

SECTION 4 – CUSTODIAN AGREEMENT

		Clause Number
4.1	General	
4.1.1	Provide that the governing law for the agreement is Irish law	[]
4.1.2	If applicable describe the scheme as ‘an umbrella scheme with segregated liability between sub-funds’ ¹	[]
4.1.3	Insert the fees of the Custodian or provide that they will be “as disclosed in the prospectus”	[]
4.1.4	If provision is made for sub-custody fees and expenses to be recouped from the scheme, provide that they are at normal commercial rates	[]
4.1.5	Provide that:	
a)	The Custodian hereby agrees to act as Custodian of all the securities and all other Assets (including cash) of the scheme or Where the custodian is a credit institution the following may be provided: ‘The Custodian hereby agrees to act as Custodian of all the securities and all other assets of the scheme save cash deposited with it as principal which shall constitute a debt due by the Custodian’	[]
(i)	Confirm that the definition of ‘Assets’ includes all investments, i.e. includes cash and derivatives	[]
b)	The scheme hereby undertakes to transfer to the Custodian, forthwith on receipt thereof, all sums (if any)* received by it representing subscription application money for shares and cash and all payment of income, principal, or capital distribution received by it in relation to all investments owned by the scheme from time to time. (*The following wording is acceptable if inserted here “(less any initial charge(s) payable to the investment manager or any other distributor in respect thereof)”)	[]
4.1.6	The following statement is permitted It is hereby agreed and declared that the duties and obligations of the Custodian to hold the Assets shall extend only to sums actually received by it and its sub-custodians	[]
4.1.7	State any amendments to the agreement shall be made in accordance with the requirements of the Financial Regulator, and	[]
4.1.8	State any assignments will be in accordance with the requirements of the Financial Regulator.	[]
4.2	Custodian Duties	
4.2.1	Provide that the Custodian will carry out the duties listed in NU 7 <i>Or</i> List the duties in the Custodian Agreement	[] []
4.3	Control/Transfer of Assets	

¹ As per Section 25 of the Investment Funds, Companies and Miscellaneous Provisions Act, 2005

4.3.1	List <u>all</u> the circumstances under which cash can be transferred, exchanged, surrendered, delivered etc.	<input type="text"/>
4.3.2	Provide that cash can be transferred “only” in the following circumstances	<input type="text"/>
4.3.3	List <u>all</u> the circumstances under which all other Assets can be transferred, exchanged, surrendered, delivered, etc.	<input type="text"/>
4.3.4	Provide that Assets can be transferred “only” in the following circumstances	<input type="text"/>
	Where it is specified that assets can be delivered for any other purpose ensure that the details of such purpose are authorised by the Memorandum and Articles of Association and referred to in the Prospectus	
4.3.5	If the agreement states that the Custodian shall not be responsible for any Assets which the investment company has instructed the Custodian to deliver to third parties other than the sub-custodian appointed by the Custodian confirm the instructions to transfer are in accordance with the circumstances detailed above	<input type="text"/>
4.3.6	If the agreement provides that:	
a)	Cash and other accounts (e.g. security accounts) can be opened in the name of the scheme, provide that the such accounts are subject only to drawings, instructions and orders by the Custodian	<input type="text"/>
b)	Assets may be registered in the <u>scheme’s</u> name, provide that	<input type="text"/>
	(i) registration in the scheme’s name is standard market practice ² ; and	
	(ii) such Assets cannot be assigned, transferred, exchanged, delivered without the prior approval of the Custodian.	
4.3.7	Provide that the Custodian may make or accept payment for, or delivery of Assets, in accordance with proper instructions.	<input type="text"/>
a)	Where provision is made for settlement in accordance with market practice confirm that it is clear from the Custodian Agreement that this is in accordance with proper instructions	<input type="text"/>
b)	Confirm that it there is no provision to permit the custodian to act against proper instruction without reverting to the management company	<input type="text"/>
4.3.8	Where provision is made that the Custodian may release and deliver assets as security for borrowings include a statement to the effect that the value of the assets delivered is the minimum amount required to secure or continue the borrowing as appropriate and provided that the release and delivery of assets is in accordance with the requirements of the Financial Regulator	<input type="text"/>
4.4	Delegation	
4.4.1	Provide that the Custodian may appoint a sub-custodian or agent to hold the Assets of the scheme.	<input type="text"/>
4.4.2	Provide that the liability of the Custodian will not be affected by the fact that that it has entrusted to a third party some or all of the Assets in its safe-keeping.	<input type="text"/>

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

4.4.3 Provide that in order for the Custodian to discharge its responsibility under the Notices, the Custodian must exercise care and diligence in choosing and appointing a third party as a safekeeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The Custodian must maintain an appropriate level of supervision over the safekeeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.

