agent of an application in such form as the Directors may from time to time determine allot and issue Shares of any Class or Classes. Shares shall be treated as having been allotted and issued when the subscriber for those Shares has been entered in the Register.]
37. [No Share of a Class shall be allotted or issued during any period when determination of the Net Asset Value of the Company or the relevant Sub-Fund is suspended, or when the Directors have suspended the issuance of Shares of the relevant Class, pursuant to this Instrument. If determination of the Net Asset Value or the issuance of Shares is so suspended any application for Shares of the relevant Class or Classes shall be similarly suspended. During the period of suspension any application for Shares of such Class or Classes may be withdrawn at the request of the applicant unless otherwise specified in the Offering Documents. Any withdrawal of an application for Shares under this Clause shall be made in writing and shall only be effective if actually received by the Company or its duly authorized agent before termination of the period of suspension. If the application is not so withdrawn the relevant Shares shall be issued on the Dealing Day next following the end of the suspension and dealt with accordingly.]
38. [All moneys payable on or in respect of Shares (including without limitation the subscription and redemption moneys in respect of Shares) shall be paid in the relevant Class Currency or such other currency as the Directors may from time to time reasonably determine. Application moneys other than in the relevant Class Currency may be converted into such Class Currency and all bank charges and other conversion costs will be deducted from the application moneys prior to investment in Shares. Issues of Shares of a Class shall be effected at not less than the Subscription Price for Shares of the relevant Class.]

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<sup>18</sup> Please refer to the requirement under 8.1(b) of the Code.

<sup>19</sup> For product design fairness, it is generally expected that only Shareholders of that share class can vary the rights of that Class of Shares, the variation needs to obtain consent from that Class of Shareholders.

39. [The initial issue of Shares of a Class shall be made on such day as is stated in the Offering Documents. Thereafter, all Shares of a Class shall be allotted on a Dealing Day for Shares of the relevant Class.]
40. [If any application for Shares of a Class is received after the Subscription Deadline in respect of a Dealing Day for the relevant Class then the application will be *[please insert manner in which the application will be handled, which should be compliant with any applicable Laws and Regulations]*.]
41. [Fractions of a Share rounded to *[please insert number of decimal places]* or such other number of decimal places (if any) as specified in the Offering Documents may be issued (unless the Directors otherwise determine generally or for any particular Class or Classes). Any such rounding will be retained for the benefit of the Company.]
42. [Payment shall be made at such time and place and in such manner as the Directors from time to time reasonably determine. If payment is not so received, the Directors may cancel the relevant allotment of Shares. Where Shares are cancelled pursuant to this Clause:
- (a) the relevant Shares are deemed never to have been issued;
  - (b) the Company is not liable to an applicant for any loss, damages, liability, costs or expenses the applicant incurs as a result of such cancellation and the applicant has no right to claim against the Company in respect of such loss, damages, liability, costs or expenses;
  - (c) the Company may charge the applicant (and retain for the account of the relevant Sub-Fund) a cancellation fee of such amount as the Directors may from time to time determine to represent the administrative costs involved in processing the application for such Shares from such applicant.]
43. [Unless the Directors otherwise determine (either generally or for a particular Class or Classes of Shares), the Company will not issue certificates in respect of Shares allotted and issued. Where the Directors determine to issue any certificates in respect of Shares, the certificates shall be issued in such form, and on such terms (including as to their replacement), as the Directors may reasonably determine from time to time.]
44. [The Company may, in respect of the issue of any Shares, pay such brokerage or commission to any person as may be lawful.]
45. [If any application is not accepted in whole or in part, the application moneys or (where an application is accepted in part only) the balance will be returned [(with interest)][(without interest)] by bank draft made out in favour of the applicant (or in the case of joint applicants, the first named) and sent by ordinary post at the risk and expense of the applicant. Funds may also be returned by telegraphic transfer at the discretion of the Company or its delegate and at the risk and expense of the applicant.]



## REDEMPTION OF SHARES

46. Subject to the Laws and Regulations, this Instrument and any restrictions on redemption of Shares in the Company set out in the Offering Documents, [a Shareholder may at any time request the redemption of all or any of the Shareholder's Shares]<sup>20</sup>. [Except as provided in Clause 52, a redemption request once given cannot be revoked without the consent of the Directors.]
47. A redemption request must be made in [*please insert the form in which the request should be made*]/[such form, in such manner and be accompanied by such other documents and information as the Directors may from time to time reasonably require.]
48. [A redemption request received prior to the Redemption Deadline for a Dealing Day will be dealt with on that Dealing Day. A redemption request received after the Redemption Deadline for a Dealing Day will be [*please insert the manner in which the redemption will be handled*].]
49. [The Company may satisfy the redemption request by:
- (a) redeeming the relevant Shares at the Redemption Price applicable to Shares of the relevant Class; or
  - (b) [*please insert any other relevant provision as appropriate to the OFC, provided that such provisions should not be inconsistent with any applicable Laws and Regulations.*]
50. The deferral of any redemptions at a Valuation Point to the next Valuation Point and suspension of redemption is permitted [*please insert the circumstances in which the deferral or suspension will take place, which should be compliant with the Laws and Regulations.*]
51. [Unless the Directors otherwise determine, no redemption of part of a Shareholder's holding of a Class of Shares may be made if as a result the Shareholder would hold less than the Minimum Holding of Shares of the relevant Sub-Fund or relevant Class.]
52. [The right of a Shareholder to have the Shareholder's Shares redeemed pursuant to this Instrument shall be suspended during any period when determination of the Net Asset Value of the Company or the relevant Sub-Fund or the relevant Class is suspended or when the Directors have determined to suspend the redemption of the relevant Class of Shares. Unless stated otherwise in the Offering Documents, during the period of suspension a Shareholder may withdraw any redemption request by notice in writing. Such withdrawal shall only be effective if actually received by the Company or its duly authorized agent before termination of the period of suspension. If the request is not so withdrawn the redemption of the relevant Shares shall be made on the Dealing Day next following the end of the suspension and dealt with accordingly.]

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<sup>20</sup> If the OFC imposes any redemption gates or lock-up period, this should be set out clearly in the Offering Documents and the Instrument should also provide for relevant provisions.

53. [With a view to protecting the interests of all Shareholders of Shares relating to a Sub-Fund, the Directors may limit the total number or total Net Asset Value of Shares of any Sub-Fund which Shareholders are entitled to redeem on any Dealing Day to *[please insert the percentage having regard to compliance with the Laws and Regulations]*. Where the Directors exercise this power:
- (a) subject to paragraph (b), this limitation will be applied pro rata to all Shareholders of Shares relating to the relevant Sub-Fund who have validly requested redemption to be effected on such Dealing Day so that the proportion redeemed of each holding so requested to be redeemed is the same for all such Shareholders;
  - (b) Shares that are not redeemed because of the exercise of this power will be redeemed on the next succeeding Dealing Day for such Shares (subject to any further exercise of this power on any subsequent Dealing Day);
  - (c) any part of a redemption request to which effect is not given by reason of the exercise of this power will be treated as if the request had been made with priority in respect of the next Dealing Day and all following Dealing Days (in relation to which the Directors has the same power) until the original request has been satisfied in full; and
  - (d) if requests for redemption are carried forward pursuant to this Clause, the Directors will give notice to affected Shareholders that the relevant Shares have not been redeemed and that (subject to any further exercise of this power on any subsequent Dealing Day) such Shares will be redeemed on the next succeeding Dealing Day for the relevant Sub-Fund.]
54. [Subject to the Laws and Regulations, the Investment Manager may charge a Redemption Charge on the redemption of Shares of a percentage of either (i) the Redemption Price per Share; or (ii) the total redemption amount in relation to a redemption request, as the Investment Manager may at its discretion determine. The maximum percentage that may be charged is *[please insert percentage]*% or such higher percentage as the Directors may determine with the sanction of a Special Resolution of Shareholders of Shares of the relevant Class affected.]
55. [Subject to the Laws and Regulations, the Redemption Charge will be deducted from the amount payable to a Shareholder in respect of the redemption of Shares. The Redemption Charge shall be retained by the Company for the benefit of the relevant Sub-Fund.]
56. [Amounts payable in respect of the redemption or purchase of the Shares shall be paid to the redeeming Shareholder in the Class Currency of the relevant Class, in such other currencies as may be determined by the Directors at the request or with the agreement of the relevant Shareholder, or in such other manner as set out in the Offering Documents.]
57. [Payment for Shares redeemed or purchased under this Instrument shall be made in accordance with written instructions of the redeeming Shareholder by a cheque, draft,

telegraphic transfer or other means of payment posted (at the risk of the redeeming Shareholder), and subject to the fulfilment of such conditions as may be, reasonably determined by the Directors from time to time. ]

58. [All bank charges and other conversion costs associated with payment of the Redemption Price in the Class Currency (or such other relevant payment currency) to the redeeming Shareholder will be deducted from the redemption proceeds. If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption moneys payable to the redeeming Shareholder the amount of such withholding shall be deducted from the redemption moneys otherwise payable to such person.]
59. [Subject to Clause 52, any amount payable to a redeeming Shareholder upon the redemption or purchase of the Shareholder's Shares shall be paid as soon as practicable but in any event not exceeding [*please insert period*] after the later of (i) the relevant Dealing Day and (ii) the day on which the Company or its duly authorized agents receive the duly completed redemption request and such other documents and information as the Directors may reasonably require.]
60. [Where amounts are payable to a redeeming Shareholder in respect of the redemption of Shares, the Company may:
- (a) delay payment to the Shareholder where:
    - (i) the signature of the Shareholder or (in the case of joint Shareholders) each joint Shareholder on the relevant redemption request has not been verified to the satisfaction of the Company or its duly authorized agents;
    - (ii) the market(s) in which a substantial portion of the investments of the relevant Sub-Fund is made is subject to such legal or regulatory requirements (such as foreign currency controls) rendering the payment of such amounts not practicable, but payment may be delayed only to the extent that additional time is needed in light of the specific circumstances in the relevant markets;
    - (iii) the Shareholder fails to produce any documents or information reasonably required by the Company or its duly authorized agents for the purpose of verification of identity or that are necessary to ensure compliance with the Laws and Regulations, including any anti-money laundering law or regulation;
  - (b) refuse to make payment to the Shareholder if the Company reasonably suspects or is advised that such refusal is necessary to ensure compliance by the Company, the Directors or any Service Providers with any Laws or Regulations, including any anti-money laundering law or regulation, in any relevant jurisdiction.]

61. Upon the removal of the name of a Shareholder from the Register with respect to a redemption, the relevant Share shall be cancelled.
62. [No amount payable to redeeming Shareholder upon the redemption or purchase of the Shareholder's Shares shall bear interest against the Company.]
63. [Unless the Directors otherwise agree or determine, Shares of a Class held by a redeeming Shareholder will be redeemed in the order of their acquisition, so that the first Shares of such Class issued to such Shareholder will be redeemed first.]

