

# SPECIFIC TERMS - CUSTODY



## **Specific Terms - Custody**

The Specific Terms Custody (ST Custody) complement the General Terms (GT) for the provision of custody services by KBC Bank ("KBC") and the Client having selected custody services as part of the service offering of KBC.

### **1. Interpretation and definitions**

It is understood that the provisions of the GT shall apply, unless this ST Custody expressly provides otherwise. The Client declares that he has read and expressly accepts the GT, together with any future amendments thereto.

The words and expressions used in this ST Custody shall have the meaning set forth in Annex 1.

### **2. Appointment of KBC as custodian**

- 2.1 The Client appoints KBC to act as custodian of all its Financial Instruments and KBC accepts such appointment. KBC reserves the right to refuse acting as custodian for certain Financial Instruments which KBC shall determine in its sole discretion. Financial instruments that KBC does not accept or no longer accepts for deposit will be returned to the Client. The bank will return the financial instruments or items within a reasonable period. The return or transfer of financial instruments is effected exclusively by way of transfer to another account held with the bank or another financial institution. Return or transfer is effected within a reasonable period after Client's instructions. No restitution is required in the event of force majeure, as defined in the General Terms of Business. If the Client fails to make the arrangements with another custodian required for the transfer of such financial instruments within three months from KBC's notification that it refuses the custody of financial instruments, the bank is entitled to sell them and make the proceeds available in the manner it deems most appropriate.
- 2.2 By entrusting Financial Instruments for custody to KBC, the Client accepts the fungibility of such Financial Instruments and the application of the laws and regulations governing Financial Instruments.
- 2.3 The Client hereby establishes with KBC one or more Custody and Cash Accounts in the name of the Client to be used in connection with the holding of and Transactions in Financial Instruments. At the request of the Client, a distinction may be made between Client Securities Accounts and House Securities Accounts. The numbers of the Cash and the Custody Accounts, together with the specification whether the Custody Account is a Client or a House Securities Account, are communicated to the Client. If no such specification is made, all Custody Accounts will be considered to be House Securities Accounts. Custody Account shall refer to Client and House Securities Account as the case may be, unless indicated specifically.

## **2bis. Restrictions of service for certain countries**

For certain countries, KBC does not accept providing custody services where the Client holds the financial instruments for underlying customers that are a resident of the same country. The list of these countries (and in some occasions, the types of financial instrument) for which this restriction applies can be found on <https://securitiesservices.kbc.be/content/dam/securities-services/List-of-countries-with-holding-restrictions.pdf>, and may be updated from time to time.

The Client will abstain from providing custody services to such customers for such financial instruments, and undertakes to monitor the absence of such cases, and to notify KBC promptly of any case that would occur and take appropriate action accordingly.

## **3. Duties of KBC as custodian**

3.1 Subject to the conditions of this Agreement, KBC shall be responsible for the recording, safekeeping and administration of the Financial Instruments received and accepted by KBC in the Custody Account of the Client.

3.2 KBC shall:

a) In accordance with the Client's instructions or consequent to any Transactions executed pursuant this Agreement, sell, exchange, transfer, deliver or receive the Financial Instruments and purchase or subscribe for other Financial Instruments and credit the sale proceeds or debit the purchase price, including any related costs, fees and taxes to or from the appropriate Cash Account in accordance with article 3.2d).

b) Deliver and surrender promptly any Financial Instruments as and when the same are called, redeemed or otherwise fall due for payment.

In accordance with the Client's instructions, make and receive all payments in connection with such Transactions by debiting or crediting the appropriate Cash Account in accordance with art. 3.2d).

c) Collect all interests, dividends or other income.

d) Credit and/or debit the appropriate Cash Account with cash received or paid in accordance with this Article 3, and hold the balance. Unless instructions to the contrary are received (which instructions may be included in the Account setup details):

- the sale proceeds, the proceeds from the collection of interest, dividends, other income or from any payments in connection with the Financial Instruments, including without limitation as a consequence of calls, redemptions or maturities, shall be credited to the Cash Account of the Client;
- any amount to be debited shall be debited from the Cash Account of the Client.

e) Hold in custody and properly record Financial Instruments in the Custody Account of the Client.