4.4.4 If the following statement is included, confirm that it immediately follows 5.4.3 above (which provides for the minimum standard of care for sub-custodians) and it is disclosed in the prospectus.

Provide:

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

(ii) Details of the potential risks to investors in such markets will be set out comprehensively in the scheme's prospectus in accordance with the requirements of the Financial Regulator

4.5	Liability/Indemnity
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4.5.1 a) Provide that the Custodian must exercise due care and diligence in the discharge of its duties and will be liable to the investment company and the shareholders for any loss arising from negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties

b) Confirm that there are no provisions detracting from this minimum standard e.g. words such as "hereunder" or "under this agreement" which could limit liability.

4.5.2 **In general the Agreement should not contain any clauses limiting the Custodian's liability.** The following clauses are permitted options provided the exact wording is included:

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

And

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

Or

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

Or

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

b) If the agreement provides that the Custodian is not liable for uninvested moneys provide the following: "provided that it is acting under specific proper instructions regarding where to invest the cash"

- c) Any clearing broker to which margin monies or margin assets are deposited in respect of futures and options or other hedging contracts shall not be a sub-custodian or agent of the Custodian for such purposes and the Custodian shall not be liable for the acts or omissions or any loss directly or indirectly caused by any such clearing broker.
- d) Where the Agreement provides that “The investment company/manager shall indemnify and keep indemnified and hold harmless the Custodian (and each of its directors, officers, servants, employees and agents) from and against any and all third party actions, proceedings, claims ... etc. insert “other than as a result of the Custodian’s negligence, fraud, bad faith, wilful default or recklessness in the performance of those duties’
- e) Subject and without prejudice to (the general liability clause) the Custodian shall not be liable to the investment company or the shareholders or any other person for consequential or indirect or special damages or losses arising out of or in connection with the performance or non-performance by the Custodian of its duties and obligations
- 4.5.3 If there are other clauses which limit the liability of and/or indemnify the custodian, these provisions must be subject to the general liability clause and relevant clauses identified here

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

4.7	Termination of Appointment
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- 4.7.1 Provide that the termination of the appointment of the Custodian is only permissible:
a) Upon the appointment of a successor custodian; or
b) Upon the revocation of the authorisation of the scheme
- 4.7.2 Confirm provisions on the removal or replacement of the Custodian reflect the equivalent provisions in the Articles
- 4.7.3 Confirm that there is no provision for the termination of the Custodian’s appointment upon the appointment of a liquidator to the scheme
- 4.7.4 Provide that any replacement Custodian must be approved by the Financial Regulator
- 4.7.5 Where no replacement Custodian is found it is permitted to include the following
a) an extraordinary general meeting will be convened at which an ordinary resolution to wind up the scheme will be considered so that shares in the scheme will be repurchased; and

b)	the Custodian's appointment will only be terminated on the revocation of the scheme's authorisation	<input type="text"/>
4.7.6	Confirm that there is no provision for Assets to be passed to the Company or to any other entity (except the successor Custodian) on the termination of the Custodian's appointment	<input type="text"/>
4.7.7	Confirm that there is no provision for Assets to be passed to the Company or to any other entity (except the liquidator) on the winding up of the scheme	<input type="text"/>
4.7.8	Confirm that the Agreement provides that either party may terminate on 30 days, 3 months or 6 months notice to the other party	<input type="text"/>
4.7.9	Confirm the following are not provided for:	
	(i) a notice period in excess of 6 months;	<input type="text"/>
	(ii) an initial term (without termination on notice) in excess of 3 years; or	<input type="text"/>
	(iii) successive periods (without termination on notice) in excess of 1 year	<input type="text"/>
4.8	Prime Brokers and Related Issues	
4.8.1	Indicate the clause number that provides for passing of assets to the Prime Broker, etc.	<input type="text"/>
4.8.2	Where the Custodian's procedures for monitoring compliance with the Prime Broker conditions, and/or OTC counterparty criteria, are provided for in the Custodian Agreement confirm the provisions are consistent with the draft Prime Broker Guidance Note _/04	<input type="text"/>
4.9	Custody of Russian Securities	
4.9.1	The principles and procedures in relation to the custody of Russian securities, as set out in Schedule 1 to the Application Form, apply where relevant.	<input type="text"/>