### **COMPULSORY REDEMPTION OF SHARES**

64. [If the Directors reasonably suspect that Shares of any Class are owned directly or beneficially by any person:
  - (a) in contravention of any laws or requirements of any country, any governmental authority or any stock exchange on which such Shares are listed;
  - (b) in circumstances (whether directly or indirectly affecting such person and whether taken alone or in conjunction with any other persons, connected or not, or any other circumstances appearing to the Directors to be relevant) which in their opinion might result in the Sub-Fund in relation to such Class of Shares, the Company, the Directors, any Service Provider and/or other Shareholders incurring any liability to taxation or suffering any other pecuniary disadvantage which the Sub-Fund, the Company, the Directors, Service Provider and/or other Shareholders might not otherwise have incurred or suffered; or
  - (c) in breach of any requirements specified in the Offering Documents in relation to such Class of Shares,

the Directors may:

- (i) give notice requiring the relevant Shareholder to transfer the Shares to a person who would not be in contravention of the above restrictions within [30] days of the date of the notice; or
  - (ii) take such other actions as they reasonably believe are required by the Laws and Regulations. ]
65. [Where:
  - (a) the Directors have given notice pursuant to Clause 64(c)(i); and
  - (b) the Shareholder has failed to either (i) transfer the relevant Shares prior to expiry of the notice, or (ii) establish to the reasonable satisfaction of the Directors (whose judgment is final and binding) that the relevant Shares are not held in contravention of any of the restrictions in Clause 64,

the Shareholder is deemed to have given a redemption request in respect of the relevant Shares on the expiry of the notice.]

66. [Subject to the Laws and Regulations, the Directors may deem a Shareholder to have given a redemption request in respect of Shares held by such Shareholder:
- (a) on the termination date or maturity date of a Sub-Fund having a fixed life or maturity date, in respect of Shares relating to such Sub-Fund;
  - (b) in order to give effect to the termination of a Sub-Fund or the termination of a Class of Shares pursuant to [*please insert Clauses under the heading of Termination Otherwise Than By Winding Up below*];
  - (c) where the Shareholder has refused or failed to provide or produce to the satisfaction of the Company or its duly authorized agent(s) any document or information reasonably required to ensure compliance with the Laws and Regulations; or
  - (d) where the Company or its duly authorized agent(s) are not able to confirm the identity of the Shareholder to their reasonable satisfaction.]

#### [CONVERSION OF SHARES]

67. [Subject to the Laws and Regulations, this Instrument and any restrictions on conversion of Shares in the Company set out in the Offering Documents, where Shares are issued in more than one Class, Shareholders may convert all or part of their holding of Shares of any Class of a Sub-Fund (the “**Existing Class**”) into Shares of any other Class of the same Sub-Fund or of another Sub-Fund (the “**New Class**”). The following provisions shall apply to any such conversion: [*please insert the terms and conditions of such conversion*]]
68. [Shares shall not be converted during any period when the determination of the Net Asset Value of any relevant Sub-Fund is suspended pursuant to this Instrument or when the Directors have determined that subscriptions for Shares of the New Class or redemptions of Shares of the Existing Class are closed.]

#### VALUATION

69. [Except when determination of the Net Asset Value has been suspended pursuant to Clause 73,] the Valuation Agent shall determine the Net Asset Value of the Company, each Sub-Fund and each Class of Shares in accordance with the Laws and Regulations and, subject thereto, in accordance with [the Schedule to] this Instrument as at each Valuation Point and on such other occasions as may be required by this Instrument <sup>21</sup>.
70. If Shares of a Class are to be issued or sold on any Dealing Day, the Valuation Agent shall ascertain the Subscription Price of a Share of the relevant Class for that Dealing Day. If Shares of a Class are to be redeemed or converted on any Dealing Day, the

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<sup>21</sup> Please refer to the requirement under section 112P(3) and (4) of the SFO.

Valuation Agent shall ascertain the Redemption Price of a Share of the relevant Class for that Dealing Day.

71. [Any certificate as to the Net Asset Value or as to the Subscription Price or Redemption Price per Share of any Class given in good faith by or on behalf of the Valuation Agent shall be binding on all parties.]
72. Notwithstanding any other provisions in this Instrument, the Investment Manager may adjust the value of any cash, deposits and/or investments or permit some other method of valuation to be used if such adjustment is required to reflect the fair value provided that such adjustment may only be made in compliance with the Laws and Regulations.<sup>22</sup>

### **SUSPENSION OF VALUATION**

73. Subject to the Laws and Regulations, the Directors may suspend the determination of the Net Asset Value of the Company or of any Sub-Fund or of any Class of Shares, the allotment or the issuance of Shares of any Class and/or the right of Shareholders to redeem or switch Shares of any Class and/or the payment of the Redemption Price for the whole or any part of any period:
  - (a) [during which there is a closure (other than customary weekend and holiday closing) of or the restriction or suspension of trading on any Securities Market on which a substantial part of the investments of the Company or a Sub-Fund is normally traded;
  - (b) during which for any other reason the prices of investments held or contracted for by the Company or a Sub-Fund cannot, in the opinion of the Directors, reasonably, promptly or fairly be ascertained;
  - (c) when circumstances exist as a result of which in the opinion of the Directors it is not reasonably practicable for the Company to realise a substantial part of the investments held or contracted for the account of the Company or a Sub-Fund or it is not possible to do so without seriously prejudicing the interests of Shareholders of the relevant Class;
  - (d) during which the remittance or repatriation of funds which will or may be involved in the realisation of, or in the payment for, a substantial part of the investments of the Company or a Sub-Fund or the issue or redemption of Shares of the relevant Class is delayed or cannot, in the opinion of the Directors, be carried out promptly at normal rates of exchange;
  - (e) when a breakdown in the systems and/or means of communication usually employed in ascertaining the value of investments or the Net Asset Value or the Subscription Price or Redemption Price per Share of any Class or when for any other reason the value of any of the investments or the Net Asset Value of the Company or a Sub-Fund or the Subscription Price or the Redemption Price per

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<sup>22</sup> Please refer to the requirement under Section 5 of Annex 1 to the “Guide on Practices and Procedures for Application for Authorization of Unit Trusts and Mutual Funds”.

Share of any Class cannot in the opinion of the Directors reasonably or fairly be ascertained or cannot be ascertained in a prompt or accurate manner;

- (f) when in the opinion of the Directors such suspension, delay or extension is required by law or applicable legal process or the issue, redemption or transfer of Shares would result in the violation of any applicable law;
- (g) where the Company or a Sub-Fund is invested in one or more collective investment schemes and the realisation of interests in any relevant collective investment scheme(s) (representing a substantial portion of the assets of the Company or that Sub-Fund) is suspended or restricted; or
- (h) during which the business operations of the Manager, [the Administrator,] the Custodian or their delegates in respect of the Company are substantially interrupted or closed as a result of or arising from sabotage, storm, tempest, typhoon, earthquake, accident, fire, flood, explosion, toxicity, radioactivity, acts of God, act of any government or other competent authority, hostilities (whether war be declared or not), act of terrorism, riot, civil commotion, strikes or industrial action of any kind, insurrection, rebellion or other cause, which is beyond the reasonable control of the relevant party.]

74. During a period of suspension—

- (a) where the suspension is in respect of the determination of the Net Asset Value, there shall be no determination of the Net Asset Value of the Company or the relevant Sub-Fund or the relevant Class (as applicable) (although an estimated Net Asset Value may be calculated and published) and any application for issue or request for redemption of Shares of the Company or the relevant Sub-Fund or the relevant Class (as applicable) shall be similarly suspended; and
- (b) where the suspension is in respect of the allotment or issue and/or the redemption of Shares of a Class, there shall be no allotment, issue and/or redemption of Shares of that Class. For the avoidance of doubt, the allotment, issue or redemption of Shares of a Class may be suspended without suspending the determination of the Net Asset Value.

75. Any such suspension shall take effect at such time as the Directors shall declare but not later than the close of business on the Business Day next following the declaration, and there shall be no determination of the Net Asset Value of the Company or of the relevant Sub-Fund or of the relevant Class and/or the issuance of Shares of the relevant Class and/or the redemption of Shares of the relevant Class by Shareholders (as the case may be) until the Directors shall declare the suspension at an end, except that such suspension shall terminate in any event on the first Business Day on which:

- (a) the condition giving rise to the suspension shall have ceased to exist; and
- (b) no other condition under which suspension is authorized under this Clause shall exist.

76. Each declaration by the Directors pursuant to Clause 75 shall be consistent with the Laws and Regulations.
77. Whenever the Directors shall declare a suspension under Clause 75, the Directors (i) shall, immediately after any such declaration notify the SFC of such suspension; and (ii) shall, immediately after any such declaration and at least once a month during the period of such suspension, publish in an appropriate manner that such declaration has been made.

#### **TITLE TO SHARES<sup>23</sup>**

78. Title to Shares shall be evidenced by an entry in the Register of Shareholders.
79. Where a Shareholder requests in writing to the Company that his name be entered in the Register of Shareholders in respect of the Shares, the Company shall, upon provision to the Company [*please insert relevant documents required*]/[such documents as the Directors may reasonably require], enter the name of that Shareholder in the Register of Shareholders in respect of those Shares.
80. [The Company shall not be bound to register more than [*please insert the number of persons*] persons as joint Shareholders of any Share (except in the case of executors or trustees of a deceased Member) provided that if [*please insert the number of persons*] persons are registered as joint Shareholders of any Share, any one of them may give an effectual receipt for any dividend or other moneys payable in respect of such Share.]
81. [Except as ordered by a court of competent jurisdiction or as required by law, no person shall be recognised by the Company as holding any Share upon any trust. The Company shall not be bound by or required in any way to recognise (even when having notice of) any equitable, contingent, future or partial interest in any Share, or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any Share except an absolute right to the entirety thereof in the registered Shareholder.]

#### **[LIENS ON SHARES]**

82. [The Company shall have a first and paramount lien on every Share (not being a fully paid Share) for all moneys, whether presently payable or not, called or payable, at a date fixed by or in accordance with the terms of issue of such Share, in respect of such Share, and the Company shall also have a first and paramount lien on every Share (other than a fully paid Share) standing registered in the name of a single Shareholder for all the debts and liabilities of such Shareholder or the Shareholder's estate to the Company. The Company's lien on a Share shall extend to all dividends payable on such Share. The Directors may at any time either generally or in any particular case reasonably waive any lien that has arisen, or reasonably declare any Share to be wholly or in part exempt from the provisions of this Clause.]

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<sup>23</sup> Please refer to the requirements under rules 60 to 72 of the OFC Rules.



83. [The Company may sell, in such manner as the Directors may think fit, any Share on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of [14] days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable and giving notice of the intention to sell in default of such payment, has been given to the registered Shareholder for the time being of the Share, or the person entitled thereto by reason of his death or bankruptcy. ]
84. [The net proceeds of the sale by the Company of any Share on which it has a lien shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the Share prior to the sale) be paid to the person entitled to the Share at the date of the sale. To give effect to any such sale, the Directors may authorize some person to transfer the Share sold to the purchaser thereof. The purchaser shall be registered as the Shareholder of the Share comprised in any such transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the sale.]

#### **CALLS ON SHARES**

85. The Directors may from time to time make calls upon the Shareholders in respect of any moneys unpaid on their Shares and not by the conditions of allotment thereof made payable at [fixed times]. Each Shareholder shall (subject to the Company serving upon the Shareholder at least [14] days' notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified the amount called on the Shareholder's Shares. [A call may be revoked or postponed as the Directors may reasonably determine.]
86. The joint Shareholders of a Share shall be jointly and severally liable to pay all calls in respect of such Share.
87. [If a sum called in respect of a Share is not be paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate not exceeding [*please insert percentage number*]% per annum as the Directors may reasonably determine, but the Directors shall be at liberty to waive payment of such interest wholly or in part.]
88. [The Directors may on the issue of Shares differentiate between the allottees or Shareholders as to the amount of calls to be paid and the times of payment].
89. No Shareholder shall be entitled to receive any dividend, or (unless the Directors otherwise determine) to be present or vote at any general meeting, either personally or (save as proxy for another Shareholder) by proxy or to exercise any privilege as a Shareholder, or be reckoned in a quorum, until the Shareholder has been entered on the Register [and shall have paid all calls or other sums for the time being due and payable on every Share held by the Shareholder, whether alone or jointly with any

other person, together with any accrued interest and any costs, charges and expenses incurred by the Company by reason of any non-payment.]