- f) Provide such other services as KBC and the Client may from time to time agree.
- g) Provide for the renewal of coupon sheets, stamping, exchange, conversion and generally all regularizations of Securities.
- 3.3 The Client agrees that KBC acts as central account keeper of the issuance account appointed by the issuer of Securities in dematerialized form insofar permitted by law and regulations and that KBC is not obliged to deposit such Securities with the central depository. In such case, KBC shall take in its name an inscription in the issuer's books for the Securities it holds on behalf of Clients, act as a central point of contact for Clients of such Securities and otherwise act in conformity with applicable law and regulations applicable to such role.
- 3.4 With respect to shares with voting entitlement, which are listed on a regulated market as defined in art. 4.1, 21 of the Directive 2014/65/EU, issued by corporations having their statutory seat established in a member state, KBC shall transmit to the Client the information it receives on shareholders meetings, unless the Client instructs KBC not to transmit such information. Such instruction can only be given globally and not for individual shares.
- 3.5 KBC will facilitate the exercise of shareholders rights in accordance with applicable law. Such service is restricted to shares with voting entitlement, which are listed on a regulated market as defined in art. 4.1, 21 of the Directive 2014/65/EU, issued by corporations having their statutory seat established in a member state, unless the Parties expressly agree otherwise. KBC is entitled to charge a reasonable fee for such services.
- 3.6 KBC shall transmit to the Client as soon as practicable and as far as legally permitted all information on corporate events requiring action received by KBC from the issuer of such Securities held for KBC and pertaining to such Securities. If by the deadline set by KBC in such notice the Client does not give instructions to KBC, or in the case of unclear instructions, KBC shall act as follows:
- a) For corporate actions requiring the choice of the Client to make an additional investment (voluntary corporate actions), KBC shall not take any action, even in the event where the rights entitling the Client to participate in the corporate action would list separately from the Security concerned.
- b) In all other cases, , KBC will act in accordance with the default option indicated in its communication to the Client.
- However, whenever KBC keeps in safe custody one or more subscription rights that are not attached to another Security, KBC shall not be obliged to transmit to the Client any information requiring action pertaining to these subscription rights, nor shall KBC be obliged to undertake any action in relation thereto without explicit instruction of the Client.
- KBC is not obliged to notify the Client of any other information including, without limitation, the existence of shareholders meeting (other than those mentioned in article 3.4), a class action brought against the issuer, bankruptcies or other events of default.
- 3.7 Where the conditions of an issue provide for a choice of several currencies for the payment of income or other payments in connection with the Financial Instruments, the Client shall notify

KBC clearly and precisely of the currency it chooses. Failing this or in the case of unclear instructions, the choice made by the fiscal agent or the body designated in the terms governing the issue shall apply, and only failing any provision, KBC shall choose the currency in its own discretion.

- 3.8 KBC shall keep such books, records and statements as may be necessary to give a record of all Financial Instruments held and all Transactions carried out by KBC pursuant to this Agreement, and this for the time required by the laws and/or regulations applicable to KBC.

The records and accounts shall enable KBC to distinguish at any time and without delay the Financial Instruments belonging to the Client from the ones of others as well as from KBC's own assets. KBC shall ensure the accuracy of such records and accounts and their correspondence to the Financial Instruments and funds held for Clients, which may be used in audit trail.

- 3.9 KBC shall make adequate arrangements to safeguard the ownership rights and minimise the risk of loss or diminution of Financial Instruments of Client or rights related thereto as a result of misuse, fraud, poor administration, inadequate record keeping or negligence as well as prevent the use of such Financial Instruments for its own account or for the account of others except with the Client's prior express consent.
- 3.10 KBC shall monitor that the quantity of Financial Instruments recorded in its books as being held by the Client or for its account with any third parties, including any sub-custodians, central depository, clearing house or settlement institution, issuers, nominees or other agents, on the basis of the statements received from such third parties equals the Financial Instruments held by all Clients.
- 3.11 KBC shall send to the Client statements of all receipts and disbursements in relation to Financial Instruments held in safe custody (including movements of Financial Instruments, and income generated by Financial Instruments), the periodicity of which will be agreed upon by the Parties when discussing the setup of the reporting (which might be influenced by the Client's choice of the reporting channel), and KBC will thereby provide the Client with a statement on the Financial Instruments or funds KBC holds in custody for the Client as often as required under applicable law and regulations or more frequently as agreed between Parties.
- 3.12 KBC shall have no obligation pursuant to this ST Custody to take, defend or participate in any legal action or proceedings, neither to take any other extraordinary actions to collect any income or payments. However, if KBC, at the request of the Client, determines in its absolute discretion to take, defend or participate in any legal action or proceedings, it shall be entitled to be fully indemnified and secured to its satisfaction in connection therewith.
- 3.13 Where the Client, being a foreign financial institution or investment company holds Financial Instruments on behalf of underlying customers in a Client Securities Account, which has been, upon instruction of the Client, set up in the books of KBC as an X-account in relation to the X/N Securities Settlement System of the NBB (National Bank of Belgium), the Client either undertakes to provide KBC with signed attestations of each of the beneficial owners of income generated the financial instruments held in that account, or to provide KBC with a list of all beneficial owners of

income derived from the financial instruments held in that account. The Client undertakes to keep those documents up to date.

- 3.14 The Client hereby represents and warrants to KBC that, where KBC exempts the income derived from financial instruments held in an X-account, KBC can totally rely upon the fact that all Financial Instruments the Client holds at any moment in an X-account exclusively belongs to beneficial securities holders that fall within the category of persons which are allowed to open an X-account in accordance with art. 4 of the Royal Decree of 26 May 1994 regarding the collection and the reallowance of withholding taxes.
- 3.15 Should the Client discover at any time that the above representation and warranty is at any time not true, it will immediately notify KBC thereof in writing, which notification shall include the detail of the reasons for which it was not true and the period for which that was so. Moreover the Client hereby irrevocably consents to abide by any measures imposed by KBC to remedy, including the transfer of the relevant Financial Instruments to another account, the sale thereof, and disclosure to the competent fiscal authorities.
- 3.16 Clients that are financial intermediaries established in Belgium or having a Belgian established in Belgium represent and warrant that they will file the required reporting with the Belgian tax authorities and respond to any disclosure requests addressed to them in accordance with Belgian tax law.
- 3.17 The Client will hold KBC harmless for any damages, including tax penalties, that result from the Clients violation of the representations, warranties and undertakings set forth in this clause.
- 3.18 Without prejudice to the previous paragraphs or to the generality of the GT, KBC may disclose the Client's name and address to its correspondents and, where applicable, to its sub-custodians or agents when income is to be collected for which exemption from or a reduction of withholding tax may be obtained. KBC may disclose the same information to a clearing house or securities settlement institution where Financial Instruments are held in accordance with ST Custody.