#### **TRANSFER AND TRANSMISSION OF SHARES<sup>24</sup>**

90. Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of both the transferor and the transferee.
91. [A reasonable fee]/[No fee]<sup>25</sup> may be charged by the Company for registering any instrument of transfer or other document relating to or affecting the title to any Share.
92. The Company may retain any instrument of transfer that is registered.
93. The transferor remains the Shareholder of a Share until the transferee's name is entered in the Register of Shareholders as Shareholder of it.
94. Any person who intends to acquire Shares by way of transfer shall provide to the Directors or to such person as the Directors may authorize for this purpose such information and documents as the Directors or such person may request:
  - (a) to enable the Directors or such person to determine that the proposed transferee is eligible to hold Shares and complies with such other restrictions (if any) as are imposed by the Directors on the Shareholders pursuant to this Instrument; and
  - (b) (concerning the establishment or verification of that person's identity or otherwise) to enable the Company to comply with all Laws and Regulations, including any anti-money laundering law or regulation.
95. The Directors may refuse to register the transfer of a Share if—
  - (a) [the transferee fails to provide any information or documents requested pursuant to Clause 94];
  - (b) [the transfer would result in either the transferor or the transferee holding less than the Minimum Holding of Shares];
  - (c) the transfer would result in a contravention of any Laws or Regulations or any provision of this Instrument, or would produce a result inconsistent with any provision of the Offering Documents;
  - (d) the instrument of transfer is not lodged at the Company's registered office or another place that the Directors have appointed for this purpose; [or]
  - (e) [the instrument of transfer is not accompanied by evidence the Directors reasonably require to show the transferor's right to make the transfer, or

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<sup>24</sup> Please refer to the requirements under rules 60 to 72 of the OFC Rules.

<sup>25</sup> If the OFC is to impose any fee for such registration, such fee should be a reasonable fee.

evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf]

96. If the Directors refuse to register the transfer of a Share—
- (a) the transferor or transferee may request a statement of the reasons for the refusal; and
  - (b) the instrument of transfer must be returned to the transferor or transferee who lodged it unless the Directors suspect that the proposed transfer may be fraudulent.
97. Upon the occurrence of Clause 95, subject to the Laws and Regulations, the instrument of transfer must be returned in accordance with Clause 96(b) together with a notice of refusal within two months after the date on which the instrument of transfer was lodged with the Company.
98. If a request is made under Clause 96(a), the Directors must, within 28 days after receiving the request—
- (a) send the transferor or transferee who made the request a statement of the reasons for the refusal; or
  - (b) register the transfer.
99. [If a Shareholder dies, the Company may only recognize the following person or persons as having any title to a Share of the deceased Shareholder—
- (a) if the deceased Shareholder was a joint Shareholder of the Share, the surviving Shareholder or Shareholders of the Share; and
  - (b) if the deceased Shareholder was a sole Shareholder of the Share, the legal personal representative of the deceased Shareholder.

Nothing in this Clause releases the estate of a deceased Shareholder (whether a sole or a joint Shareholder) from any liability in respect of any Share held by the Shareholder.]

100. If a transmittee produces evidence of entitlement to the Share as the Directors properly require, the transmittee may, subject to this Instrument, choose to become the Shareholder of the Share or to have the Share transferred to another person.
101. A transmittee is entitled to the same dividends and other advantages to which the transmittee would be entitled if the transmittee were the Shareholder of the Share, except that the transmittee is not, before being registered as a Shareholder in respect of the Share, entitled in respect of it to exercise any right conferred by shareholdership in relation to meetings of the Company.
102. The Directors may at any time give notice requiring a transmittee to choose to become the Shareholder of the Share or to have the Share transferred to another person.

103. If a transmittee chooses to become the Shareholder of a Share, the transmittee must notify the Company in writing of the choice.
104. Within 2 months after receiving the notice under Clause 103, the Directors must—
  - (a) register the transmittee as the Shareholder of the Share; or
  - (b) send the transmittee a notice of refusal of registration.
105. If the Directors refuse registration, the transmittee may request a statement of the reasons for the refusal.
106. If a request is made under Clause 105, the Directors must, within 28 days after receiving the request—
  - (a) send the transmittee a statement of the reasons for the refusal; or
  - (b) register the transmittee as the Shareholder of the Share.
107. [If the transmittee chooses to have the Share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.]
108. [All the limitations, restrictions and other provisions of this Instrument relating to the right to transfer and the registration of transfer of Shares apply to the notice under Clause 103 or the transfer under Clause 107, as if the transmission had not occurred and the transfer were a transfer made by the Shareholder of the Share before the transmission.]
109. [If a notice is given to a Shareholder in respect of shares and a transmittee is entitled to those Shares, the transmittee is bound by the notice if it was given to the Shareholder before the transmittee's name has been entered in the Register of Shareholders.]

#### **REGISTER OF SHAREHOLDERS<sup>26</sup>**

110. The Directors shall provide for the keeping of the Register in such place as the Directors may from time to time determine [and for such purpose may appoint any person to maintain the Register on such terms (including as to remuneration) as the Directors may from time to time determine. Such person as may be appointed shall be obligated to enter or procure the entry on the Register of all particulars of Shareholders and their shareholdings in the Company as may be required by Laws and Regulations and this Instrument and may, with the consent of the Directors, appoint any other person to assist in the performance of part or all of its functions under this Clause].

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<sup>26</sup> Please refer to the requirement under rule 69 of the OFC Rules. Please also take note of the requirement under rule 70 of the OFC Rules.

111. A Shareholder is entitled, on request and without charge (a) to inspect entries in the Register of Shareholders relating to the Shareholder [during normal business hours]; and (b) to be provided with a copy of the entries.
112. Each of the Custodian and the Investment Manager are entitled, on request and without charge, to inspect the Register of Shareholders [during normal business hours] and to be provided with a copy of such part(s) of the Register on request without charge.
113. The Register may be closed at such times and for such periods as the Directors may from time to time determine, provided that it shall not be closed for more than 30 days in any one year and reasonable prior notice, as stated in the Offering Documents, shall be provided to Shareholders in respect of such closure<sup>27</sup>.
114. If a person is entitled to be provided with a copy of the whole or any part of any company records of the Company upon request under this Instrument or the Laws and Regulations, the Company must, within [10] Business Days after the date of receipt of the request, provide the copy to the person.

#### **GENERAL MEETINGS<sup>28</sup>**

115. The Directors may, if they think fit, call a general meeting. [If the possibility exists of a conflict of interest between different Sub-Funds or different Classes of Shareholders in relation to any matter to be considered at a general meeting, the Directors must call separate meetings of the Sub-Funds or Classes (as applicable), provided that where the interests of 2 or more Sub-Funds or 2 or more Classes of Shareholders in relation to the matter to be considered are the same, a combined meeting of such Sub-Funds or Classes (as applicable) may be called.]
116. [*In the case of a Company which holds an annual general meeting, to include the following Clause: “The Company must, in respect of each financial year of the Company, hold a general meeting as its annual general meeting within [6]<sup>29</sup> months after the end of its Accounting Period.”*]
117. The Shareholders of the Company may request the Directors to call a general meeting. [Such request must be in writing, must state the objects of the meeting and must be signed by the Shareholders making the request.]
118. The Directors are required to call a general meeting if the Company has received requests to do so from Shareholders of the Company representing at least 10% of the total voting rights of all the Shareholders having a right to vote at general meetings.
119. If the Directors are required to call a general meeting under Clause 118, they must call the general meeting in accordance with Part 5 of the OFC Rules.

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<sup>27</sup> Please refer to the requirement under rule 70 of the OFC Rules.

<sup>28</sup> Please refer to the requirements under rules 73 to 77 of the OFC Rules, and 8.1(a) of the Code.

<sup>29</sup> For a private OFC which will hold annual general meetings, it is generally expected that such meetings will be held within 6 months or shorter after the end of its Accounting Period.

120. If the Directors do not call a general meeting in accordance with Rule 74 of the OFC Rules, the Shareholders who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with Rule 75 of the OFC Rules.

### NOTICE OF GENERAL MEETINGS<sup>30</sup>

121. A general meeting must be called by notice of at least 14 days in writing<sup>31</sup>.
122. [In the case of a Company which holds an annual general meeting, to include the following Clause: “An annual general meeting must be called by notice of at least 21 days in writing<sup>32</sup>.”]
123. The notice is exclusive of—
- (a) the day on which it is served or deemed to be served; and
  - (b) the day for which it is given.
124. The notice must—
- (a) specify the date and time of the meeting;
  - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
  - (c) state the general nature of the business to be dealt with at the meeting;
  - (d) if a resolution (whether or not a Special Resolution) is intended to be moved at the meeting—
    - (i) include notice of the resolution; and
    - (ii) include or be accompanied by a statement containing any information or explanation (if any) that is reasonably necessary to indicate the purpose of the resolution;
  - (e) if a Special Resolution is intended to be moved at the meeting, specify the intention and include the text of the Special Resolution; and
  - (f) contain a statement specifying a Shareholder’s right to appoint a proxy under [please insert Clauses under the heading of “Proxy” below].

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<sup>30</sup> Please refer to the requirements under rules 78 to 83 of the OFC Rules and 8.1 and 8.2 of the Code.

<sup>31</sup> Please refer to the requirement under rule 78(2) of the OFC Rules.

<sup>32</sup> For the avoidance of doubt, an OFC is not required to include this Clause if it does not hold an annual general meeting, but is mandatory if it holds an annual general meeting, corresponding to the requirement under 8.2(b) of the Code.

- (g) *[in the case of a Company with an annual general meeting, to include the following Clause: “A notice calling an annual general meeting shall state that the meeting is an annual general meeting.”]*
125. Notice of a general meeting must be given to:<sup>33</sup>
- (a) every Shareholder;
  - (b) every Director;
  - (c) the Investment Manager; and
  - (d) the Custodian.
126. In Clause 125, the reference to a Shareholder includes a transmittee, if the Company has been notified of the transmittee’s entitlement to a Share.
127. If notice of a general meeting or any other document relating to the meeting is required to be given to a Shareholder, the Company shall give a copy of it to its Auditor (and if more than one Auditor, to every one of them) at the same time as the notice or the other document is given to the Shareholder.
128. Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

### **PROXY**

129. A Shareholder is entitled to appoint another person (whether a Shareholder or not) as a proxy to exercise all or any of the Shareholder’s rights to attend and to speak and vote at a general meeting of the Company.
130. A proxy may only validly be appointed by a notice (“**proxy notice**”) in writing that—
- (a) states the name and address of the Shareholder appointing the proxy;
  - (b) identifies the person appointed to be that Shareholder’s proxy and the general meeting in relation to which that person is appointed;
  - (c) is authenticated in such manner as the Directors may reasonably require, or is signed on behalf of the Shareholder appointing the proxy; and
  - (d) is delivered to the Company in accordance with this Instrument and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.
131. [The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes. ]

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<sup>33</sup> Please refer to the requirement under rule 79 of the OFC Rules.

132. [A proxy notice may specify how the proxy appointed under it is to vote (or that the proxy is to abstain from voting) on one or more resolutions dealing with any business to be transacted at a general meeting.]
133. [Unless a proxy notice indicates otherwise, it must be regarded as—
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the general meeting; and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.]
134. [Where a proxy notice purports to be signed on behalf of a Shareholder which is a corporation by an officer of the corporation, it is presumed, unless the contrary appears, that such officer was duly authorized to sign such proxy notice on behalf of the corporation without further evidence of the fact.]
135. [If a proxy notice is not authenticated in such manner as the Directors may reasonably require, it must be accompanied by written evidence of the authority of the person who executed the appointment to execute it on behalf of the Shareholder appointing the proxy.]
136. A proxy notice does not take effect unless it is received by the Company—
- (a) for a general meeting or adjourned general meeting, at least [48] hours before the time appointed for holding the meeting or adjourned meeting; or
  - (b) for a poll taken more than [48] hours after it was demanded, at least [24] hours before the time appointed for taking the poll; or
  - (c) [delivered to the chairperson of the meeting on the day and at the place, but before the start, of the meeting or the adjourned meeting or poll.]
137. [An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given. A notice revoking the appointment only takes effect if it is:
- (a) received by the Company at least [24] hours before the time appointed for holding the meeting or adjourned meeting or (for a poll taken more than [48] hours after it was demanded) for taking the poll; or
  - (b) delivered to the chairperson of the meeting on the day and at the place, but before the start, of the meeting or adjourned meeting or (for a poll taken more than [48] hours after it was demanded) the poll.]
138. [A proxy's authority in relation to a resolution is to be regarded as revoked if the Shareholder who has appointed the proxy:



- (a) attends in person the general meeting at which the resolution is to be decided; and
  - (b) exercises, in relation to the resolution, the voting right attached to the Shares in respect of which the proxy is appointed.]
139. [A proxy notice shall cease to be valid after the expiration of [12 months] from the date named in it as the date of its execution.]
140. [A Shareholder who is entitled to attend, speak or vote at a general meeting remains so entitled in respect of the meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of the Shareholder.]
141. [A vote given in accordance with the terms of a proxy notice is valid despite:
- (a) subject to Clause 141, the previous death or mental incapacity of the Shareholder appointing the proxy;
  - (b) the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy is executed; or
  - (c) the transfer of the Share in respect of which the proxy is appointed.]
142. [Clause 141 does not apply if notice in writing of the death, mental incapacity, revocation or transfer is:
- (a) received by the Company at least [24] hours before the time appointed for holding the meeting or adjourned meeting or (for a poll taken more than [48] hours after it was demanded) for taking the poll; or
  - (b) delivered to the chairperson of the meeting on the day and at the place, but before the start, of the meeting or adjourned meeting or (for a poll taken more than [48] hours after it was demanded) the poll.]
143. [Anything which under this Instrument a Shareholder may do by proxy the Shareholder may likewise do by a duly appointed attorney and the provisions of this Instrument relating to proxies and instruments appointing proxies apply *mutatis mutandis* in relation to any such attorney and, subject to any rule of law applicable thereto, to the instrument under which such attorney is appointed.]
144. [Any corporation which is a Shareholder of the Company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the Company or of any Sub-Fund or of any Class of Shares of the Company. The person so authorized is entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Shareholder of the Company and such corporation is for the purposes of

this Instrument deemed to be present in person at any such meeting if a person so authorized is present at such meeting<sup>34</sup>.]

### **ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

145. [A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.]
146. The Custodian and Investment Manager shall be entitled to appoint a representative to attend and speak on their behalf at a general meeting on any part of the business of the meeting that concerns the Custodian as the Custodian of the Company or the Investment Manager as the Investment Manager of the Company.
147. A person is able to exercise the right to vote at a general meeting when—
  - (a) the person is able to vote, during the meeting, on resolutions put to vote at the meeting; and
  - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
148. [The Directors may make such arrangements they consider appropriate [(including, without limiting the generality of the foregoing, by telephone or video conferencing)] to enable those attending a general meeting to exercise their rights to speak or vote at it.]
149. [In determining attendance at a general meeting, it is immaterial whether any two or more Shareholders attending it are in the same place as each other.]
150. [Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.]

### **QUORUM FOR GENERAL MEETINGS<sup>35</sup>**

151. Two Shareholders present in person or by proxy constitute a quorum at a general meeting.<sup>36</sup>
152. No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

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<sup>34</sup> Please refer to the requirement under rule 85 of the OFC Rules.

<sup>35</sup> Please refer to the requirement under 8.1(a) of the Code.

<sup>36</sup> Please refer to the requirement under 8.2(a) of the Code.

## **CHAIRING GENERAL MEETINGS**

153. [If the chairperson (if any) of the board of Directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
154. The Directors present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) there is no chairperson of the board of Directors;
  - (b) the chairperson is not present within [15] minutes after the time appointed for holding the meeting;
  - (c) the chairperson is unwilling to act; or
  - (d) the chairperson has given notice to the Company of the intention not to attend the meeting.
155. The Shareholders present at a general meeting must elect one of themselves to be the chairperson if—
  - (a) no Director is willing to act as chairperson; or
  - (b) no Director is present within [15] minutes after the time appointed for holding the meeting.]

## **ADJOURNMENT OF GENERAL MEETINGS**

156. If a quorum is not present within [half an hour] from the time appointed for holding a general meeting, the meeting must be adjourned for not less than [15] days[, at the same time and place, or to another day and at another time and place that the Directors may reasonably determine].
157. The chairperson may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting for not less than 15 days[, at the same time and place, or to another day and at another time and place that the Directors may reasonably determine].
158. The quorum at an adjourned meeting will be those Shareholders present at the adjourned meeting in person or by proxy.
159. When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.
160. [If a general meeting is adjourned for [30] days or more, not less than [seven] days' notice of the adjourned meeting must be given.]
161. [The business to be transacted at any adjourned meeting shall be limited to business which might lawfully have been transacted at the meeting from which the adjournment took place.]

## GENERAL RULES ON VOTING<sup>37</sup>

162. A resolution put to the vote of a general meeting may be decided on a show of hands or by a poll in accordance with this Instrument.
163. [If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.]
164. On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
- (a) has or has not been passed; or
  - (b) has passed by a particular majority,
- is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
165. An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.
166. [A person entitled to more than one vote on a poll need not use all the person's votes or cast all the votes the person uses in the same way.]
167. [Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid. Any objection must be referred to the chairperson of the meeting whose decision is final].

## DEMANDING A POLL

168. A poll on a resolution may be demanded—
- (a) in advance of the general meeting where it is to be put to the vote; or
  - (b) at a general meeting.
169. A poll on a resolution may be demanded by<sup>38</sup>—
- (a) the chairperson of the meeting;

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<sup>37</sup> Please refer to the requirement under rule 87(2) of the OFC Rules, which provide that for the purpose of the valid passing of a resolution, the OFC Rules will prevail in the event of any inconsistency between the instrument of incorporation and the OFC Rules.

<sup>38</sup> It is generally expected that the instrument of incorporation would not have a provision the effect of which is to exclude the right to demand a poll at a general meeting on any question other than (a) the election of the chairperson of the meeting; or (b) the adjournment of the meeting. The provisions are also not expected to have the effect of making ineffective a demand for a poll at a general meeting made (i) by at least 5 shareholders having the right to vote at the meeting; or (ii) by a shareholder or shareholders representing at least 5% of the total voting rights of all the shareholders having the right to vote at the meeting; or (iii) by the chairperson of the meeting (save for a question in respect of chairperson-election of the meeting and meeting-adjournment).

- (b) at least [two] Shareholders present in person or by proxy; or
  - (c) any Shareholder or Shareholders present in person or by proxy and representing at least 5% of the total voting rights of all the Shareholders having the right to vote at the meeting.
170. [If, before or on the declaration of the result on a show of hands, the chairperson of the meeting knows from the proxies received by the Company that the result on a show of hands will be different from that on a poll, the chairperson must demand a poll.]
171. The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.
172. A demand for a poll on a resolution may be withdrawn.
173. [If a poll is required, it must be taken in such manner (including the use of ballot or voting papers or tickets) as the chairperson of the meeting may direct, and the result of the poll must be deemed to be the resolution of the meeting at which the poll was demanded. The chairperson of the meeting may (and if so directed by the meeting must) appoint scrutineers and may adjourn the meeting to some place, day and time fixed by the chairperson for the purpose of declaring the result of the poll.]
174. [A poll demanded on the choice of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such subsequent time (not being more than [30] days from the date of the meeting) and place as the chairperson may direct. The demand for a poll must not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.]

#### **NUMBER OF VOTES A MEMBER HAS**

175. [On a vote on a resolution on a show of hands at a general meeting—
- (a) every Shareholder present in person has 1 vote; and
  - (b) every proxy present who has been duly appointed by a Shareholder entitled to vote on the resolution has 1 vote.]
176. [If a Shareholder appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.]
177. [On a vote on a resolution on a poll taken at a general meeting—
- (a) every Shareholder present in person has 1 vote for each Share held by him or her; and
  - (b) every proxy present who has been duly appointed by a Shareholder has 1 vote for each Share in respect of which the proxy is appointed.]

178. Clauses under this Part on the number of votes of a Shareholder has have effect subject to the Laws and Regulations and any rights or restrictions attached to any Shares or Class of Shares.

#### **[VOTES OF JOINT HOLDERS OF SHARES]**

179. [For joint Shareholders, only the vote of the most senior Shareholder who votes (and any proxies duly authorized by the Shareholder) may be counted.]
180. [For the purposes of Clause [179], the seniority of a Shareholder of a Share is determined by the order in which the names of the joint Shareholders appear in the Register of Shareholders.]

#### **MEETING PROCEEDINGS - SUB-FUNDS AND CLASS MEETINGS**

181. The provisions of this Instrument which relate to proceedings at general meetings shall apply mutatis mutandis to Class meetings and Sub-Fund meetings as they apply to general meetings.
182. A meeting of Shareholders or a Sub-Fund meeting or a Class meeting (as the case may be) duly convened and held shall have the power by the passing of the appropriate resolution to decide any matter (including, without limitation, the suspension or curtailment of the powers of the Directors), subject to the Laws and Regulations and (in the case of Sub-Fund meetings and Class meetings) subject also to any rights in relation to that matter which Shareholders of other Sub-Funds or Classes may have.

#### **WRITTEN RESOLUTIONS<sup>39</sup>**

183. Anything that may be done by a resolution passed at a general meeting or Class meeting or Sub-Fund meeting may be done, without a meeting and without any previous notice being required, by a written resolution of the Shareholders of the Company or of the relevant Class or Sub-Fund (as the case may be), save for the removal of an Auditor or a Director before the Auditor or the Director's term of office.
184. A resolution may be proposed as a written resolution by the Directors or the Shareholders representing not less than 5% of the total voting rights of all the Shareholders entitled to vote on the resolution at the relevant meeting of the Company, relevant Sub-Fund or relevant Class of Shares (as the case may be).
185. If a resolution is proposed as a written resolution, a copy of the resolution shall be sent to all the Shareholders of the Company in hard copy form or in electronic form or by making the copy available on a website as supplied by the Company and previously notified to the Shareholders.
186. The Company shall send the copies (or if copies are sent to Shareholders on different days, the first of those copies) of the proposed resolution to the Shareholders not more

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<sup>39</sup> Please refer to the requirements under rules 90 to 95 of the OFC Rules.

than [21] days after the Directors proposed a resolution as a written resolution, or after a resolution is proposed under Clause 184.