#### **4. Protection of Deposits**

Cash deposits and financial instruments held by the Client on an account with KBC are the object of the Belgian investor protection scheme, in relation to cash deposits through the 'Garantiefonds/Fonds de Garantie', and regarding the restitution of financial instruments, through the 'Bescherminingsfonds/Fonds de protection'.

Cash deposits, regardless of their denomination, held by the Client in an Account with KBC awaiting investments or reimbursement to the Client are, in the event of KBC's bankruptcy or default, reimbursed by the 'Garantiefonds/Fonds de Garantie' up to a maximal amount of 100.000 Euro per (legal) person. Deposits owned by enterprises in the financial sector (banks, insurance companies, etc ...), of states and public authorities as well as deposits targeted by the legislation regarding the fight against terrorism and money laundering practices, are however excluded from this protection scheme. More information can be found on <http://garantiefonds.belgium.be/en>.

The 'Bescherminingsfonds/Fonds de Protection' provides for compensation up to a maximum amount of 20.000 Euro for losses sustained by a Client as a consequence of the default of KBC to reconstitute the Financial Instruments it holds for such Client. There are however important exclusions from this

protection scheme, such as for financial instruments owned government and their departments, financial institutions and investment firms, pension funds, investment funds, insurance companies, large corporations (defined by reference to the applicable accounting standard – not entitled to file a succinct balance sheet) and persons associated with such institutions. More detail thereon can be found on <http://garantiefonds.belgium.be>.

## **5. Use of central depositories, clearing, settlement or other agents and sub-custodians**

The Client agrees and understands that KBC is entitled to deposit any Financial Instruments with Euroclear Belgium (formerly 'Caisse Interprofessionnelle de dépôts et de virements des titres or C.I.K.'), the National Bank of Belgium (NBB), or any other Belgian or foreign local or international central depository, clearing house or settlement institution, or any of their respective legal successors. Such entities may themselves deposit the Financial Instruments with similar parties, that may or may not be located in the same country. KBC shall bear no responsibility as to the performance by these institutions of the duties delegated to them. KBC may from time to time appoint and/or use one or more Belgian or foreign agents (including nominees or central account keepers) or sub-custodians other than the aforementioned, to perform in whole or in part any of the duties of KBC and in the absence of gross negligence, wilful default or fraud on the part of KBC in selecting such agents or sub-custodians, KBC cannot be held liable for the acts or omissions or failure for whatever reason (including but not limited to insolvency) of such agents or sub-custodians. Such agents or sub-custodians may themselves deposit the Financial Instruments with other parties, that may or may not be located in the same country. Such sub-custody may imply that the laws of different law systems may apply, which may differ from the local applicable law.

The rights of the Client over Financial Instruments held with such entities shall be subject to the supervision, the laws and regulations, rules and procedures or contracts concluded by KBC with such entities. The Client is informed of the list of countries where Financial Instruments are held by any means (including if appropriate through the website of KBC).

KBC however does not entrust Financial Instruments in sub-custody with a sub-custodian that is located in a country where the custody of Financial Instruments is not submitted to a specific set of laws and regulations and prudential supervision, save to the extent that such sub-custody is required by the nature of the specific Financial Instrument or investment service. By entrusting to KBC such Financial instruments, the Client expressly instructs KBC to deposit its Financial Instruments with such sub-custodian.

The Client is informed of the cases where Financial Instruments are held outside the European Union in a country that is not subject to laws and regulations and prudential supervision and of the risks related thereto by any means (including if appropriate through the website of KBC).

KBC will exercise reasonable care and diligence in the selection, appointment and periodic review of its sub-custodians, as well as for the legal and contractual regulations in relation to the safe custody of Financial Instruments. More specifically, KBC will take into account the know-how and market reputation of the selected sub-custodians, as well as the legal and contractual regulations and the Market practices in relation to the safe custody of Financial instruments, especially when such may have an impact on the Client's rights.

In view of protecting the Client's rights, KBC will require that every sub-custodian clearly segregates the Financial Instruments of the Client from KBC's own Financial Instruments, as well as from the sub-custodians own Financial Instruments, except to the extent that the applicable law of the country where Financial Instruments are being kept does not allow this. Financial Instruments may be distinguished by the use of separate accounts in which the Financial Instruments of the Client are being administered or by any other comparable measure offering the same level of protection. The Client will be informed of the cases where no segregation is possible or where comparable measure are in place by any means (including if appropriate through the website of KBC).

Financial Instruments of the Client are generally administered in a collective account (omnibus account) with a sub-custodian, rather than in separate Accounts in the name of every single client. More information about the different levels of securities segregation can be found in article 16.

KBC shall reconcile the quantity of financial Instruments recorded in its books as being held by Clients or for their account with any third parties, including any sub-custodians, central depository, clearing house or settlement institution, issuers, nominees or other agents, on the basis of the statements received from such third parties equals the financial Instruments held by all Clients.

KBC may grant security interests, liens, rights of set-off over Financial Instruments or funds of the Client to such intermediaries but shall not permit such rights to recover debts that do not relate to the Client or the provision of service to the Client, unless required by applicable law. The Client will be informed of security interests, liens, rights of set-off of a depository or sub-custodians as required under MIFID by any means (including if appropriate through the website of KBC).

KBC shall hold funds of the Client as required by applicable law and regulations on account(s) separately identified and segregated from the account(s) on which own funds of KBC are held.

## **6. Instructions and notices**

6.1 Instructions to take any action related to any Financial Instruments must be given by the deadline indicated by KBC or in the absence thereof on a Business Day between 8.30 am and 16.30 pm, Brussels Time. If instructions are given on days which are not Business Days or later than 16.30 pm, Brussels Time, they will be deemed to be given at the following Business Day .

6.2 Instructions and notices shall be given in writing (this is by mail, by authenticated SWIFT, by telefax, by email), by telephone or by other agreed medium.

KBC may request that instructions communicated by telephone shall be promptly confirmed in writing by an authorized person of the Client, although KBC may, in its absolute discretion, act upon such instructions before any confirmation is received and shall be fully protected in so acting even in the absence of any such confirmation. The Client accepts the delay that may result therefrom.

6.3 Notices and instructions shall be served to the respective addresses, swift-addresses, telefax numbers and e-mail addresses as stated in Annex 3.

6.4 Any such notice or instruction, if given as provided in this article, shall be deemed to have been received on the Party to which it is addressed:

- a) if delivered by hand or by courier and in the case of a facsimile transmission, where such day is a Business Day, and where the delivery/transmission occurs before 16.00 hours (local time at the place of delivery/where the transmission is received), on the day of delivery/transmission and in any other case on the Business Day following the day of delivery/transmission;
- b) if sent by mail, on the third day following the day of posting unless such day is not a Business Day in which case it shall be deemed to have been received on the next following Business Day.

## **7. Remuneration, expenses and taxes**

The clearing, settlement and safe-keeping fees and the expenses set forth in the Fee and Limits Schedule as incorporated in Annex 2 shall be debited from the Client's Cash Account at such time indicated in the Fee Schedule.

KBC is entitled to change the fees, costs and commission, applicable to custody services upon simple notice to the Client. The amendments to the fees and commissions will take effect 60 days after receipt of the said notification by the Client.

## **8. Specific Indemnity**

KBC shall be indemnified by the Client and held harmless from and against all or any losses including any indirect or consequential loss, liabilities, demands, damages, costs, claims or reasonable expenses which KBC may suffer or incur in acting as custodian and in performing the services for the Client other than by reason of wilful misconduct, gross negligence or fraud in the performance of its duties under this ST Custody.

Without limiting the generality of the foregoing, KBC shall be indemnified and held harmless by the Client from and against any loss, including indirect or consequential loss, liabilities, demands, damages, costs, claims or reasonable expenses, suffered or incurred by KBC arising from:

- i) the receipt or holding of Financial Instruments, as a consequence of laws and regulations and/or obligations in sub-custody agreements concluded by KBC for the provision of services under this ST Custody;
- ii) the fact that Financial Instruments deposited or negotiated by it, or on its behalf, are found not to be of good delivery or subject to a reversal or loss event, unless such is due to the gross negligence, wilful misconduct or fraud of KBC.

## **9. Specific disclaimers of liability**

9.1 KBC will incur no liability for losses incurred by the Client or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid Financial Instrument, regardless of when any such defect is detected.

9.2 KBC is under no duty to examine or verify the validity of ownership or of title to any Financial Instruments and will incur no liability in respect of any defect in ownership or title.

9.3 KBC is under no duty to examine or verify whether the Client may be entitled to tax exemption or reduction on income paid on Financial Instruments held in custody, nor to advise the Client in relation to tax matters in general.



## **10. Waiver of guarantees of KBC for Client Securities Account(s)**

KBC shall not ascertain and hereby waives its general pledge, retention and set-off rights provided in article 11.2 to 11.4 of the GT in respect of Financial Instruments held in the Client Securities Account(s) for debts and obligations that do not result from fees, taxes, costs and expenses generated by the services provided by KBC for the benefit of such Client Securities Account(s) or related to the Transactions in Financial Instruments held in such Client Securities Account(s), provided such Account(s) have been properly identified to KBC as Client Securities Account(s).

## **11. Claims and complaints**

Unless the Client makes a claim within two Business Days of receipt of the relevant information, in respect of any action taken by KBC pursuant to an instruction or request of the Client and otherwise within one month of receipt of the relevant Information, the action shall be considered approved and ratified and/or the Client shall not be entitled to submit a claim.

If the Client has not informed KBC forthwith of any errors it may notice in the documents or statements sent to it, they shall be deemed to be correct and to have been accepted by the Client.

Every claim on KBC becomes prescribed after a period of three months save where a shorter legal or conventional period of prescription exists. This period runs from the date of the receipt of the reporting regarding the event that gives rise to the claim.

## **12. Termination and amendment**

- i) The Client and KBC may from time to time agree to open Cash or Custody Accounts in addition to those opened and notified to the Client, or they may agree to close one or more of these Accounts. All Accounts will be governed by this Agreement.
- ii) Without prejudice to the GT, the provision of custody services under this ST Custody may be specifically terminated by either party by an instrument in writing delivered to the other party, such termination to take effect upon the expiration of 30 days' notice. This termination shall not affect the remaining parts of the Agreement in respect of other services rendered by KBC to the Client, unless specified otherwise.