187. The Company shall, on or before the circulation date, send to the Auditor, the Investment Manager and the Custodian a copy of—
- (a) the resolution; and
  - (b) any other document relating to the resolution that is to be sent to Shareholders together with that resolution.
188. A written resolution is passed when all eligible Shareholders of the Company have signified their agreement to it, such eligible Shareholders being Shareholders who would have been entitled to vote on the proposed written resolution on the circulation date of the resolution.
189. A Shareholder's agreement to a written resolution, once signified, may not be revoked. A Shareholder signifies agreement to a proposed written resolution when the Company receives from the Shareholder (or from the Shareholder's duly authorized representative) a document—
- (a) identifying the resolution to which it relates; and
  - (b) indicating the Shareholder's agreement to the resolution.
190. A proposed written resolution lapses if it is not passed before the end of the period of [28] days beginning on the circulation date.
191. If a resolution is passed as a written resolution, the Company must, within 15 days after the resolution is passed, send a notice of this fact to—
- (a) every Shareholder;
  - (b) the Auditor;
  - (c) the Investment Manager; and
  - (d) the Custodian.

#### **RECORDS OF RESOLUTIONS AND MEETINGS<sup>40</sup>**

192. The Company shall:
- (a) in respect of a resolution decided on a poll taken at a general meeting, record in the minutes of proceedings of the general meeting the result of the poll, the total number of votes that could be cast on the resolution, the number of votes in favour of the resolution, and the number of votes against the resolution;
  - (b) keep minutes of all proceedings of general meetings; and

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<sup>40</sup> Please refer to the requirement under rule 96 of the OFC Rules and 8.1(a) of the Code.

- (c) keep copies of all resolutions of shareholders passed otherwise than at general meetings (as well as minutes and resolutions for all Sub-Fund meeting or Class meetings, as the case may be)

for at least 10 years from the date of the resolution or meeting.

## **DIRECTORS**

- 193. Subject to the Laws and Regulations and this Instrument, the business and affairs of the Company are managed by the Directors, who may exercise all the powers of the Company, and the powers given by this Clause are not limited by any other power given to the Directors by this Instrument.
- 194. No provision in this Instrument shall be construed as (i) providing any exemption of any liability of the Directors to the Shareholders under Hong Kong law<sup>41</sup>, nor may the Directors be indemnified against such liability by Shareholders or at the Shareholders' expense, (ii) diminishing or exempting the directors from any of their duties and liabilities under the Laws and Regulations, and the letters of appointment of the Directors shall not contain any provision to the effect of providing any such exemption or indemnity<sup>42</sup>.
- 195. An alteration of this Instrument does not invalidate any prior act of the Directors that would have been valid if the alteration had not been made.
- 196. A Directors' meeting at which a quorum is present may exercise all powers exercisable by the Directors.
- 197. [The Shareholders may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.]
- 198. [A Special Resolution under Clause [197] does not invalidate anything that the Directors have done before the passing of the Special Resolution.]
- 199. [Subject to the Laws and Regulations and this Instrument, the Directors may, if they think fit, delegate any of the powers that are conferred on them under this Instrument—
  - (a) to any person or committee of persons;
  - (b) by any means (including by power of attorney);
  - (c) to any extent, for any period and without territorial limit;
  - (d) in relation to any matter; and
  - (e) on any terms and conditions.]

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<sup>41</sup> Please refer to the requirement under section 112ZC of the SFO.

<sup>42</sup> Please refer to section 112ZC of the SFO.



200. [If the Directors so specify, the delegation may authorize further delegation of the Directors' powers by any person to whom they are delegated.]
201. [The Directors may—
- (a) revoke, annul or alter the delegation wholly or in part;
  - (b) revoke, annul or alter its terms and conditions; or
  - (c) remove any delegate so appointed,
- but no person dealing in good faith and without notice of any such revocation, annulment or alteration may be affected thereby.]
202. [A decision of the Directors may only be taken—
- (a) by a majority of the Directors at a meeting; or
  - (b) in accordance with [*please insert the Clauses on unanimous decisions below*] (in which case it is as effective as a resolution passed at a meeting of the Directors).]
203. [A unanimous decision of the Directors may take the form of a resolution in writing, copies of which have been signed by each eligible Director or to which each eligible Director has otherwise indicated agreement in writing.]
204. [A reference in Clause [203] to eligible Directors is a reference to Directors who would have been entitled to vote on the matter if it had been proposed as a resolution at a Directors' meeting.]
205. [A decision may not be taken as an unanimous decision if the eligible Directors would not have formed a quorum at a Directors' meeting.]

#### **DIRECTORS' MEETINGS<sup>43</sup>**

206. Any Director may call a Directors' meeting by giving notice of the meeting to the Directors. Matters which require Directors' approval include the following: [*please insert matters requiring directors' approval*]
207. [Notice of a Directors' meeting must indicate—
- (a) its proposed date and time; and
  - (b) where it is to take place.]

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<sup>43</sup> Please refer to the requirement under 8.1(a) of the Code which requires the procedures and notices for holding directors' meetings, exercise of votes, quorum required, matters which require approval, as well as the thresholds for and manner of approval and record-keeping to be set out in the instrument of incorporation.

208. Notice of a Directors' meeting must be given to each Director[, but need not be in writing. A Director may waive notice of any meeting and any such waiver may be retroactive.]
209. [Subject to this Instrument, Directors participate in a Directors' meeting, or part of a Directors' meeting, when—
- (a) the meeting has been called and takes place in accordance with this Instrument; and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.]
210. [In determining whether Directors are participating in a Directors' meeting, it is irrelevant where a Director is and how they communicate with each other.]
211. [Without limiting the generality of the foregoing, a meeting of the Directors may be held by means of such electronic or other communication facilities (including without limitation by telephone or video conferencing) which permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting constitute presence in person at such meeting.]
212. [If all the Directors participating in a Directors' meeting are not in the same place, they may regard the meeting as taking place [where the largest group of those Directors participating in the meeting is physically assembled, or, if there is no such group, where the chairperson of the meeting then is].]
213. At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
214. The quorum for Directors' meetings may be fixed from time to time by a decision of the Directors and unless otherwise fixed it is two.
215. If the total number of Directors for the time being is less than the quorum required for Directors' meetings, the Directors must not take any decision other than a decision—
- (a) to appoint further Directors; or
  - (b) to call a general meeting so as to enable the Shareholders to appoint further Directors.
216. [If there is no Director able or willing to act, then any Shareholder may summon a general meeting for the purpose of appointing Directors or a Director.]
217. The Directors may appoint a Director to chair their meetings and the person appointed for the time being is known as the chairperson.
218. [The Directors may terminate the appointment of the chairperson at any time.]

219. [If the chairperson is not participating in a Directors' meeting within [10 minutes] of the time at which it was to start or is unwilling to chair the meeting, the participating Directors may appoint one of themselves to chair it.]
220. [If the numbers of votes for and against a proposal are equal, the chairperson or other Director chairing the Directors' meeting has a casting vote.]
221. [Clause [220] does not apply if, in accordance with this Instrument, the chairperson or other Director is not to be counted as participating in the decision-making process for quorum or voting purposes.]
222. The Directors must ensure that the Company keeps a written record of the minutes of all proceedings at meetings of its directors and all resolutions passed by its directors without a meeting for at least 10 years from the date of the meeting or the date of the passing of the resolution without a meeting.<sup>44</sup>

### **CONFLICTS OF INTEREST<sup>45</sup>**

223. This Clause applies if—
- (a) a Director is in any way (directly or indirectly) interested in a transaction, arrangement or contract with the Company that is significant in relation to the Company's business; and
  - (b) the Director's interest is material<sup>46</sup>.
224. The Director must declare the nature and extent of the Director's interest to the other Directors in accordance with the following requirements:
- (a) A declaration of interest in a transaction, arrangement or contract that has been entered into must be made as soon as reasonably practicable.
  - (b) A declaration of interest in a transaction, arrangement or contract must be made before the Company enters into the transaction, arrangement or contract.
  - (c) A declaration of interest to Directors must be made (i) at a Directors' meeting, or (ii) by notice in writing sent by the Director to the other Directors, or (iii) by notice in writing sent to the Company [in which case the Company shall send a copy of the notice to the other Directors within [15] days of receipt.]
225. In the declaration or notice, the Director must state the nature and extent of the Director's interest in the transaction, arrangement or contract, or a proposed transaction, arrangement or contract, that is significant in relation to the Company's business.

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<sup>44</sup> Please refer to the requirement under rule 112 of the OFC Rules.

<sup>45</sup> Please refer to the requirements under rules 110 and 111 of the OFC Rules.

<sup>46</sup> The OFC may provide in its instrument of incorporation the method in which materiality of a Director's interest will be determined, such provision should not be inconsistent with the Laws and Regulations including the Common Law.

226. A declaration to Directors made by notice in writing is to be regarded as forming part of the proceedings at the next Directors' meeting after the notice is given.
227. [The Director must neither—
- (a) vote in respect of the transaction, arrangement or contract in which the Director is so interested; nor
  - (b) be counted for quorum purposes in respect of the transaction, arrangement or contract.]
228. [If the Director contravenes Clause [227(a)], the vote of that Director must not be counted.]
229. A reference in Clauses under the heading of “Conflicts of Interest” to a transaction, arrangement or contract includes a proposed transaction, arrangement or contract.
230. [A Director may hold any other office or position of profit under the Company (other than the office of Auditor) in conjunction with the office of Director for a period and on terms (as to remuneration or otherwise) that the Directors determine.]
231. [A Director or intending Director is not disqualified by the office of Director from contracting with the Company with regard to the tenure of the other office or position of profit mentioned in Clause [230]
232. [The contract mentioned in Clause 231 or any transaction, arrangement or contract entered into by or on behalf of the Company in which any Director is in any way interested is not liable to be avoided.]
233. Subject to the Laws and Regulations, the Company may by [Ordinary Resolution] ratify any transaction or act of a Director not duly authorized by reason of a contravention of the provision of this Instrument on conflicts of interest, provided that such [Ordinary Resolution] is passed with the votes of interested members (being the Director, any connected person of the Director and a trustee holding Shares in trust for the Director or for the connected person of the Director) disregarded.
234. Nothing in the above Clauses under the heading of “Conflicts of Interests” shall absolve the Directors from their fiduciary duty to act in the best interests of the Company as a whole.

#### **VALIDITY OF ACTS OF MEETING OF DIRECTORS**

235. The acts of any meeting of Directors or the acts of any person acting as a Director are as valid as if the Directors or the person had been duly appointed as a Director and was qualified to be a Director, even if it is afterwards discovered that—
- (a) there was a defect in the appointment of any of the Directors or of the person acting as a Director;
  - (b) any one or more of them were not qualified to be a Director or were disqualified from being a Director;

- (c) any one or more of them had ceased to hold office as a Director; or
- (d) any one or more of them were not entitled to vote on the matter in question.