## **13. Specific representations and warranties**

In addition to the representations and warranties in the GT, the Client hereby represents and warrants that:

- i) It undertakes not to infringe any law, regulation, market practice, rule of professional conduct, charter, bylaw, charge or undertaking affecting the Client or any of its assets, not to infringe any court order or judgment of a court or any other official agency, or any other rule applicable to it, and the Client undertakes to comply with all legal and regulatory obligations, including but not limited to the rules regarding public offering of securities and investment funds and regarding money laundering.

- ii) It has sufficient knowledge and experience to be able to evaluate the risks and the merits involved with accepting this ST Custody and its services contemplated under it, and to be solely responsible for making its own decision to do so.

## 14. UCITS V Requirements

### 14.1 Scope

This article specifies and supplements the duties and obligations of KBC for its Clients that are UCITS, management companies acting on behalf of UCITS or Clients acting as depositaries or sub-custodians for UCITS in respect of Financial Instruments or other assets held in the Custody Account of the Client and/or identified as held for the UCITS or the management company acting on behalf of the UCITS (UCITS Assets) and ensures compliance of KBC acting as sub-custodian with the UCITS V framework (Directive 2014/91/EU amending Directive 2009/65/EU (“D”) and Commission Delegated Regulation 2016/438 (“R”)).

### 14.2 General requirements applicable to KBC as sub-custodian (art. 22.3 D), conflict of interest (art.25 D)

KBC is subject to effective prudential regulation and supervision as provided in article 1.3 of the GT, as well as external periodical audit to ensure that UCITS assets are in its possession (art. 22bis.3 (b) D).

KBC shall (i) have the structure and expertise that are adequate and proportionate to the nature and complexity of UCITS Assets that it has accepted in custody, (ii) not act as both management company and sub-custodian for UCITS Assets, (iii) act honestly, fairly, professionally, independently and solely in the interests of the UCITS and the investors of the UCITS in respect of UCITS Assets and (iv) not carry out its activities with regard to UCITS or management company on behalf of UCITS that may create conflicts of interest between UCITS, the investors, the management company and itself unless it has functionally and hierarchically separated the performance of its tasks as sub-custodian from the potentially conflicting tasks.

As provided in article 4 of the GT, KBC aims to identify, manage, monitor and disclose potential conflict of interest to the Client and has a conflict of interest policy in place.

### 14.3 Specific requirements for safekeeping duties (art.22bis, 22.5 and 22.7 D and art.13 R) and segregation (art.16 R)

KBC shall (i) maintain records and segregated accounts in a way to ensure their accuracy, and in particular their correspondence to the UCITS Assets ((Art.22.5(b) D, art.13.1(b) and 16.1(b) R), (ii) segregate the UCITS Assets from its own assets, assets of its other clients, own assets of the Client and assets held for other clients of the Client, in such a way that the UCITS Assets can, at any time be clearly identified as belonging to the UCITS (art.22bis.3(c) D and 16.1(a) R), (iii) keep records and accounts to enable at any time and without delay to distinguish UCITS Assets from own assets and of assets of other clients (art.16.1(a) R), (iv) conduct reconciliations on a regular basis between KBC’s internal accounts and records and those of third parties to whom safekeeping functions are delegated (Art.13.1(c) and 16.1(c) R), (v) exercise due care in relation to UCITS Assets to ensure a high standard of investor protection art.13.1(d) R), (vi) assess and monitor all relevant custody

risks throughout the custody chain and inform the Client of any material risk identified (art.13.1(e) R), (vii) introduce adequate arrangements to minimize the risk of loss or diminution of UCITS Assets or of the rights in connection to UCITS Assets as a result of fraud, poor administration, inadequate registering or negligence (art.13.1(f) and 16.1(d) R), (viii) verify the ownership rights of the UCITS on UCITS Assets (art 13.1(g) R) and (ix) refrain from re-using the UCITS Assets, except in case the conditions of the UCITS framework are satisfied (art.22.7 D).

#### 14.4 Due diligence in case of sub-custody (art.15.1-4 R) and requirements for selection (art.22bis.3 D)

In case of sub-custody, KBC shall implement and apply an appropriate documented due diligence procedure for the selection and ongoing monitoring of the sub-custodian. KBC shall not select a sub-custodian with the intention of avoiding the requirements of the UCITS framework and shall demonstrate that there is an objective reason for the sub-custody.

When selecting and appointing a sub-custodian, KBC shall exercise all due skill, care, diligence to ensure that entrusting Financial Instruments of the UCITS to a sub-custodian provides an adequate standard of protection and shall at least: (i) assess the regulatory and legal framework, including the country risk, custody risks and enforceability of the contract entered with the sub-custodian, (ii) assess whether the practice, procedures and internal controls of the sub-custodian are adequate to ensure that the Financial Instruments of the UCITS are subject to a high standard of protection, (iii) assess whether the sub-custodian's financial strength and reputation are consistent with the safekeeping and (iv) ensure that the sub-custodian has the operational and technological capabilities to perform the safekeeping with a high degree of protection and security.

In the periodic review and ongoing monitoring, KBC shall exercise all due skill, care, diligence to ensure that the sub-custodian continues to comply with the requirement of the previous paragraph and shall at least: (i) monitor the sub-custodian performance with the standards of KBC, (ii) ensure that the sub-custodian exercises a high degree of care, prudence, diligence in the performance of safekeeping and in particular that it effectively segregates the Financial Instruments of the UCITS, (iii) review the custody risks associated with the safekeeping and notifies the Client in case of change of those risks as well as increase the frequency and scope of the review in case of market turmoil or when a risk has been identified, and (iv) monitor the prohibitions of re-use the UCITS Assets.

The appointment of a sub-custodian shall be evidenced by a written contract. KBC shall in turn impose to the sub-custodian(s) the provisions as required by UCITS V Framework. KBC may however sub-deposit certain UCITS Assets to a local sub-custodian that is not subject to effective prudential regulation and supervision, where, to the extent and as long as the law requires it and no local entity satisfies this requirement and only if (i) investors of UCITS are informed, prior to the investment of this legal constraint and (ii) KBC has been instructed by the Client to sub-deposit the UCITS Assets to such entity.

#### 14.5 Insolvency protection for safekeeping in third countries, early termination and reporting (art.15.7 and 17 R)

KBC shall if a sub-custodian is situated outside the EU: (i) take all necessary steps to ensure that in the event of its insolvency or that of its sub-custodian, the UCITS Assets held by it or by the sub-custodian are unavailable for distribution or amongst or realization by its creditors or those of its sub-custodians (art.17.1 R), (ii) procure independent legal advice confirming that the applicable insolvency law recognizes the segregation of assets of the UCITS and that these assets do not form part of the sub-custodian's estate in case of insolvency and are unavailable for distribution among or realization for the benefit of the creditors of the sub-custodian (art.17.2(a) R), (iii) ensure that the conditions laid down in the applicable insolvency laws or case law of the country recognize that the UCITS assets are segregated and unavailable for distribution and realization for the benefit of the creditors of the Client (art.17.2(b) R), (iv) immediately inform the Client when the conditions of (iii) are no longer met, (v) maintain accurate and up-to-date records and accounts of the assets of the UCITS on the basis of which the Client can at any time establish the precise nature, location and ownership status of those assets (art.17.2(d) R) and (vi) inform the Client about the changes in insolvency law and its effective application (art.17.2(f) R).

KBC shall ensure that the contract with any sub-custodian situated outside the EU allows for early termination taking into account the need to act in the best interest of the UCITS and its investors, in case the insolvency laws or case law no longer recognize the segregation of the UCITS Assets in the event of insolvency of KBC or the sub-custodian or the conditions laid down in the law or case law are no longer fulfilled (art.15.7 R).

As indicated in articles 9 of the GT and 3.9 of this Specific Terms Custody, KBC shall provide statements regularly and whenever a change occurs (art.17.2(e) and 17.3 R).

#### 14.6 Duties of the Client

The Client shall perform all the duties of the UCITS framework (including open the custody account with KBC in the name of or for the account of the UCITS or the management company acting for UCITS (art.22.5(a)(ii) D) that are necessary for KBC to execute its own obligations and in particular provide all required information to KBC and properly designate UCITS Assets to KBC.

#### 14.7 (I)CSD

Issuer (I)CSDs are not sub-custodians as contemplated by this article, therefore paragraphs 4 and 5 of this article do not apply in case of sub-deposit of UCITS Assets with (I)CSDs. Furthermore, KBC shall have no liability for acts and omissions of (I)CSDs as provided in the Agreement and KBC shall assist the Client to recover its loss from (I)CSDs.

## 15 AIFMD Requirements

### 15.1 Scope

This article specifies and supplements the duties and obligations of KBC for its Clients that are AIF, AIFM acting on behalf of AIF or Clients acting as depositaries or sub-custodians for AIF in respect of Financial Instruments or other assets held in the Custody Account of or identified as held for the AIF or the AIFM acting for the AIF (AIF Assets) and ensures compliance of KBC acting as sub-custodian with the AIF framework (Directive 2011/61/EU (“D”), Commission Delegated Regulation 2013/231 (“R”)).

### 15.2 General requirements applicable to KBC as sub-custodian (art.21 D), conflict of interest (art.21.10 D)

KBC is subject to effective prudential regulation and supervision as provided in article 1.3 of the GT, including minimum capital requirements as well as external periodical audit to ensure that AIF assets are in its possession (art.21.11(d)(ii) D).

KBC shall (i) have the structure and expertise that are adequate and proportionate to the nature and complexity of AIF Assets that it has accepted in custody (art.21.11(d)(i) D), (ii) act honestly, fairly, professionally, independently and solely in the interests of the AIF and the investors of the AIF [in respect of AIF Assets](art.21.10 D), (iii) not carry out activities that may create conflict of interest between the AIF, the investors of the AIF, the AIFM and itself unless it has separated the performance of its safekeeping tasks from the other potential conflicting ones (art.21.10,§2 D).

As provided in article 4 GT, KBC aims to identify, manage, monitor and disclose potential conflict of interest to the Client and has a conflict of interest policy in place.

### 15.3 Specific requirements for safekeeping duties (art.21.11, 21.8, 21.10 D and art.89 R) and segregation (art.99 R)

KBC shall (i) maintain records and segregated accounts in a way to ensure their accuracy, and in particular their correspondence to the AIF Assets ((Art.21.11(d)(iii) D), art.89.1(b) and 99.1(b) R), (ii) segregate the AIF Assets from its own assets, assets of its other clients, own assets of the Client and assets held for other clients of the Client, in such a way that the AIF Assets can, at any time be clearly identified as belonging to the AIF (art.99.1(a) R), (iii) conduct reconciliations on a regular basis between KBC’s internal accounts and records and those of third parties to whom safekeeping functions are delegated (Art.89.1(c) R), (v) exercise due care in relation to AIF Assets to ensure a high standard of investor protection (art.89.1(d) R), (vi) assess and monitor all relevant custody risks throughout the custody chain and inform the Client of any material risk identified (art.89.1(e) R), (vii) introduce adequate arrangements to minimize the risk of loss or diminution of AIF Assets or of the rights in connection to AIF Assets as a result of fraud, poor administration, inadequate registering or negligence (art.89.1(f) R), (viii) verify the ownership rights of the AIF or AIFM acting on behalf of AIF on AIF Assets (art 89.1(g) R) and (ix) refrain from re-using the AIF Assets, except in case the conditions of the AIF framework are satisfied (art.21.11(d)(iv) D).