### **APPOINTMENT, REMOVAL AND RETIREMENT OF DIRECTORS**

236. The Company shall have at least two Directors. At least one Director of the Company shall be an independent Director. For this purpose, a Director is independent if the Director is not a director or employee of the Custodian<sup>47</sup>.
237. A person who is willing to act as a Director may be appointed to be a Director by a decision of the Directors, subject to the approval of the SFC and the Laws and Regulations.<sup>48</sup>
238. *[In the case of a Company with annual general meetings, to include the following Clause: “Subject to the Laws and Regulations, a person who is willing to act as a Director shall be appointed to be a Director by an Ordinary Resolution, save that the Directors may appoint a person to act as a Director to fill any vacancy until the next annual general meeting.”]*<sup>49</sup>
239. A person ceases to be a Director if the person<sup>50</sup>—
- (a) ceases to be a Director or is prohibited from being a Director under the Laws and Regulations or under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
  - (b) becomes bankrupt or makes any arrangement or composition with the person’s creditors generally;
  - (c) becomes a mentally incapacitated person;
  - (d) resigns from the office of Director by notice in writing of the resignation [of not less than [28] days];
  - (e) for more than [6] months has been absent without the Directors’ permission from Directors’ meetings held during that period;
  - (f) upon the expiry of any period or notice period stated in an agreement for the provision of services between the Company and the Director or if such agreement is summarily terminated in accordance with its terms; or

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<sup>47</sup> Please refer to the requirements under section 112U(1) of the SFO and 5.2 of the Code.

<sup>48</sup> Please refer to rule 101 of the OFC Rules for appointment of directors for a company with or without an annual general meeting.

<sup>49</sup> Please refer to the requirement under rule 101(2) of OFC Rules.

<sup>50</sup> Please refer to the requirements under 5.5 and 5.6 of the Code, which require that the circumstances under which the directors must cease to hold office and the procedures of removal from office to be included in the instrument of incorporation, and that the OFC is required to put in place appropriate arrangements as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least two individual directors including at least one independent director, for example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements.

- (g) is removed from the office of Director by an [Ordinary] Resolution.
240. Special notice in accordance with the Laws and Regulations is required of a resolution to remove a Director or appoint a person in place of a Director so removed at the meeting at which the Director is removed<sup>51</sup>.
241. A vacancy created by the removal of a Director, if not filled at the meeting at which the Director is removed, may be filled as a casual vacancy and the person appointed in place of a removed Director is to be regarded, for the purpose of determining the time at which that person or any other Director is to retire, as if that person had become Director on the day on which the person removed was last appointed a Director<sup>52</sup>.
242. In relation to a resolution to remove a Director before the end of the Director's term of office, no Share may, on a poll, carry a greater number of votes than it would carry in relation to the generality of matters to be voted on at a general meeting of the Company<sup>53</sup>.

### **DIRECTORS' REMUNERATION AND EXPENSES**

243. The Directors shall be entitled to remuneration for their services as Directors. *[please insert the determination of the directors' remuneration, which should be consistent with the Laws and Regulations].*
244. [The Company may pay any travelling, accommodation and other expenses properly incurred by Directors in connection with their attendance at meetings of Directors, general meetings, separate meetings of the Shareholders or any Sub-Fund or Class of Shareholders or the exercise of their powers and the discharge of their responsibilities in relation to the Company.]

### **[INDEMNITY]**

245. [Subject to Clause 246 and the provisions of and so far as may be consistent with the Laws and Regulations, every Director of the Company may be indemnified by the Company against all costs, charges, losses, expenses and liabilities incurred by the Director in the execution and/or discharge of the Director's duties and/or the exercise of the Director's powers and/or otherwise in relation to or in connection with the Director's duties, powers or office.]
246. [Clause 245 only applies if the indemnity does not cover:
- (a) any liability of the Director to pay:
    - (i) a fine imposed in criminal proceedings; or
    - (ii) a sum payable by way of a penalty in respect of non-compliance with any requirement of a regulatory nature; or

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<sup>51</sup> Please refer to the requirement under rule 103(3) of OFC Rules.

<sup>52</sup> Please refer to the requirements under rule 103(4) and 103(5) of OFC Rules.

<sup>53</sup> Please refer to the requirement under rule 103(6) of OFC Rules.

- (b) any liability incurred by the Director:
  - (i) in defending criminal proceedings in which the Director is convicted;
  - (ii) in defending civil proceedings brought by the Company in which judgment is given against the Director;
  - (iii) in defending civil proceedings brought on behalf of the Company by a Shareholder in which judgment is given against the Director;
  - (iv) in connection with an application for relief under any laws in which the Court refuses to grant the Director relief; or
  - (vi) to the Company in connection with any negligence, default, breach of duty or breach of trust in relation to the Company.

For these purposes:

- (aa) a reference in this Clause to a conviction, judgment or refusal of relief is a reference to the final decision in the proceedings;
- (bb) a conviction, judgment or refusal of relief:
  - (i) if not appealed against, becomes final at the end of the period for bringing an appeal; or
  - (ii) if appealed against, becomes final when the appeal, or any further appeal, is disposed of;
- (cc) an appeal is disposed of if:
  - (i) it is determined, and the period for bringing any further appeal has ended; or
  - (ii) it is abandoned or otherwise ceases to have effect.]

247. [A Director shall use all reasonable efforts to first seek indemnification payment from other sources, including payments on applicable insurance policies, which payments shall reduce (or, where appropriate, require a return of) indemnification payments to which the relevant person would be entitled to receive from the Company. ]

#### **INVESTMENT MANAGER<sup>54</sup>**

248. The Directors shall subject to the approval of the SFC appoint any corporation which is eligible under the Laws and Regulations to act as the investment manager of an OFC as the Investment Manager of the Company, to perform the duties of an investment manager prescribed by the Laws and Regulations, including investment

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<sup>54</sup> Please refer to the requirements under Chapter 6 of the Code.

management, valuation and pricing of the Scheme Property<sup>55</sup> of the Company, and perform such other duties upon such terms as the Directors may from time to time (with the agreement of the Investment Manager) determine.

249. The Company shall enter into an Investment Management Agreement with the Investment Manager, which must include the following provisions:

- (a) in the exercise of any powers, discretions or obligations granted to it or agreed to it, the Investment Manager shall exercise due skill, care and diligence and shall owe duties in accordance with the Investment Management Agreement and pursuant to all applicable Laws and Regulations (including its obligations under the the Code) to the Company and the Shareholders;
- (b) the Investment Manager in exercising its duties and powers under the Investment Management Agreement in relation to the Company and/or any Sub-Fund shall at all times comply with the applicable Laws and Regulations and shall act at all times in compliance with and in a manner consistent with the Laws and Regulations (including its obligations under the Code) (as may be modified by any applicable waivers or exemptions granted by the SFC);
- (c) no provision shall be construed as (i) providing any exemption of any liability of the Investment Manager to the Shareholders under Hong Kong law<sup>56</sup>, nor may the Investment Manager be indemnified against such liability by Shareholders or at the Shareholders' expense, (ii) diminishing or exempting the Investment Manager from any of its duties and liabilities under the Laws and Regulations, and no provision shall have the effect of providing any of such exemption or indemnity<sup>57</sup>.
- (d) the Investment Manager must retire in the case of (i) below, and must be subject to removal by notice in writing from the Directors in the case of (ii) or (iii) below<sup>58</sup>:
  - (i) when it ceases to be eligible to be an Investment Manager or is prohibited from being an Investment Manager under the Laws and Regulations or when the SFC withdraws its approval of the Investment Manager;
  - (ii) when it goes into liquidation, becomes bankrupt or has a receiver appointed over its assets;
  - (iii) when for good and sufficient reason, the Directors state in writing that a change in the Investment Manager is desirable in the interests of the Shareholders.

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<sup>55</sup> Please refer to the requirement under 5.3 of Code.

<sup>56</sup> Please refer to the requirement under section 112ZC of the SFO.

<sup>57</sup> Please refer to the requirements under section 112ZC of the SFO.

<sup>58</sup> Please refer to the requirements under 6.5 of the Code.



- (e) The Investment Manager may not retire except upon the appointment of a new Investment Manager approved by the SFC.
250. In the event that the Investment Manager shall retire or be removed or its appointment shall otherwise terminate, the Company shall appoint another corporation eligible under the Laws and Regulations to act as the investment manager of an OFC which is approved by the SFC to be the Investment Manager in place of the Investment Manager so retiring or being removed on or before the expiry of any period of notice of such retirement or removal.<sup>59</sup>
251. The Company may further entrust to and confer upon the Investment Manager so appointed any of the relevant powers, duties, discretions, and/or functions exercisable by them as Directors upon such terms and conditions including the right to remuneration payable by the Company and with such powers of delegation and such restrictions as they think fit and collaterally with their own powers.

#### **CUSTODIAN<sup>60</sup>**

252. The Directors shall subject to the approval of the SFC appoint any corporation which is eligible under the Laws and Regulations to act as custodian of an OFC as Custodian to perform the duties of a custodian prescribed by the Laws and Regulations and perform such other duties upon such terms as the Directors may from time to time (with the agreement of the Custodian) determine.
253. The Company shall enter into a custodian agreement with the Custodian, which must include the following provisions:
- (a) in the exercise of any powers, discretions or obligations granted to it or agreed to it, the Custodian shall exercise due skill, care and diligence and shall owe duties in accordance with the custodian agreement and pursuant to all applicable Laws and Regulations (including its obligations under the Code) to the Company and the Shareholders;
  - (b) the Custodian in exercising its duties and powers under the Custodian in relation to the Company and/or any Sub-Fund shall at all times comply with the applicable Laws and Regulations and shall act at all times in compliance with and in a manner consistent with the Laws and Regulations (including its obligations under the and the Code) (as may be modified by any applicable waivers or exemptions granted by the SFC);

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<sup>59</sup> Please refer to the requirement under 6.4 of the Code, which requires the OFC to put in place appropriate arrangement as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least one investment manager licensed or registered for Type 9 regulated activity, for example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements, and the OFC should establish appropriate procedures to prepare for and facilitate a replacement in the event of any retirement or removal of the Investment Manager.

<sup>60</sup> Please refer to the requirements under Chapter 7 of the Code.

- (c) the Custodian shall (i) exercise reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of its nominees, agents and delegates; and (ii) be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent to provide the relevant service; and
- (d) the Custodian shall exercise reasonable care and diligence:
  - (i) to ensure that the processes and procedures have been properly implemented by the Custodian and sub-custodian (if applicable); and
  - (ii) to conduct regular reviews of such Custodian's and sub-custodian (if applicable)'s processes and procedures to ensure that the Custodian remains satisfied that such processes and procedures remain appropriate and adequate for the selection, appointment and ongoing monitoring of the nominees, agents and/or delegates appointed for the custody and/or safekeeping of the Scheme Property.
- (e) the Custodian shall in the performance of its duties under this Instrument and the custodian agreement at all times comply with the applicable provisions of the Laws and Regulations and shall act at all times in compliance with and in a manner consistent with the Laws and Regulations (as may be modified by any applicable waivers or exemptions granted by the SFC).
- (f) no provision in the custodian agreement shall be construed as (i) providing any exemption of any liability of the Custodian to the Shareholders under Hong Kong law<sup>61</sup>, nor may the Custodian be indemnified against such liability by Shareholders or at the Shareholders' expense, (ii) diminishing or exempting the Custodian from any of its duties and liabilities under the Laws and Regulations, and no provision shall have the effect of providing any of such exemption or indemnity<sup>62</sup>.
- (g) a Custodian must retire in the case of (i) below, and must be subject to removal by notice in writing in the case of (ii) and (iii) below:—
  - (i) when it ceases to be eligible to be a Custodian or is prohibited from being a Custodian under the Laws and Regulations or when the SFC withdraws its approval of the Custodian;
  - (ii) when it goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
  - (iii) when for good and sufficient reason, the Directors state in writing that a change in the Custodian is desirable in the interests of the Shareholders.
- (h) the Custodian may not retire except upon the appointment of a new Custodian. In the event that the Custodian shall retire or be removed or its appointment shall otherwise terminate, the Company shall appoint another corporation

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<sup>61</sup> Please refer to the requirement under section 112ZC of the SFO.