#### 15.4 Due diligence in case of sub-custody and requirements for selection (art.21.11 D and 98 R)

In case of sub-custody, KBC shall implement and apply an appropriate documented due diligence procedure for the selection and ongoing monitoring of the sub-custodian. KBC shall not select a sub-custodian with the intention of avoiding the requirements of the AIF framework and shall demonstrate that there is an objective reason for the sub-custody (art.21.11(a)(b) D).

When selecting and appointing a sub-custodian, KBC shall exercise all due skill, care, diligence to ensure that entrusting Financial Instruments of the AIF to a sub-custodian provides an adequate standard of protection and shall at least: (i) assess the regulatory and legal framework, including the country risk, custody risks and enforceability of the contract entered with the sub-custodian (art.98.2(a) R), (ii) assess whether the practice, procedures and internal controls of the sub-custodian are adequate to ensure that the Financial Instruments of the AIF are subject to a high standard of protection (art.98.2(b) R), (iii) assess whether the sub-custodian's financial strength and reputation are consistent with the safekeeping (art.98.2(c) R) and (iv) ensure that the sub-custodian has the operational and technological capabilities to perform the safekeeping with a high degree of protection and security (art.98.2(d) R).

In the periodic review and ongoing monitoring, KBC shall exercise all due skill, care, diligence to ensure that the sub-custodian continues to comply with the requirement of the previous paragraph and shall at least: (i) monitor the sub-custodian performance with the standards of KBC (art.98.3(a) R), (ii) ensure that the sub-custodian exercises a high degree of care, prudence, diligence in the performance of safekeeping and in particular that it effectively segregates the Financial Instruments of the AIF (art.98.3(b) R), (iii) review the custody risks associated with the safekeeping and notifies the Client in case of change of those risks as well as increase the frequency and scope of the review in case of market turmoil or when a risk has been identified (art.98.3(c) R), and (iv) monitor the prohibitions according to which sub-custodian shall not be a AIFM or a prime broker, except under certain conditions (art.98.5 R, art.21.4 D).

The appointment of a sub-custodian shall be evidenced by a written contract. KBC shall in turn impose to the sub-custodian the provisions as required by AIF framework. KBC may however sub-deposit certain AIF Assets to a local sub-custodian that is not subject to effective prudential regulation and supervision, where, to the extent and as long as the law requires it and no local entity satisfies this requirement and only if (i) investors of AIF are informed, prior to the investment of this legal constraint and (ii) KBC has been instructed by the Client to sub-deposit the AIF Assets to such entity.

#### 15.5 Duties of the Client

The Client shall perform all the duties of the AIF framework (including open the custody account with KBC in the name of or for the account of the AIF or the AIFM acting for AIF that are necessary for KBC to execute its own obligations and in particular provide all required information to KBC and properly designate AIF Assets to KBC.

## 15.6 Liability (art.21.12-13 D, 100 R)

The liability of KBC is not altered by the AIF framework, however KBC shall, in order to allow the Client to discharge its own liability to the extent and in conformity of the other conditions set by AIF framework (art.21.13 D), endeavour to ensure that the sub-custodian is liable for losses of Financial Instruments or losses resulting from its negligent, fraudulent or wilful act. KBC shall assist the Client to recover its loss from sub-custodian.

## 15.7 (I)CSD

Issuer (I)CSDs are not sub-custodians as contemplated by this article, therefore paragraphs 4 and 6 of this article does not apply in case of sub-deposit of AIF Assets with (I)CSD. Furthermore, KBC shall have no liability for acts and omissions of (I)CSDs as provided in the Agreement and KBC shall assist the Client to recover its loss from (I)CSDs.

## **16 Protection levels associated with the different levels of securities segregation**

The purpose of this article is to inform customers of the different levels of securities segregation that KBC offers for their financial instruments on custody accounts and the level of protection associated with those different levels. This declaration is required by Article 38 (5) and (6) of the CSDR. A list of the costs linked to the different segregation levels can be found in 'Fee Schedule Financial Institutions'. This article provides general information and may not be construed under any circumstances as legal advice. If you have further questions or would like advice regarding the level of protection applicable to your personal situation, you should contact your advisers for legal advice in this regard.

### 16.1 Description of the different levels of securities segregation

In its own books, KBC maintains for each customer separate custody accounts, in which the financial instruments that the customer holds at KBC are booked. All data and accounts are maintained in an accurate manner, so that KBC is able immediately and at all times to differentiate the customer's financial instruments from its own financial instruments and those of other customers, and to minimise the risk of loss or diminution of the financial instruments due to misuse, fraud, malpractice or negligence.

The financial instruments in a custody account are held and handled within a hierarchical pyramid with, at its apex, a central securities depository, which provides the central custody of all financial instruments, or another financial institution (also referred to as the 'top of the pyramid'), which is not a central securities depository, but fulfils the same role. Both are referred to hereinafter as 'central depositories'. Within this pyramidal structure, the financial instruments that customers hold on a custody account at KBC, will be held in turn by KBC directly or indirectly (i.e. via other financial institutions known as 'sub-depositories') on an account at the relevant central depository of the financial instrument. KBC will ensure that the central depository or sub-depository segregates its customers' financial instruments from any financial instruments belonging to the central depository/sub-depository itself, to KBC itself or to another customer of that central depository/sub-depository. This segregation of securities occurs by means of separate accounts or other equivalent measures. KBC regularly verifies that the data on the (custody) accounts of

customers in its own books correspond with the accounts it holds at the central depository or sub-depository.

The separate accounts (levels of securities segregation) that KBC opens at the central depository or sub-depository to segregate its customers' financial instruments can be omnibus accounts or individualised accounts:

- In an omnibus account, all the financial instruments that KBC holds for its customers are merged and booked on a single account at the central depository or sub-depository. The customers' individual positions (as indicated by the custody accounts of customers in KBC's own books) are therefore not reflected in this collective account.
- In the case of an individualised account, the financial instruments that a customer holds at KBC are held by KBC on a separate account in the customer's name at the central depository (or sub-depository). In contrast to an omnibus account, the customer's financial instruments are therefore also segregated at the central depository (or sub-depository) from the financial instruments or other customers of KBC.

Providing individualised accounts is an obligation for central securities depositaries in the European Economic Area (EEA) and the financial institutions that directly hold their accounts there ('participants'). KBC is therefore only obliged to provide individualised accounts to its customers for the financial instruments in central custody at a central securities depository where KBC is a participant (or, in other words, with which KBC maintains accounts directly, without the intervention of a sub-depository). This obligation does not apply, by contrast, to financial instruments that KBC maintains indirectly at the central securities depository via a sub-depository or for financial instruments, the central custody of which is not provided by a central securities depository.

KBC is a participant in a number of central securities depositaries in the EEA and hence offers customers the possibility of maintaining individualised accounts for their financial instruments which are kept in central custody by the relevant central securities depository.

## 16.2 Protection level and most important legal implications associated with the different levels of securities segregation

This article only discusses the protection level and the legal implications associated with the different levels of securities segregation (omnibus or individualised accounts) in the event of insolvency or another instance of concursus creditorum on the part of KBC.

For a discussion of the protection level associated with these accounts in the case of insolvency or another case of concursus creditorum affecting the central securities depository itself, we refer to the announcement published by the relevant central securities depository.

The protection enjoyed by customers does not differ in principle according to the level of securities segregation that the customer chooses (omnibus account or individualised account).

In the event of insolvency on KBC's part or another case of concursus creditorum, Belgian law will apply in principle to the settlement of the insolvency. The protection that a customer's financial instruments enjoy where applicable on a KBC custody account, are subject to the following



(Belgian) legislation, depending on the type of financial instruments. Since the protection is equivalent under each legislation, it will be further explained below without distinction.

- The Companies and Associations Code and the Royal Decree of 12 January 2006 relating to book-entry corporate securities;
- Coordinated Royal Decree No. 62 of 10 November 1967 relating to the deposit of fungible financial instruments and the settlement of transactions in such instruments;
- The Act of 2 January 1991 on the market for public debt securities and monetary policy instruments.

The booking of financial instruments on an account grants the right of co-ownership to the customer. As a consequence of this co-ownership right, the financial instruments always remain outside the (bankrupt) assets and hence outside the reach (garnishment) of KBC Bank's creditors. In the event of bankruptcy or concursus creditorum, the co-ownership right will be exercised collectively by the customers in the following manner: customers may reclaim the financial instruments of which they are owner – as indicated by their KBC Custody Account – from the separate account that KBC held for its customers' financial instruments at the central depository or sub-depository. Should the number of financial instruments at the central depository or sub-depository be insufficient (e.g., due to loss), the financial instruments of which KBC itself is the owner will be drawn upon. If this is still not sufficient, the financial instruments will be distributed amongst the customers in proportion to their rights (positions) relative to one another.

The protection these customers enjoy does not depend on whether the customer opts for an omnibus account or an individualised account at the central securities depository. Joint ownership relates, after all, to the generality of financial instruments that KBC held at the central securities depository. The financial instruments held on an individualised account still belong, despite the individualisation, to the generality. A customer who has opted for an individualised account with the central securities depository must, therefore, together with all other customers, bear any losses in the generality, even if this loss did not occur on their individualised account. Conversely, any losses on an individualised account will be borne collectively by the customers on the omnibus account and the other individualised accounts.

### 16.3 Right of use of KBC on omnibus accounts and individualised accounts

KBC does not have the right to use its customers' financial instruments for its account or on the account of another person or customer of KBC, unless the customer has given their explicit, prior consent for such use under precisely defined circumstances. If KBC wished to use financial instruments held in an omnibus account at the central depository or sub-depository, this would require KBC to seek the consent of all the customers whose financial instruments are booked on the omnibus account. If, however, the customer has chosen an individualised account, their sole consent will be required. This consent can have implications for the exercise of the co-ownership right of the individual customer in question in the event of KBC's bankruptcy or another case of concursus creditorum, i.e. they will only receive the financial instruments that remain after all other customers, who have not consented to the use of their financial instruments by KBC, have been repaid.