<sup>62</sup> Please refer to the requirements under section 112ZC of the SFO.

eligible under the Laws and Regulations to act as a custodian of an OFC which is approved by the SFC to be the Custodian in place of the Custodian so retiring or being removed on or before the expiry of any period of notice of such retirement or removal<sup>63</sup>. The retirement of the Custodian should take effect at the same time as the new Custodian takes up office<sup>64</sup>.

### AMENDMENTS TO THIS INSTRUMENT

254. An amendment to this Instrument may be made to the extent permitted by the Laws and Regulations and in accordance with this Instrument.
255. No material change to this Instrument, being a change to the following matters as set out in this Instrument, may be made without Shareholders' approval by [Ordinary] Resolution<sup>65</sup>:
- (a) material changes to the Company or Sub-Fund's investment objectives and policy; and
  - (b) [to insert any other changes which may materially prejudice shareholders' rights.]
256. Without prejudice to the Clauses 254 and 255, no other alteration to this Instrument may be made unless<sup>66</sup>:
- (a) the alteration has been approved by Shareholders by [an Ordinary] Resolution ;  
or
  - (b) the Directors certify in writing that in their opinion the proposed alteration:
    - (i) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements;
    - (ii) does not materially prejudice Shareholders' interests, does not to any material extent release the Directors, the Investment Manager, the Custodian or any other person from any liability to Shareholders and does not increase the costs and charges payable from the Scheme Property; or
    - (iii) is necessary to correct a manifest error;

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<sup>63</sup> Please refer to the requirement under 7.6 of the Code, which requires the OFC to put in place appropriate arrangement as far as reasonably practicable for the purpose of complying with the applicable regulatory requirements for the OFC to have at least one custodian, for example, there should be a termination notice requirement of sufficient length of time to enable the OFC to effect a replacement to meet the applicable regulatory requirements, and the OFC should establish appropriate procedures to prepare for and facilitate a replacement in the event of any retirement or removal of the custodian.

<sup>64</sup> Please refer to the requirements under 7.5 and 7.6 of the Code.

<sup>65</sup> Please refer to the requirements under 12.1 of the Code. The Instrument must set out what constitutes material changes to the instrument of incorporation which require shareholders' approval. Please also refer to the requirements under section 112K of the SFO and rule 14 of the OFC Rules for statutory provisions on matters in the instrument of incorporation which must not be altered.

<sup>66</sup> Please refer to the requirements under 12.2 of the Code.

and that the Custodian has no objection to such alteration.

257. The Company shall provide reasonable prior notice in writing to Shareholders in respect of any material changes to this Instrument which may affect investors' investment decision or materially impact on Shareholders' rights. The Company shall provide written notice to Shareholders [*please insert the period within which such notice would be given in advance of/ following a change which is not a material change*]for all other kinds of changes to this Instrument<sup>67</sup> .
258. Notice to Shareholders of an amendment to this Instrument shall be made [in the manner as set out in the Offering Documents].<sup>68</sup>

### **THE SEAL**

259. If the Company has a seal the Directors shall provide for its safe custody. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Directors. The Directors may from time to time determine whether or not any instrument to which the Seal is affixed shall be signed and the person(s) and/or the number of such persons (if any) who are to sign such instrument. Until otherwise so determined, the Seal may be affixed in the presence of any Director.
260. [A Seal must be a metallic seal having the Company's name engraved on it in legible form.]
261. [If the Company has an official seal for sealing securities, it may only be affixed to securities by or a person authorized to apply it to securities by the board of Directors.]

### **DIVIDENDS AND ALLOCATION OF INCOME**

262. [*Please state the distribution policy and approximate date when income will be distributed (if applicable).*] [The Directors in each year may if they think fit and in accordance with the dividend policy disclosed in the Offering Documents for the time being of the Company and each of the Sub-Funds, declare and pay or reinvest such dividends on the Shares of the Company and each of the Sub-Funds.]
263. If a dividend or other sum that is a distribution is payable in respect of a Share, it must be paid by one or more of the following means—
- (a) [transferring to a bank account specified by the distribution recipient either in writing or as the Directors decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a Shareholder of the Share), or (in any other case) to an

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<sup>67</sup> Please refer to the requirements under 12.3 of the Code. The notice requirement should be set out in this Instrument or in the Offering Documents.

<sup>68</sup> Please refer to the requirements under 12.3 of the Code. The notice requirement should be set out in this Instrument or in the Offering Documents.

address specified by the distribution recipient either in writing or as the Directors decide;

- (c) sending, by post, a cheque made payable to a person specified by the distribution recipient at the address the distribution recipient has specified in writing;
  - (d) any other means of payment as the Directors agree with the distribution recipient either in writing or as the Directors decide.]
264. [The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by the terms on which the Share was issued or the provisions of another agreement between the Shareholder of the Share and the Company.]
265. [If dividends or other sums are payable in respect of Shares and they are not claimed after having been declared or become payable, they may be invested or made use of by the Directors for the benefit of the Company until claimed.]
266. [A distribution recipient is no longer entitled to a dividend or other sum and it ceases to remain owing by the Company, if [six] years have passed from the date on which the dividend or other sum became due for payment and the distribution recipient has not claimed it.]
267. [The Directors may retain any dividend or other moneys payable on or in respect of a Share on which the Company has a lien and may apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists.]

### **RECORD DATES**

268. [The Directors, having notified the Custodian, may fix any date as the record date, being such date on which the names of the Shareholders must be entered on the Register to be entitled to distribution (if any) declared in respect of an Accounting Period.]

### **AUDITOR<sup>69</sup>**

269. A person who is eligible for appointment as an Auditor of the Company in accordance with the Laws and Regulations<sup>70</sup>, and who is willing to act as an Auditor may be appointed to be an Auditor by a decision of the Directors [or by Ordinary Resolution]<sup>71</sup>, subject to the Laws and Regulations.

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<sup>69</sup> Note to 9.1 of the Code requires the procedures and requirements for appointment and removal of a person from the office of auditor must be included in the instrument of incorporation.

<sup>70</sup> Please refer to the requirement under rule 128 of the OFC Rules.

<sup>71</sup> Please refer to the requirement under rules 130 and 131 of the OFC Rules. In the case where (a) the company holds an annual general meeting and provides for appointment of auditors by shareholders at annual general meeting, the instrument of incorporation should provide for how such appointment by shareholders is to take place; and where (b) the company does not hold annual general meeting but nonetheless provides for

270. A person ceases to be an Auditor if—
- (a) the term of office expires;
  - (b) the person resigns the office of Auditor by notice in writing;
  - (c) the person ceases to be eligible to be an Auditor or is prohibited from being an Auditor under the Laws and Regulations; or
  - (d) the person is removed from the office of Auditor by an Ordinary Resolution in accordance with the Laws and Regulations, in which case special notice in compliance with the Laws and Regulations must be provided to the Shareholders for the resolution<sup>72</sup>.

### **ACCOUNTS AND REPORTS**

271. The Directors must cause to be made up and audited accounts relating to the Company and each Sub-Fund as at each Accounting Date. Such accounts:
- (a) must be in such form and contain such information as the Directors may determine from time to time in respect of the Accounting Period then ending provided that the accounts of such Sub-Fund shall, as a minimum, contain the information required to be contained therein by the Laws and Regulations;
  - (b) must be audited by the Auditors in accordance with the accounting policy determined by the Directors;
  - (c) must be filed with the SFC and made available to Shareholders as provided in Clause 273; and
  - (d) are deemed to be conclusive and binding.
272. [The Auditors must provide a report on the accounts stating:
- (a) whether the accounts and the relevant statements attached to the accounts have been properly prepared in accordance with this Instrument;
  - (b) whether, in the Auditors' opinion, the accounts present a true and fair view of the state of the Company and of each Sub-Fund at the end of the period they cover and the transactions of the Company and each Sub-Fund during such period;
  - (c) whether proper books and records of the Company have been kept and whether the accounts are in agreement with such books and records; and

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*shareholders' right to appoint auditors, the instrument of incorporation should similarly set out the relevant procedures.*

<sup>72</sup> Please refer to the requirement under rule 140 of the OFC Rules.

- (d) whether the Auditors have obtained all the explanations and information they have required for the purposes of the audit.]
273. [The accounts and the report of the Auditors relating to such accounts:
- (a) must be prepared in either (i) English, (ii) Chinese or (iii) both English and Chinese as set forth in the Offering Documents;
  - (b) must be made available to Shareholders within such period of time as may be specified in the Offering Documents provided that the Directors shall procure —
    - (i) the audited accounts of a Sub-Fund to be made available to Shareholders of such Sub-Fund within four months after the end of the Accounting Period to which they relate;
    - (ii) [the unaudited semi-annual accounts to be made available to Shareholders of such Sub-Fund within 2 months after the end of the period to which they relate;]
  - (c) must be made available either in hard copy or in electronic form or both at the discretion of the Directors;
  - (d) must, at the written request of a Shareholder, be sent [(at such Shareholder's expense)] to such Shareholder in hard copy;
  - (e) must be available for inspection during usual business hours by any Shareholder at such place or places as the Directors may determine and specified in the Offering Documents from time to time; and
  - (f) must, if required by any applicable statute or regulation, be filed with the relevant authorities in Hong Kong within the applicable stipulated time period.]
274. Subject to the Laws and Regulations, the Directors may at any time alter the Accounting Period after consultation with the Auditor, the Accounting Date and the number of Accounting Dates in respect of the Company or any Sub-Fund(s) provided that any after any extension the Accounting Period must not be longer than 18 months<sup>73</sup>.

### **CHARGES AND EXPENSES**

275. The Directors may pay, out of the capital or any other moneys of the Company:
- (a) [the fees payable to the Investment Manager, which shall be set out in the Investment Management Agreement and shall include *[please insert]*;

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<sup>73</sup> Please refer to the requirement under rule 149 of the OFC Rules.

- (b) [the fees payable to the Custodian, which shall be set out in the custodian agreement and shall include *[please insert]*];
  - (c) *[please insert any other material fees and charges payable out of the Scheme Property.]*
276. [Subject to the Laws and Regulations, the expenses attributable or deemed to be attributable to a Class or Sub-Fund in any Accounting Period may be taken from either the income or the capital property attributable or deemed to be attributable to that Class or Sub-Fund [in accordance with the policy set out in the Schedule].]

### **DESTRUCTION OF DOCUMENTS**

277. Subject to the Laws and Regulations, the Company may destroy:
- (a) any payment mandate (including any variation or cancellation of it) or any notification of change of name or address, at any time after the expiry of [six] years from the date such mandate, variation, cancellation or notification was recorded by the Company;
  - (b) any instrument of transfer of Shares which has been registered, at any time after the expiry of [10] years from the date of registration; and
  - (c) any other document on the basis of which any entry in the Register of Shareholders is made or cancelled, at any time after the expiry of 10 years from the date an entry in the Register of Shareholders was first made or cancelled in respect of it<sup>74</sup>.
278. It shall conclusively be presumed in favour of the Company that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document destroyed under these Clauses was a valid and effective document in accordance with the recorded particulars of it in the books or records of the Company, provided always that the document was destroyed in good faith and without express notice to the Company that the preservation of the document was relevant to a claim.

### **NOTICES**

279. Subject to the Laws and Regulations, any notice or document to be given by the Company to a Shareholder must be given in writing and may be given in any form and is deemed to be duly given in accordance with Clause 280 if it is:
- (a) given to the Shareholder personally;
  - (b) sent to the Shareholder by post at the registered address as appearing in the Register or any other address supplied by the Shareholder to the Company for the giving of notice to him; or

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<sup>74</sup> Please refer to the requirement under rule 67(6) of the OFC Rules.



- (c) sent or transmitted to the Shareholder by any electronic means to any transmission number, address or other communications details supplied by the Shareholder and enabling the Company to communicate with the Shareholder in electronic form or the Shareholder's last known address which the Company reasonably and bona fide believes at the relevant time will result in the notice being duly received by the Shareholder.

280. [Any notice or other document:

- (a) if served or delivered by hand, is deemed to have been received upon delivery, and in proving such service or delivery a certificate in writing signed by a Director or other officer of the Company as to the fact and time of such service or delivery is conclusive evidence thereof;
- (b) if served by post (by airmail where appropriate), is deemed to have been received on the [second] Business Day after the day on which a prepaid envelope containing the same is put into the post. In proving such service it is sufficient to prove that the letter containing the notice or document was properly addressed and put into the post and a certificate in writing signed by a Director or other officer of the Company that the prepaid envelope containing the notice or other document was so addressed and put into the post is conclusive evidence thereof;
- (c) if sent or transmitted by electronic means, is deemed to have been received [48] hours after the notice or document has been sent, and a certificate in writing signed by a Director or other person appointed by the Directors that the notice or document has been sent or transmitted via the relevant electronic means is conclusive evidence thereof; and
- (d) if served or delivered in any other manner contemplated in this Instrument is deemed to have been received upon delivery or at the time of the relevant despatch or transmission (as the case may be), and in proving such service or delivery a certificate in writing signed by a Director or other officer of the Company as to the fact and time of such service, delivery, despatch or transmission is conclusive evidence thereof.]

281. [A Shareholder:

- (a) from whom the Company has not received any notice of the Shareholder's registered address as appearing in the Register or communication details as aforementioned; or
- (b) who despite having provided the Company with such an address or communication details, notices or documents sent by the Company to him at such address or communication details over a period of at least [twelve months] have all been returned undelivered or the Company has received notification that they have not been delivered,

is deemed to have received any notice which has been displayed at the Company's registered office or made available on a website as supplied by the Company and previously notified to the Shareholder, and such notice is deemed to have been

received by such Shareholder on the day following that on which it has been first so displayed. ]

282. A Shareholder whose registered address is not within Hong Kong and who gives to the Company an address within Hong Kong at which notices may be given to him shall be entitled to have notices given to him at that address. If he has not given such an address the Company will give notices to him at his address outside Hong Kong unless the Company is aware that its doing so would contravene any laws or regulations.
283. In the case of joint Shareholders, service of a notice or document on any one is effective service on the other joint Shareholders.

#### **AUTHENTICATION OF DOCUMENTS**

284. [Any Director or the Investment Manager duly appointed and authorized by the Directors for the purpose has power to:
- (a) authenticate any documents affecting the constitution of the Company and any resolutions passed by the Company or the Directors, and any books, records, documents and accounts relating to the business of the Company; and
  - (b) certify copies thereof or extracts therefrom as true copies or extracts.]
285. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting, of the Company, a Sub-Fund or a Class or of the Directors which is purported to be signed by the chairperson of that meeting or the next meeting is conclusive evidence in favour of all persons dealing with the Company upon the faith of such document that such resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted meeting.

#### **TERMINATION OTHERWISE THAN BY WINDING UP<sup>75</sup>**

286. Without prejudice to any provision in the Laws and Regulations by virtue of which the Company, or a Sub-Fund or a Class of Shares may be terminated in other circumstances, the Company, a Sub-Fund or a Class of Shares may be terminated, subject to and in accordance with the Laws and Regulations, by the Directors in their absolute discretion if:
- (a) *[[please insert period]* from the date of the first issue of Share relating to the relevant Sub-Fund or at any date thereafter the Net Asset Value of the relevant

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<sup>75</sup> Please refer to the requirement under 10.6 of the Code which requires the instrument of incorporation of an OFC to clearly disclose the circumstances and procedures to be followed for conducting the termination and arrangements for distribution of assets to shareholders, including a reasonable notice to its shareholders containing relevant and key particulars and procedures of the termination and impact on shareholders. There should be adequate disclosure of the termination process to the investors at the same time and in an appropriate and timely manner. The Company is expected to devise appropriate provisions under this heading accordingly pursuant to such requirements under the Code.

Sub-Fund is less than [*please insert amount*] or its equivalent in the Base Currency of the Sub-Fund; or

- (b) any law shall be passed which renders it illegal or in the reasonable opinion of the Directors impracticable or inadvisable to continue the relevant Sub-Fund.]
287. This is without prejudice to any provision in the Laws and Regulations by virtue of which the Company and any Sub-Fund may be terminated in other circumstances.
288. The Directors shall give reasonable notice of termination of the Company, the relevant Sub-Fund, or the Class of Shares (as the case may be) to the Shareholders in the Company, the relevant Sub-Fund or the Class of Shares (as the case may be) in such manner and with such contents which are compliant with the Laws and Regulations<sup>76</sup> and by such notice fix the date on which such termination is to take effect.
289. With effect on and from the date as at which the Company or any Sub-Fund is to terminate:
- (a) no Shares of the relevant Class or Classes may be issued or sold by the Company;
  - (b) the Investment Manager shall on the instructions of the Directors realise all the assets then comprised in the relevant Sub-Fund; and
  - (c) distributions shall be made to the Shareholders of the relevant Class or Classes in proportion to their respective interests in the relevant Sub-Fund all net cash proceeds derived from the realisation of the relevant Sub-Fund and available for the purpose of such distribution, provided that the Custodian shall be entitled to retain out of any monies in its hands as part of the relevant Sub-Fund full provision for all costs, charges, expenses, claims and demands reasonably incurred by or on behalf of the Company, Directors, the Investment Manager or the Custodian in connection with or arising out of the termination of the relevant Sub-Fund.
290. Every such distribution shall be made in such manner as the Directors shall at their reasonable discretion determine but shall be made only against the production of such evidence relating to the Shares of the relevant Class or Classes in respect of which the same is made and upon delivery of such form of request for payment as shall be reasonably required.

## WINDING UP

291. Subject to any other provisions applicable to the specific Sub-Fund set out in [the Schedule to] this Instrument, the rights of the Shareholders to participate in the property comprised in [the Company / a Sub-Fund] on a winding up of the [Company /Sub-Fund] shall be proportionate to the proportionate interests in the [Company /Sub-Fund] represented by the Shares which they hold.

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<sup>76</sup> Please refer to the requirement under 10.6 of the Code.

292. If [the Company / a Sub-Fund] is wound up and a surplus remains after the payment of debts proved in the winding up, the liquidator—
- (a) may, with the required sanction of a [Special Resolution] of the [Company / Shareholders of the relevant Sub-Fund] and any other sanction required by the Laws and Regulations, divide amongst the Shareholders the whole or any part of the assets of the [Company / relevant Sub-Fund] (whether they consist of property of the same kind or not) and may, for this purpose, set a value the liquidator thinks fair on any property to be so divided; and
  - (b) may determine how the division is to be carried out between the Shareholders or different Classes of Shareholders.

### **[REPORTING TO TAX AUTHORITIES]**

293. [The Directors may sign and/or file any returns, elections, or statements by the Company to be filed with the applicable Tax Authorities, and may disclose information regarding any Shareholder to any Tax Authority to enable the Company to comply with any applicable law or regulation or any agreement with a Tax Authority (including, but not limited to, any applicable law, regulation or agreement under FATCA and/or CRS). The Directors may enter into agreements on behalf of the Company with any applicable Tax Authority (including any agreement entered into pursuant to FATCA and/or CRS, or any similar or successor legislation) to the extent it determines, in its sole discretion, such agreement is in the best interest of the Company.]
294. [Each Shareholder (i) shall be required to, upon demand by the Company, provide any form, certification or other information reasonably requested by and acceptable to the Company that is necessary for the Company (A) to avoid withholding (including, without limitation, any withholding taxes required under FATCA, CRS or otherwise) or qualify for a reduced rate of withholding or backup withholding in any jurisdiction from or through which the Company receives payments and/or (B) to satisfy due diligence, reporting or other obligations under FATCA, CRS and the US IRC, or to satisfy any obligations relating to any applicable law, regulation or any agreement with any Tax Authority, (ii) will update or replace such form, certification or other information in accordance with its terms or subsequent amendments or when such form, certificate or other information is no longer accurate, and (iii) will otherwise comply with any reporting obligations imposed by the United States, Hong Kong or any other jurisdiction, including reporting obligations that may be imposed by future legislation.]
295. [If, and to the extent that, the Company is required to make (or is subject to) any payment, withholding (including, without limitation, withholding taxes under FATCA, CRS or otherwise) or deduction (such payment, withholding or deduction referred to as a “**Deduction**”) as a consequence of any Shareholder (the “**Defaulting Shareholder**”) failing to comply in a timely manner with the requirement in the preceding Clause, the Company shall be entitled to, at the discretion of the Directors, redeem such of that Defaulting Shareholder’s Shares so as to ensure that no other Shareholder in the Company shall suffer any reduction in the value of their Shares as a

consequence of such Deduction. In addition, the Directors shall at any time and from time to time be entitled to determine that the Company shall not make payment of all or a portion of the redemption proceeds payable in respect thereof to a Defaulting Shareholder if the Company is required under the laws of the United States, Hong Kong or any other jurisdiction or as a consequence of any agreement with any Tax Authority to withhold any payments as a consequence of any Defaulting Shareholder failing to comply in a timely manner with the requirement in Clause 294.]

#### **CONFLICT WITH REGULATIONS**

296. In the event of any conflict arising between any provision of this Instrument and the Laws and Regulations, the Laws and Regulations shall prevail. This Instrument shall be construed and shall take effect accordingly.

#### **GOVERNING LAW**

297. The Company shall be subject to and governed by the laws of Hong Kong and this Instrument including the Schedule hereto shall be construed according to the laws of Hong Kong. Nothing in this Instrument and or the Schedule may exclude the jurisdiction of the courts of Hong Kong to entertain an action concerning the Company.

## THE SCHEDULE

### [Part 1]<sup>77</sup>

#### [Details of the Sub-Funds and their Investment Objective and Category]

[Set out below are the Sub-Funds which are available in the Company and their respective investment objectives (and any special investment powers).]

Each Sub-Fund would be a private OFC for the purposes of the Code as if it were itself an open-ended investment company in respect of which a registration made by the SFC were in force.]

1. [Please insert name of Sub-Fund]

[Please insert investment objective]

[Please insert Base Currency and other information on the Sub-Fund]

### Part [2]<sup>78</sup>

#### Determination of Net Asset Value

2. [Please insert (if not detailed in the main text of the Instrument): (a) the method of determining the value of the assets and liabilities of the property of the Company and each of the Sub-Fund and the Net Asset Value accordingly; and (b) the method of calculating the Subscription Price and Redemption Price of each Class of Shares and the circumstances under which it may change, having regard to the applicable requirements under the Laws and Regulations including the FMCC].

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<sup>77</sup> The OFC may modify the clauses in this part ("Sub-funds") referring to the Schedule as appropriate depending on whether it will set out the Sub-Fund(s) in the Instrument or by way of directors' resolution, coupled with appropriate updates to the Offering Documents to reflect the relevant provisions on the Sub-Funds.

<sup>78</sup> Please refer to Clause 69 of this Instrument.